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FEDERAL COURT

B E T W E E N:

RONSCO INC.

Plaintiff/Moving Party

and

HIS MAJESTY THE KING, THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS, CANADA BORDER
SERVICES AGENCY

Defendants/Responding Parties

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

MOTION RECORD OF THE MOVING PARTY, RONSCO INC.

August 15, 2023

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AND TO: **DEPARTMENT OF JUSTICE**
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Solicitors for the Defendants/Responding Parties

FEDERAL COURT

B E T W E E N:

RONSCO INC.

Plaintiff/Moving Party

and

HIS MAJESTY THE KING, THE MINISTER OF PUBLIC SAFETY
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FEDERAL COURT

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RONSCO INC.

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SERVICES AGENCY

Defendants

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

NOTICE OF MOTION
(Motion to substitute the discovery witness under Rule 237(3))

TAKE NOTICE THAT the Plaintiff will make a Motion to the Court as soon as the motion can be heard, at Ottawa, Thomas D'Arcy McGee Building, 90 Sparks Street, 5th floor, Ottawa, Ontario, K1A 0H9.

THE MOTION IS FOR

1. An order that the Defendants produce Doug Band as their representative to be examined for discovery by the Plaintiff;
2. Costs thrown away by the Plaintiff in preparing for and attending the examination for Discovery of Kelly Bartlett;
3. The costs of this motion; and,
4. Such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

OVERVIEW

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1. This motion arises out of the Defendants' decision to put forward as their discovery representative a low-level employee (Kelly Bartlett) who had almost no relevant knowledge regarding the matters at issue, who had no relevant decision-making authority, who had failed to inform herself by speaking to her superiors or others with relevant knowledge, and who had never had any interactions with the Plaintiff, not even by e-mail.
2. Ms. Bartlett was utterly unsuitable as a witness.
3. The decision to put her forward is a flagrant abuse of the Crown's right to choose its discovery representative. Given the witness's complete inability to answer relevant questions, it is difficult to imagine that the Defendants' choice to put her forward was anything but tactical.
4. The Defendants' actions appear designed to frustrate the Plaintiff's ability to obtain relevant evidence and to create further delays in the litigation.
5. Doug Band is the witness best suited to serve as the Crown's discovery representative in this action. He continues to be an employee of CBSA and is available to serve as a witness.
6. Mr. Band was the source of the crucial representations that form the basis of Ronsco's claim, when he told the company that it would not be subject to retroactive duties, which amounted to nearly \$2.5 million. Ms. Bartlett did not attend this meeting and could not answer relevant (and basic) questions regarding the meeting and Mr. Band's representations.
7. Mr. Band also has direct knowledge of the decision making behind CBSA's series of reversals on its position following these representations: first disavowing Mr. Band's representations, then completing an internal analysis suggesting that his representations should be honoured, then reversing course again to abandon this analysis and impose retroactive duties on Ronsco. Ms. Bartlett admitted that these decisions were made above her rank. She had no

knowledge of how the decisions were made and could not answer relevant questions regarding them.

RONSCO'S CLAIM FOR BREACH OF PUBLIC LAW DUTIES

8. Ronsco's action seeks damages against the Defendants for a series of breaches of their public law duties, including significant misrepresentations made to Ronsco, treating Ronsco differently and unfairly as compared to similarly situated importers, and providing a series of conflicting mis-directions with respect to the appropriate appeals route.
9. Ronsco is the only Canadian-owned independent railway wheelset manufacturing shop in Canada. It supplies products and services to North American and international rail, mining, and transit industries. Ronsco is headquartered in Montreal, with five locations across Canada. Ronsco has been active for over 50 years.
10. Beginning in July 2017, Ronsco was subjected to a Trade Compliance Verification for goods imported by Ronsco between January 1, 2015 to December 31, 2015. Among the goods reviewed were "AAR approved H36 Wheels Class C, 8-3/8" bore diameter" ("**rough bore wheels**").
11. On April 20, 2018, Ronsco received an Interim Report from the CBSA, advising that the duty free tariff item (8607.19.21 or "**Tariff 21**"), under which Ronsco and other importers had imported rough bore wheels for many years, was no longer applicable. Instead, Ronsco was told that the goods should be imported under Tariff Item 8607.19.29 ("**Tariff 29**") with a duty rate of 9.5%.
12. Ronsco was informed that it would have to make corrections and pay duties going back four years, on the basis that it purportedly had "reason to believe" that its initial tariff declaration was incorrect based on CBSA's purported position that Tariff 21 is *prima facie* clear and evident.

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13. On June 26, 2018, Ronsco officials met with Doug Band, a Director General with CBSA and representatives of the Minister of Public Safety (the “**Doug Band Meeting**”). 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.
14. Ms. Bartlett did not attend the Doug Band Meeting and could not give any evidence as to what transpired at the meeting.
15. CBSA takes the position that Mr. Band made these representations based on a memo that was erroneously prepared for the meeting, which addressed Sumitomo Canada Limited (“**Sumitomo**”). Sumitomo had similarly imported rough bore wheels under Tariff 21 for years. But it benefited from a preferential agreement with CBSA in the form of an advanced ruling, which made clear that Tariff 21 applied to the goods.
16. Following the meeting, CBSA reversed its position from what was represented by Doug Band, and instead issued a final verification report (the “**Final Report**”) on July 24, 2018, requiring Ronsco to pay retroactive duties going back four years on the basis that Ronsco had “reason to believe” that Tariff 21 was not the correct classification.
17. Subsequent to the issuance of the Final Report, CBSA again reversed its position based on further analysis that determined that Ronsco, in fact, did not have “reason to believe.” Accordingly, CBSA concluded that the Final Report should be amended, such that Ronsco would not be required to pay retroactive duties going back four years.
18. Despite these findings, CBSA decided to reverse its position yet again, deciding not to amend the Final Report and to instead compel Ronsco to pay four years of retroactive duties. Ms. Bartlett had no knowledge of and could not offer any evidence as to how or why this decision was made.

19. Ronsco appealed the CBSA’s findings to the CBSA President, including attempting to appeal the finding that Ronsco had “reason to believe.”
20. On November 8, 2018, Sue Ogilvie, an Appeals Officer with the CBSA’s Toronto Trade Appeals Unit, advised that there was no jurisdiction to consider the findings regarding “reason to believe” in an appeal to the President. She advised that these findings could only be challenged by appealing the Administrative Monetary Penalty that Ronsco would receive, under section 129 of the *Customs Act*.
21. Ronsco’s appeals to the CBSA President, and subsequently to the Canadian International Trade Tribunal (“CITT”), were denied.
22. On October 11, 2019, the CBSA issued a Notice of penalty Assessment to Ronsco stating that Ronsco had “reason to believe” that it had selected the incorrect Tariff for the goods subject to the retroactive corrections. Ronsco filed an appeal, which was eventually dismissed.
23. 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, 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”.
24. CBSA now takes 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*, as Ronsco had attempted to do in the first instance but was thwarted by Ms. Ogilvie.
25. Ms. Bartlett had no knowledge of and could not offer any evidence regarding Ms. Ogilvie’s or Ms. Alimohamed’s advice.

CBSA PUTS FORWARD AN UNSUITABLE AND DEFICIENT WITNESS

26. The parties conducted examinations for discovery on May 3 and 4, 2023. The parties agreed to 1.5 days of examination for each party.
27. On May 4, 2023, after only a few hours of examination, Ronsco adjourned the examination because Ms. Bartlett could not answer relevant questions and was unsuitably as a representative of the Crown in this action.
28. At the time of the events underlying the claim, Ms. Barlett was a policy advisor. She reported to a manager, who reported to a director, who reported to Mr. Band. Ms. Bartlett was so low on the CBSA chain of command that she could not even identify the Vice-President of the division of CBSA in which she worked and whom Mr. Band reported to.
29. Ms. Barlett had almost no relevant knowledge of the matters in issue:
 - (a) She never once interacted with Ronsco, not even over e-mail;
 - (b) She was not involved in the verification audit of Ronsco;
 - (c) She was not involved in preparing the interim verification report;
 - (d) She was not involved in preparing the Final Report;
 - (e) She did not attend the Doug Band Meeting and she had no knowledge of the details of what transpired at the meeting, including who attended and what was discussed;
 - (f) In particular, she could not give evidence as to whether Mr. Band believed he was meeting with Ronsco or Sumitomo or why he represented to Ronsco that it would not be subject to retroactive duties;
 - (g) Crucially, she had no involvement in the ultimate decision not to amend the Final Report contrary to CBSA's internal conclusion that Ronsco

did not have “reason to believe.” She admitted, frankly, that this decision was made above her rank;

- (h) She had no involvement in Ms. Ogilvie’s misleading representations to Ronsco; and
 - (i) She had no involvement in Ms. Alimohamed’s misleading representations to Ronsco.
30. Ms. Bartlett also failed to adequately inform herself, as required by Rule 241. In advance of her discovery, she did not speak to any of the following individuals with relevant knowledge of the matters in question:
- (a) Doug Band;
 - (b) Any of the other government attendees at the Doug Band Meeting;
 - (c) Lucie Gagne, who authored the Final Report;
 - (d) Grant Tebutt, Ms. Bartlett’s direct superior at the time who drafted a memo finding that Ronsco did not have “reason to believe”;
 - (e) Yannick Mondy, Grant Tebutt’s superior, who reported to Mr. Band and appears to have been involved in discussions related to CBSA’s many reversals in position;
 - (f) Sue Ogilvie; or
 - (g) Natasha Alimohamed.
31. Because of Ms. Bartlett’s lack of relevant knowledge and failure to inform herself, she was unable to answer relevant questions. The Defendants took numerous under advisements (and some undertakings) to provide information that should have been provided through the testimonial evidence of the discovery representative at the examination.

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32. Mr. Band is in a much better position to give relevant evidence than Ms. Bartlett. In particular, he has direct knowledge of what transpired at the Doug Band Meeting and why he made the representations that he made to Ronsco.
33. He also has direct knowledge of CBSA's decision making process following that meeting, including its multiple reversals on "reason to believe," and CBSA's ultimate decision to disregard its own internal analysis, which found that Ronsco did not have "reason to believe."
34. These matters are central to Ronsco's claim. Mr. Band must be examined directly on them because his credibility will be a key issue at trial. CBSA has not produced any documents recording the specifics of the Doug Band Meeting or why CBSA ultimately decided not to honour Mr. Band's representations and instead impose retroactive duties. The only way for Ronsco to adequately explore these issues is through examination of Mr. Band.
35. Mr. Band had the authority to make final decisions with respect to Ronsco. Ms. Bartlett had no such authority.
36. It would be unfair, impractical, and inconvenient for another witness to inform themselves or for CBSA to respond to undertakings on these issues. It is very likely that follow up questions will arise from any answers given, and it will be inefficient and unfair for the Defendants' witness or counsel to obtain and then subsequently provide answers. Mr. Band should be examined directly so that follow up questions can be addressed immediately at the examination.

COSTS THROWN AWAY

37. Ronsco incurred significant costs in preparing for and attending the examination of Ms. Bartlett.
38. The vast majority of these costs were thrown away because Ms. Bartlett was not an adequate witness and she could not answer relevant questions.

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39. Ronsco will now be forced to incur further costs to prepare for further examination.
40. Ronsco pleads and relies upon the *Federal Court Rules*, including *Rules 237, 237(3), 240, 241*.
41. Such further and other grounds as the solicitors may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. An affidavit to be sworn;
2. Such further and other evidence as the solicitors may advise and this Honourable Court may permit.

June 12, 2023

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TO: **The Chief Administrator**
Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
Ottawa ON K1A 0H9

-10-

AND TO: **DEPARTMENT OF JUSTICE**
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Solicitors for the Defendants

Court File No. T-1295-20

FEDERAL COURT

B E T W E E N:

RONSCO INC.

Plaintiff

and

HIS MAJESTY THE KING, 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.).

AFFIDAVIT

I, Susan Gutteridge, a law clerk with the law firm of Conway Baxter Wilson LLP/s.r.l., solicitors for the Plaintiff of the City of Ottawa, in the Province of Ontario,
AFFIRM:

1. The following documents are relevant to the issues raised in the within motion
and are attached hereto as **Exhibits A to S**:

Exhibit “A”: Fresh as Amended Statement of Claim

Exhibit “B”: Fresh as Amended Statement of Defence

Exhibit “C”: Fresh as Amended Reply

Exhibit “D”: Sumitomo Advanced Ruling

Exhibit “E”: Interim Verification Report dated April 20, 2018

Exhibit “F”: Issue Sheet Dated June 18, 2018

-2-

- Exhibit “G”:** Email chain including email from Doug band dated June 25, 2018
- Exhibit “H”:** Email chain between Grant Tebbutt, Yannick Mondy and Kelly Bartlett dated August 8, 2018
- Exhibit “I”:** Final Verification Report dated July 24, 2018
- Exhibit “J”:** Email from Yannick Mondy dated August 10, 2018
- Exhibit “K”:** Memorandum to CBSA President dated August 10, 2018
- Exhibit “L”:** Email from Doug Band to Richard Mahoney dated August 21, 2018
- Exhibit “M”:** Email from Grant Tebbutt to Yannick Mondy dated October 9, 2018
- Exhibit “N”:** November 8, 2018 emails with Sue Ogilvie
- Exhibit “O”:** Emails with Natasha Alimohamad dated August 17, 2020
- Exhibit “P”:** Letter from Adrian Johnston dated May 29, 2023, with enclosure
- Exhibit “Q”:** Doug Band LinkedIn page
- Exhibit “R”:** Email chain between S. Gutteridge, C. Maher and C. Trivisonno dated January 20 - 27, 2023
- Exhibit “S”:** Email chain between S. Gutteridge, C. Maher and C. Trivisonno dated January 30 - February 27, 2023

AFFIRMED by Susan Gutteridge at
the City of Ottawa, in the Province of
Ontario, before me on August 15, 2023
in accordance with O. Reg. 431/20,
Administering Oath or Declaration
Remotely.

D. Burke-Lachaine

Commissioner for Taking Affidavits
(or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc.,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

S. Gutteridge

SUSAN GUTTERIDGE

This is **Exhibit “A”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

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)

Address of local office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
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- TO: ATTORNEY GENERAL OF CANADA
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- TO: CANADA BORDER SERVICES AGENCY
c/o Deputy Attorney General
Department of Justice Canada
50 O'Connor Street, 5th Floor
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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 Tarif 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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Solicitors for the Plaintiff

This is **Exhibit “B”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

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



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Civil Litigation Section
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Solicitors for the Plaintiff

This is **Exhibit “C”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

Court 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 REPLY

1. The plaintiff Ronsco Inc. (“**Ronsco**”) denies the allegations in the Fresh as Amended Statement of Defence except as expressly set out below.
2. Ronsco denies that it has ever admitted, acknowledged, or failed to dispute any finding that 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 under tariff item 8607.19.21 (“**Tariff 21**”).
3. In particular, and contrary to paragraphs 29 and 30 of the Fresh as Amended Statement of Defence, Ronsco did not, in its May 25, 2018 response (the “**May 25, 2018 Response**”) to the interim report of Canada Border Services Agency (“**CBSA**”) dated April 20, 2018, admit, acknowledge or fail to dispute CBSA’s finding that Ronsco had “reason to believe” that its original tariff declaration with respect to rough bore wheels was incorrectly classified under Tariff 21.

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4. To the contrary, Ronsco was extremely surprised by CBSA's position that rough bore wheels did not fall within Tariff 21 and that Ronsco supposedly had "reason to believe" this was the case based on the wording of Tariff 21 itself. Ronsco has clearly maintained its position throughout that it did not have "reason to believe" that its original tariff declaration was incorrect based on the wording of Tariff 21.
5. The CBSA's administrative policies, including Memorandum D-11-6-10 *Reassessment Policy* and Memorandum D-11-6-6 "*Reason to Believe*" and *Self-adjustments to Declarations of Origin, Tariff Classification, and Value for Duty*, make clear that an importer's obligations to correct declarations and pay duties depend on whether or not specific information giving the importer "reason to believe" that their previous declarations were incorrect ("**specific information**") was available at the time of the declarations. Where specific information was not available, the importer is required to correct declarations and pay duties "only for the verification period . . . and going forward."
6. Given that the wording of Tariff 21 is not *prima facie* evident and transparent, Tariff 21 did not provide specific information giving Ronsco reason to believe that its previous declarations were incorrect, nor did Ronsco have any other sources of specific information prior to the trade compliance verification.
7. Tariff 21 can not be evident and transparent, given that the entire industry was importing identical or substantially similar goods under Tariff 21 and given that the Defendants issued an Advanced Ruling to Sumitomo allowing it to import

- rough bore wheels under Tariff 21.
8. The fact that Ronsco asserted in its May 25, 2018 Response that rough bore wheels are properly classified under tariff item number 8607.19.30 is irrelevant to whether Tariff 21 is *prima facie* evident and transparent. Further, if Ronsco developed a “reason to believe” at that time, which is not admitted, it was not as a result of Tariff 21, which is unclear and ambiguous.
9. Ronsco accepts the Defendants’ admission at paragraph 16. a) of the Fresh as Amended Statement of Defence that, pursuant to s. 32.2 of the *Customs Act*, an importer’s obligation to self-correct importations and pay resulting duties depends on whether or not the importer had “reason to believe” and any such obligation is limited to the time period “after having ‘reason to believe’”. The Defendants’ admissions at paragraph 16. a) are consistent with the representations by Doug Band that no retroactive duties would be imposed on Ronsco and are consistent with D 11-6-10, in particular section 27 thereof.
10. Contrary to paragraph 51 of the Statement of Defence, the goods imported by Sumitomo Canada Limited (“**Sumitomo**”) are the same as the rough bore wheels imported by Ronsco. The Advanced Ruling requested by Sumitomo and granted by CBSA classified Sumitomo’s rough bore wheels under Tariff 21 as “Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; For self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic; For use in the repair of tramway vehicles (excluding subway

- cars) with magnetic track brakes”.
11. Ronsco uses the same rough bore wheels for the very same purpose as Sumitomo. Sumitomo does not import wheel blanks for passenger coaches or for any other railway vehicle used to transport passengers.
12. In response to paragraphs 61-63 of the Fresh as Amended Statement of Defence, to the knowledge of the Defendants, Ronsco operates within a very narrow field of the economy in which Ronsco, and the industry as a whole, believed that Tariff 21 was the appropriate classification for the goods at issue, given CBSA’s treatment of similarly situated importers who were not subject to duty, penalty, or enforcement action. Similarly, the Defendants were aware of the disproportionate effect that its unequal treatment would have on Ronsco, including because of the small and competitive market in which Ronsco operates with a narrow band of importers and consumers.
13. Contrary to paragraph 54 of the Fresh as Amended Statement of Defence, Ronsco’s claim for breach of public law duties is a recognized cause of action. The plaintiff pleads and relies on the decision of Gleeson J. in this action dated July 13, 2022, *Ronsco Inc. v. Canada*, 2022 FC 1029. The Defendants are barred from attempting to re-litigate this issue by the doctrine of *res judicata*.
14. In response to paragraphs 55-57 of the Fresh as Amended Statement of Defence, Ronsco’s action is not time barred. Ronsco’s cause of action for breach of public law duties did not arise until September 17, 2020 when Ronsco received the decision dismissing its NPA Appeal. In the alternative, and if

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Ronsco's cause of action arose at an earlier date, which is not admitted and expressly denied, the cause of action arose no earlier than July 30, 2020 when Ronsco received the July 2020 DAS requiring it to pay duties and interest from 2015 to 2018. Ronsco commenced this action within three months of its cause of action arising.

15. Ronsco's cause of action for breach of public law duties arises from substantially the same facts as those pleaded in Ronsco's statement of claim dated October 26, 2020.
16. Ronsco pleads and relies upon rules 75, 76, 77, 200, and 201 of the *Federal Courts Rules*.

August 22, 2022


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-6-

AND TO: Department of Justice Canada
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Charles Maher
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Solicitors for the Defendants

This is **Exhibit “D”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

 Agence des services
frontaliers du Canada
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Région du Québec
130, rue Dalhousie
Québec (Québec)
G1K 4C4

Canada Border
Services Agency
Québec Office
Québec Region
130 Dalhousie Street
Québec, Québec
G1K 4C4

Our file
QB60700(DG)
Q268009

SUBJECT: TARIFF CLASSIFICATION ADVANCE RULING
ADVANCE RULING NUMBER:
Importer:
Commodity: Wheel blanks
Exporter:

Madam,

This is in response to your letter dated [redacted] requesting a Tariff Classification Advance Ruling for the above-mentioned product.

Based on the information on hand, the "Wheel blanks" are classified under 8607.19.21.00 as blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches.

At the present time, the ad valorem duty rate is free when the goods are imported from a country entitled to the Most Favoured Nation Tariff Treatment.

In addition to the duty payable, when applicable, the above-mentioned product is subject to the 7% Goods and Services Tax (GST) under the Excise Tax Act. This tax is calculated on the value for tax of the goods, i.e., the value of the goods in Canadian funds plus the amount of duty.

This tariff classification advance ruling will be honoured by the Canada Border Services Agency (CBSA) for future importations of the above-mentioned product you produce, export, or import as long as the material facts and circumstances surrounding the importation of this product are the same as the facts and circumstances presented in the application for the advance ruling. It is the responsibility of any importer who is quoting this advance ruling number to ascertain that the goods being imported are covered by the advance ruling. This advance ruling will only be honoured by the CBSA if all conditions in the ruling have been met and if the ruling has not been modified, revoked, revised, or reversed. Notification of any modification, revocation, revision, or reversal will be sent to you at the address listed above.

Canada

Our file
Q860700(DG)
Q268009

To ensure the benefits of this advance ruling at time of importation, please indicate that you are in possession of this ruling by indicating the advance ruling number on the Canada Customs Invoice, the commercial Invoice, in the "description" field of Form B3, Canada Customs Coding or in the "Input ruling reference number" field (K160) If you are a CADEX participant.

Furthermore this advance ruling is considered binding for all future importations of the subject goods until modified or revoked. Should you disagree with this advance ruling, issued under paragraph 43.1 (1) c) of the Customs Act, you may request a review of this advance ruling under the authority of subsection 60 (2) of the *Customs Act* by filing a letter setting forth arguments in favour of a revision or reversal of the advance ruling within 90 days of the date of issue of the advance ruling. The request for a review should be sent to the "Director of Appeals" of Montreal office, at the address listed below:

Canada Border Services Agency
Director of Appeals
400 Place Youville, 4th floor
Montreal, Quebec
H2Y 2C2

Effective from the date of this letter, for goods that will be imported, please note that you have to make the corrections set out in subsection 32.2 (2) of the *Customs Act*. Moreover, for goods already imported, you can always file requests for a refund in accordance with paragraph 74 (1) e) of the same Act.

If in the future there is a change in the facts or circumstances pursuant to which this advance ruling is issued, then, at any time, the applicant may request that this advance ruling be modified or revoked as of the date of the change in facts or circumstances.

This advance ruling is issued subject to the condition that the applicant must report any changes to the facts and circumstances upon which this ruling was based, which may have an impact on the validity of the advance ruling, to the CBSA within 30 days of learning of the changes.

This ruling is considered "reason to believe" pursuant to subsection 32.2 of the *Customs Act*. Failure to make the required corrections, including paying any duty and interest owing, to a declaration of tariff classification of imported goods within 90 days after having reason to believe the declaration was incorrect, will result in the application of penalties under the Administrative Monetary Penalty System, which came into effect October 7, 2002.

Our file
Q860700(DG)
Q268009

Pursuant to paragraph 32.2 (4), the obligation to make a correction in respect of imported goods ends four years after the goods have been accounted for under subsection 32 (1), (3) or (5).

If you require additional information on this matter, please contact the undersigned.

Yours truly,

Original signed by/
Daniel Gilbert
Trade Services Officer
Client Services Division
Regional Branch
Telephone: (418) 648-3401 Ext. 2409
Fax: (418) 648-3040
/cl

Canada

This is **Exhibit “E”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.



PROTECTED B

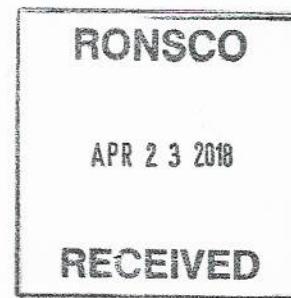
Case No. C-2016-011118

April 20, 2018

PRIORITY POST

Ms. Mary Menanno
Traffic Manager
Ronsco inc.
75 Rue Industrielle
Coteau-du-Lac, Quebec J0P 1B0

Dear Ms. Menanno:

**Subject: Trade Compliance Verification Interim Report – Tariff Classification**

The Canada Border Services Agency (CBSA) has concluded the Trade Compliance Verification of selected transactions on goods imported by RONSCO INC. - Business Number 104621065RM0001 - for the verification period of January 1, 2015 to December 31, 2015. The verification was conducted under the authority of sections 42 and 42.01 of the *Customs Act*.

As stated in our letter of July 11, 2017, the objective of this verification was to promote and ensure compliance with customs accounting obligations as they relate to the CBSA's Tariff Classification Program.

This interim report is being sent for your review and comments prior to the issuance of the Trade Compliance Verification Final Report.

Based on the information that was made available to the CBSA, some of the goods were found to be classified incorrectly. The tariff classification specified can be found in the "Findings, Requirements and Corrective Actions" portion of this report.

We will correct the transaction in error for the samples verified if there is no additional information provided that would modify our findings. The tariff classifications may be modified should additional information be made available to the CBSA. Once a Detailed Adjustment Statement (DAS) is issued, appeal rights are available under section 60 of the *Customs Act*, should you disagree with any of the determinations resulting from this verification.

The tariff classifications specified will affect not only the transactions verified but also:

- (i) other transactions of the goods verified; and
- (ii) other models of the goods verified, and any other goods that have the same function as the goods verified, that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Requirements

Under section 32.2 of the *Customs Act*, importers have an obligation to make a correction to a declaration of origin, tariff classification, or value for duty within 90 days after the importer has reason to believe that the original declaration is incorrect. Importers have reason to believe when specific information is available respecting the correct accounting of the goods. The obligation under this section to make a correction ends four years after the goods are accounted for under subsection 32(1), (3) or (5). The period over which you will be required to make corrections to incorrect declarations will be determined on the basis of the Reassessment Policy.

Refer to [Memorandum D 11-6-10](#), Reassessment Policy, which can be found on the CBSA website at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-10-eng.html>

Failure to make the required corrections within 90 days will result in administrative monetary penalties being applied. For details respecting the Administrative Monetary Penalty System (AMPS), refer to the CBSA website at: <http://www.cbsa-asfc.gc.ca/trade-commerce/amps/menu-eng.html>

Section 3 of the Imported Goods Records Regulations requires that:

A person who imports or causes to be imported commercial goods that have been released free of duty or at a reduced rate of duty because of their intended use or because they were intended to be used by a specific person shall keep records for six years following the importation;

- (a) a certificate or other record signed by the user of the commercial goods that shows the user's name, address and occupation and indicates the actual use made of the commercial goods; or
- (b) in the case where the commercial goods have been diverted to a use other than that on the basis of which they were released free of duty or at a reduced rate of duty or have been sold or otherwise disposed of to a person not entitled to have the commercial goods so released, records that contain information sufficient to confirm that the full applicable duties have been paid.

Findings, Requirements and Corrective Actions

The following provides the results of the Trade Compliance Verification of the tariff classification program and a description of the errors found, along with requirements and corrective actions.

Summary of Errors

Tariff Item as Declared	Invoice Lines Verified	Invoice Lines In Error	VFD Declared	Total VFD In Error	Total Duties & Taxes Re-assessed
8607.19.11	7	0	\$5 098 380.06	\$0.00	\$0.00
8607.19.21	5	5	\$4 857 328.62	\$4 857 328.62	\$484 518.53
8607.19.50	5	1	\$359 932.79	\$175 668.20	\$0.00

Sample # 1- Roller Bearing NP633994F**Transaction 13003153110814 line 1****Classification declared:** 8607.19.50.30 (0%)**Classification determined:** 8482.50.00.90 (0%)

According to information provided, the verified goods are cylindrical roller bearings. The goods were classified under Tariff Number 8607.19.50.30 as «*Parts of railway or tramway locomotives or rolling-stock; Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof: Parts of bogies or bissel-bogies (truck assemblies); For non self-propelled rolling-stock*».

Heading 84.82 provides for ball and roller bearings. In accordance with Note 2) e) of Section XVII, the expressions "parts" and "parts and accessories" do not apply to "articles of heading 84.81 or 84.82", whether or not they are identifiable as for the goods of this Section. Roller bearings are therefore excluded from Section XVII. The goods in issue are classified as «*Roller bearing; Other cylindrical roller bearings; Other*» under Tariff Number 8482.50.00.90 of Canadian Customs Tariff as per the General Interpretative Rule # 1 and 6.

Ronsco inc. had specific information available "reason to believe" with respect to the tariff classification of the goods verified. Different reassessment periods may apply depending on the type of the specific information.

Reassessment Period - for goods in error – no customs duties payable - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in subparagraph 1(a) of Memorandum D11-6-6, "Reason to Believe" and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. will be required to correct, within 90 days of the date of the final report, all other transactions of the same goods that were accounted for during the verification period and forward up to the date of the final report, and all subsequent importations. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Conditional Relief Tariff Item 8607.19.21Samples # 4, 5, 6, 10, 13 AAR approved H36 Wheels Class C, 8-3/8" bore diameter

Transactions:

- 13003172664734 line 1
- 13003172665074 line 1
- 13003704306035 line 1
- 13003704475201 line 1
- 13003705530245 line 1

Classification declared: 8607.19.21.00 (0%)

Classification determined: 8607.19.29.00 (9.5%)

According to information provided, the verified goods are H36 wide flange wheels for railway vehicles. The goods were classified under Tariff Number 8607.19.21.00 as «*Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; For self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic; For use in the repair of tramway vehicles (excluding subway cars) with magnetic track brakes.*

As per Note 2 (a) to Chapter 86, heading 86.07 applies to: axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels.

In order to qualify for relief under tariff item 8607.19.21, the Imported Goods Records Regulations require certificates or other records, signed by the user of the commercial goods, indicating the actual use of the goods that have been released subject to conditional relief of duties. Two signed documents were provided by the importer to support the requirements of the conditional relief tariff item. One document was from *National Steel Car Limited* and the other one was from *Canadian National Railway*. Both documents confirmed that the wheel blanks purchased from Ronsco Inc. were used in the manufacture of wheelsets for railcars. As no satisfactory evidence that the actual use of the goods was for railway and tramway passenger coaches or self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic has been provided for the 5 sampled B3 transaction lines verified, the related goods below do not qualify for relief under tariff item 8607.19.21.

As a result, H36 Wheels Class C are classified under Tariff Number 8607.19.29.00 of Canadian Customs Tariff in accordance with GIR 1 & 6.

Refer to Customs Memorandum D11-8-5 (End-Use Program) and D17-1-21 (Maintenance of Records in Canada by Importers), found on the CBSA website at:

<http://cbsa-asfc.gc.ca/publications/dm-md/d11/d11-8-5-eng.pdf>
<http://cbsa-asfc.gc.ca/publications/dm-md/d17/d17-1-21-eng.pdf>

Ronsco inc. had specific information available “reason to believe” with respect to the tariff classification of the goods verified.

Reassessment Period - for goods in error – customs duties payable - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in

subparagraph 1(a) of Memorandum D11-6-6, "Reason to Believe" and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. will be required to correct, within 90 days of the date of the final report, all other transactions of the same goods that were verified, back to the earliest date of the specific information, to a maximum of four years as provided for in the *Customs Act*. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Summary of Errors, Reassessment Requirements and AMPS Contraventions

Sample Number	Description or Issue	Basis of Specific Information providing Reason to Believe	Specific Information Date	Reassessment Period	AMPS Contravention
1	Roller Bearing NP633994F	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) Non-dutiable	Earliest import transaction date within the verification period.	January 1, 2015 to Final Report Date	C082 See below
4, 5, 6, 10, 13	AAR approved H36 Wheels Class C, 8-3/8" bore diameter	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) dutiable	Earliest import transaction date within the four year reassessment period.	Starting with the earliest import transaction date (to a maximum of 4 years) to Final Report Date	C352 See below

Administrative Monetary Penalty System Contraventions

Sample 1

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contraventions C082 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

Samples 4, 5, 6, 10, 13

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contravention C352 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

For details respecting the Master Penalty Document (MPD), refer to the CBSA website at:
<http://www.cbsa-asfc.gc.ca/trade-commerce/amps/mpd-dmi-eng.html>

Corrections will be required whether or not there is a financial impact.

Please forward your comments to the undersigned by May 22, 2018. Your comments should make reference to Case No. C-2016-011118. If comments are not received by the date indicated above, a final report will be issued.

Thank you for the cooperation that Ronsco inc. extended to the CBSA during the course of this verification. Please contact me should you require additional information.

Sincerely,



Lucie Gagné
Senior Officer Trade Compliance
Trade Operations Division
130 Rue Dalhousie
Québec, Québec G1K 4C4

Telephone: (418) 648-3401 ext.2413
Facsimile: (418) 648-3040
E-mail address: lucie.gagne@cbsa-asfc.gc.ca

Enclosure: Sample Detail Sheet

c.c.: Jaime Seidner, Pricewaterhouse Cooper (PWC), 18 York street, Suite 2600, Toronto, Ontario M5J 0B2.

No d'Échantillon 66 Date	Numéro Transaction	Numéro Ligne B3	Vendeur	Date E/D décl.	Numéro Facture	Numéro Ligne Facture	Vendeur - Facture	Numéro Produit	Description du Produit	UdeM décl.	UdeM dét.	Quantité décl.	Quantité dét.	Numéro De Class Decl	Numéro De Class Det	Traitement Tarifaire Decl	VD Decl	Taux De Droits Decl	Taux De Droits Det	
1	2015-02-02 1300315310814	00001	TIMKEN RAIL BEARING SERVICE	2015-01-23 65160467	1	The Timken Corporation		NP633994F	Roller Bearing	0	0	8607.19.50.30	8482.50.00.90	10	175668.20%	0.00%	0.00%			
2	2015-02-03 13003702971971	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2014-12-30 30014820E14084-7	1	Taiyuan Heavy Industry Railway Transit Equipment C		AAR M-01	7 x 11 Semi-Finished Class G Axles, Grade F	0	0	8607.19.11.00	8607.19.11.00	02	744820.22%	0.00%	0.00%			
3	2015-04-28 13003130159363	00001	COMET RAIL PRODUCTS	2015-04-20 R00051808	1	Comet Rail Products		8607193010	Bolster	0	0	8607.19.50.30	8607.19.50.30	10	32273.99%	0.00%	0.00%			
4	2015-05-15 13003172657474	00001	TAIYUAN HEAVY INDUSTRY RAILW	2015-04-23 31014820E15015-7	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		8607193020	SIDE FRAME	0	0	8607.19.50.30	8607.19.50.30	10	32273.99%	0.00%	0.00%			
5	2015-05-25 13003172656074	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-04-30 31014820E15015-8	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8" bore diameter	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	02	1433455.005	0.00%	9.50%		
6	2015-08-26 13003704305035	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-07-23 31014820E15015-16	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8" bore diameter	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	02	1400769.72%	0.00%	9.50%		
7	2015-09-01 13003704653333	00001	REGION LTD	2015-07-27 RR-812	1	Region Ltd		AAR approved H36 Wheels Class C, 8-3/8" bore diameter	NMB	NMB	1500	1500	8607.19.21.00	8607.19.29.00	02	908583.50%	0.00%	9.50%		
8	2015-09-14 1300370496649	00001	TAIYUAN HEAVY INDUSTRY RAILW	2015-08-08 30014824E14120-23	1	Taiyuan Heavy Industry Railway Transit Equipment C		Semi-Finished axles	0	0	8607.19.11.00	8607.19.11.00	02	593227.44%	0.00%	0.00%				
9	2015-09-29 1300370465109	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-09-05 30015813E15085-10	1	Taiyuan Industry Railway Transit Equipment		6.5 x 12 Semi-Finished Class F Axles, Grade F	0	0	8607.19.11.00	8607.19.11.00	02	514382.40%	0.00%	0.00%				
10	2015-10-23 13003704975201	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-10-01 31014840E15015-21	1	Taiyuan Heavy Industry Railway transit Equipment C		7 x 11 semi Finished Class G Axles, Grade F	0	0	8607.19.11.00	8607.19.11.00	02	787460.50%	0.00%	0.00%				
11	2015-11-02 13003704926115	00001	REGION LTD	2015-09-18 RR-815	1	Region Ltd		AAR Approved H36 Wheels, Class C, 8.5" bore diameter	NMB	NMB	1200	1200	8607.19.21.00	8607.19.29.00	02	747385.20%	0.00%	9.50%		
12	2015-11-16 13003704942250	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-10-16 34015823E15095-3	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		Semi-Finished axles	0	0	8607.19.11.00	8607.19.11.00	02	634193.86%	0.00%	0.00%				
13	2015-11-23 13003705530245	00001	TAIYUAN HEAVY INDUSTRY RAIL	2015-10-23 31014840E15015-27	1	Taiyuan Heavy Industry Railway transit Equipment C		6.5 x 12 Semi-Finished Axles, Class F Grade F	0	0	8607.19.11.00	8607.19.11.00	02	888118.40%	0.00%	0.00%				
14	2015-12-08 13003705612166	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-11-13 34015823E15095-4	1	Taiyuan Heavy Industry Railway transit Equipment C		AAR Approved H36 Wheels, Class C, 8.5" bore diameter	NMB	NMB	600	600	8607.19.21.00	8607.19.29.00	02	365155.20%	0.00%	9.50%		
15	2015-12-24 13003183229649	00001	COLUMBUS STEEL CASTINGS	2015-12-18 14838	1	Colombus Steel Castings		6.5 X 12 SEMI-FINISHED AXLES, CLASS F GRADE F	0	0	8607.19.11.00	8607.19.11.00	02	926167.20%	0.00%	0.00%				
	2015-12-24 13003183229649	00001	COLUMBUS STEEL CASTINGS	2015-12-18 14838	2	Colombus Steel Castings		Frames	0	0	8607.19.50.30	8607.19.50.30	10	54858.30%	0.00%	0.00%				
								Bolsters	0	0	8607.19.50.30	8607.19.50.30	10	54858.30%	0.00%	0.00%				

This is **Exhibit “F”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.



Approved by:
Branch: Programs Branch

Date: June 18, 2018
Classification: Unprotected

ISSUE SHEET

Meeting with Somitomo Canada on Reclassification of blank railway wheels

Suggested Speaking Bullets:

- The Canada Border Services Agency (CBSA) classifies goods in accordance with the terms of the headings, subheadings and legal notes of the *Customs Tariff* and the General Rules for the Interpretation of the Harmonized System as developed by the World Customs Organization (WCO).
- Advance Rulings (AR) issued by the CBSA provide certainty as to the tariff classification of goods, and are binding on both the importer and the CBSA until revoked or modified. As a result of a compliance verification, and based on the technical information now before the CBSA, it has been determined that the proper tariff classification of the goods is different from that provided in the AR in 2005.
- That said, the CBSA will honour the AR and only require that the tariff classification of the goods be changed on a go-forward basis.
- Pursuant to the *Tariff Classification Advance Ruling Regulations*, the CBSA will also postpone the effective date of the modified AR by 90 days, the maximum period allowed.
- As with any tariff classification decision, should importers disagree with the classification of their goods, there are procedures available under the *Customs Act* to appeal.
- Any issues regarding the financial impact of the change in tariff classification on a company must be addressed to Finance Canada.

Context:

Issue:

Reclassification of railway wheel blanks as the result of a Compliance Verification case from duty free to 9.5% MFN duty rate.

Background:

In November 2017, Somitomo Canada was selected for a single case compliance verification through the ICECAP Risk Management Unit in Pacific region, for the importation of goods declared as “wheel blanks”. During the initial review of the case, the company advised the verification officer that it was in possession of an Advance Ruling (AR) issued



on

December 19, 2005 for goods identified as "wheel blanks" classified in 8607.19.21.00, duty free.

On January 10, 2018, the Trade Policy Division (TPD) received a request from Compliance Verification (CV), Pacific Region, to provide functional guidance on the classification of the goods being imported by Sumitomo Canada Ltd. The Canada Border Services Agency (CBSA) is responsible for the tariff classification program in Canada. It classifies the goods based on their technical merits pursuant to the *Customs Tariff*. TPD reviewed the request, did its own research, and, based on the available technical information, determined the goods currently being imported were not wheel blanks but, rather, wheels of tariff item 8607.19.29, which is subject to 9.5% duty MFN. The Interim CV Report has yet to be issued to advise the client that the classification of the goods would change.

The CBSA cannot confirm whether the classification of the goods subject to the original AR is correct as the details in the Technical Reference System database are minimal, and the original file was purged when it exceeded its retention period.

Given the circumstances, the CBSA will accept that the AR was valid and not require retroactive re-assessments by the importer; rather, the importer will only be required to change the tariff classification of the goods on a go-forward basis.

Further, in accordance with subsection 16(1) of the *Tariff Classification Advance Ruling Regulations*, the new tariff classification reflected in the modified AR will only take effect 90 days after the date the modified AR is issued; that is the maximum deferred implementation allowed.

(3) Privacy

is not something that the CBSA can take into account when it classifies goods. Such a case needs to be addressed to Finance Canada, as it has, within its mandate, remedies to address such concerns.

Current Status:

The interim report will be issued and inform the importer of the tariff classification change and afford the importer 30 days to provide additional information in support of their current tariff classification.

Next Steps:

The CBSA will review any additional information provided by the importer and issue a final verification report. In conjunction, should the tariff classification change from the original AR, the CBSA will issue a modified AR in accordance with the *Tariff Classification Advance Rulings Regulations*.

As with any tariff classification decision, should importers disagree with the classification of their goods, there are procedures under the *Customs Act* to appeal.

This is **Exhibit “G”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

RE: Meeting on CBSA tariff application

From: "Nault, Lauren" <lauren.nault@cbsa-asfc.gc.ca>
To: "Johnston, Genevieve" <genevieve.johnston@cbsa-asfc.gc.ca>
Cc: "Burnett, Calixte" <calixte.burnett@cbsa-asfc.gc.ca>, "Carruthers, Tanya" <tanya.carruthers@cbsa-asfc.gc.ca>
Date: Tue, 26 Jun 2018 19:42:17 +0000

He says to just send what Yannick prepared this morning. He doesn't want to create a new note...I will send now.

Lauren

From: Johnston, Genevieve
Sent: June 26, 2018 3:33 PM
To: Nault, Lauren
Cc: Burnett, Calixte ; Carruthers, Tanya
Subject: Re: Meeting on CBSA tariff application

Maybe, depends what happened this morning. He for sure needs to do an email pin wrap up for VP to send to PO about this mornings meeting...

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Nault, Lauren
Sent: Tuesday, June 26, 2018 3:15 PM
To: Johnston, Genevieve
Cc: Burnett, Calixte; Carruthers, Tanya
Subject: FW: Meeting on CBSA tariff application

Hey Gen,

I spoke to Tanya about this one. Yannick provided an updated copy of the document this morning before the meeting.

We will run it by Doug, but if he is okay with sending up that version to VPO, then we already have what we need.

Lauren

From: Blanchard, NathalieX
Sent: June 26, 2018 2:05 PM
To: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>; Johnston, Genevieve <Genevieve.Johnston@cbsa-asfc.gc.ca>; Nault, Lauren <Lauren.Nault@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Cc: CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF <CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF@cbsa-asfc.gc.ca>; Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>
Subject: RE: Meeting on CBSA tariff application

Further to the meeting , PO request an update note – please provide VPO with a new note by 9:30 tomorrow
 Nathalie Blanchard

Chef de Cabinet du VP, direction générale des programmes

Agence des services frontaliers du Canada

NathalieX.Blanchard@cbsa-asfc.gc.ca /tél.: 613-954-7527

Chief of staff for VP, Programs Branch

Canada Border Services Agency

NathalieX.Blanchard@cbsa-asfc.gc.ca / Tel: 613-954-7527

From: Band, Doug

Sent: June 25, 2018 4:38 PM

To: Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>; Johnston, Genevieve <Genevieve.Johnston@cbsa-asfc.gc.ca>; Nault, Lauren <Lauren.Nault@cbsa-asfc.gc.ca>;

Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Cc: CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF <CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF@cbsa-asfc.gc.ca>; Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>

Subject: Re: Meeting on CBSA tariff application

Importance: High

David we won't have time to adjust the document..team swamped on steel prep stuff I will be telling them we would not intend to apply an increased duty rate of 9.5 percent retroactively for 4 years ...this is good news.

The tariff classification issue is independent from the steel surtax situation...they may or may not have to pay applicable surtax on a go forward basis depending on the government's surtax decision...but the TC issue remains and needs to be addressed once the final audit is released

We will also tell them they will have 30 days following the release of the interim audit to provide additional clarifying info.

Pls call Yannick Mondy

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Blanchard, NathalieX

Sent: Monday, June 25, 2018 4:17 PM

To: Johnston, Genevieve; Nault, Lauren; Carruthers, Tanya; Band, Doug

Cc: CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF

Subject: FW: Meeting on CBSA tariff application

MinO has confirmed that CBSA would lead this meeting, they will be in "listening mode" for this. the meeting will have firm stop at 11:30 (30 minutes total).

That being said, the EVP reviewed and had some questions on the issue sheet.

- What will we be telling them at this meeting?
- What is the timing when considering steel?
- Should we not focus on process rather than specific case information that is still ongoing (i.e. interim CV report)

Can we please re-arrange the information to a higher level that is more succinct and focuses on process? We are hoping to provide MinO with something in advance, given that there is no more time for pre-meet.

Thank you,

David Eves

Strategic Advisor, Vice-President's Office – Programs Branch

For:

Nathalie Blanchard

Chief of Staff, Vice President's Office – Programs Branch

From: Blanchard, NathalieX

Sent: June 21, 2018 12:00 PM

To: Medalla, Rocio <Rocio.Medalla@cbsa-asfc.gc.ca>

Cc: Quinn, Robyn <Robyn.Quinn@cbsa-asfc.gc.ca>; Scott, Stephen <Stephen.Scott@cbsa-asfc.gc.ca>

Subject: RE: Meeting on CBSA tariff application

As requested

Nathalie Blanchard

Chef de Cabinet du VP, direction générale des programmes

Agence des services frontaliers du Canada

Nathaliex.Blanchard@cbsa-asfc.gc.ca /tél.: 613-954-7527

Chief of staff for VP, Programs Branch

Canada Border Services Agency

Nathaliex.Blanchard@cbsa-asfc.gc.ca / Tel: 613-954-7527

From: Medalla, Rocio

Sent: June 15, 2018 12:25 PM

To: Blanchard, NathalieX <Nathaliex.Blanchard@cbsa-asfc.gc.ca>

Cc: Quinn, Robyn <Robyn.Quinn@cbsa-asfc.gc.ca>; Scott, Stephen <Stephen.Scott@cbsa-asfc.gc.ca>

Subject: FW: Meeting on CBSA tariff application

Hi Nathalie,

MinO has confirmed the stakeholder meeting for June 26, 2018, 9:30 a.m.-10:00 a.m.

I will be out of office that day, and Robyn will be filling in for me, so she will attend on my behalf.

Prior to the meeting, can Doug and team please prepare some bullets outlining CBSA duties on items described below, and approach that will be taken at meeting? Nothing formal, it can be by email- this will be used to brief the Deputies before the meeting for awareness. Following the meeting, Programs is asked to provide a meeting summary as well, as per established procedures.

BF for the quick bullets before meeting Fri Jun 22

Also MinO may want a pre-call before that, probably on the Monday. I will keep you posted on that front.

Thanks!

Rocio

From: Medalla, Rocio

Sent: June 14, 2018 4:18 PM

To: Blanchard, NathalieX <Nathaliex.Blanchard@cbsa-asfc.gc.ca>

Cc: Scott, Stephen <Stephen.Scott@cbsa-asfc.gc.ca>; Melchers, Charles <Charles.Melchers@cbsa-asfc.gc.ca>

Subject: FW: Meeting on CBSA tariff application

Hi Nathalie,

MinO has asked if Doug Band is available to participate in meeting as per below. They are looking to set up a meeting the week of June 25th, and their schedule is fairly flexible, so if there are days/times that work for Doug they can suggest those to the stakeholder

Can you please provide confirm availability and VP support?

BF by noon tomorrow please.

Thanks

Rocio

PS- YAY DOUG! MinO just really enjoys working with him, they always rave!

Rocio Medalla

Ministerial Liaison Officer

Canada Border Services Agency / Government of Canada

Rocio.Medalla@cbsa-asfc.gc.ca / Tel: 613-948-7116 Cell: 613-240-5053

Agente de liaison ministérielle

Agence des service frontaliers du Canada / Gouvernement du Canada

Rocio.Medalla@cbsa-asfc.gc.ca / Tel: 613-948-7116 Cel: 613-240-5053

++++++

My name is Graeme McLaughlin from McMillan Vantage, and along with my colleague Richard Mahoney, we act for Ronsco Inc, which is Canada's largest supplier of products and services to the rail, mining and transit industries in Canada. Ronsco has over 100 employees and is planning an expansion into Western Canada in 2019 for a potential 100 new jobs.

Ronsco was recently notified by the Canada Border Service's Agency that the rough wheels which Ronsco purchases offshore would be subject to a 9.5% tax by the CBSA. This came as a complete surprise to the company and Ronsco has no alternative source of these products in Canada. By contrast, Ronsco's large US competitors do not pay duties for offshore sources of the same products and Ronsco will now be struggling to compete with American rail part producers, which already benefit from Buy American rules and better economies of scale in the US.

We're hoping to have an opportunity to discuss this matter with you to understand how the CBSA determines the application of taxes and discuss possible solutions.

Would you be available in the next two weeks to meet and discuss this?

Look forward to hearing from you.

Graeme



Graeme McLaughlin

Principal

d 613.691.6134 | c 613.415.5961

Graeme.McLaughlin@mcmillanvantage.com

McMillan LLP

45 O'Connor Street, Suite 2000

Ottawa, Ontario K1P 1A4

mcmillanvantage.com

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McMillan aVantage s'engage à vous envoyer des communications électroniques appropriées pour vous et votre entreprise. Pour vous abonner et recevoir des communications électroniques de notre part, ou pour vous désabonner et ne plus recevoir de telles communications, veuillez visiter le **centre d'abonnement en ligne de McMillan aVantage**.

This is **Exhibit “H”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

RE: Meeting on CBSA tariff application

From: "Tebbutt, Grant" <grant.tebbutt@cbsa-asfc.gc.ca>
To: "Bartlett, Kelly" <kelly.bartlett@cbsa-asfc.gc.ca>
Date: Wed, 08 Aug 2018 15:46:21 +0000

FYI - Yannick made a point of stopping by to make certain you knew this is not a "blame game" exercise. Doug knows that many people, including him I guess, missed the discrepancy as the issue sheet for Ronsco worked its way up with Sumitomo details. This is just needed to put on file as there are duties foregone because we told them it was go forward..

From: Mondy, Yannick
Sent: August 8, 2018 9:43 AM
To: Bartlett, Kelly ; Tebbutt, Grant
Cc: Carruthers, Tanya ; Lalande, Martin
Subject: RE: Meeting on CBSA tariff application

We discussed the way forward with Doug, Beatrice and Brad yesterday. This will include among the steps a note to file. I'm not completely certain as to who will hold the pen but at a minimum, I will need from you an account of how the note ended up being written about a different company than the incoming request below.

Merci

From: Mondy, Yannick
Sent: August 7, 2018 2:02 PM
To: Bartlett, Kelly <Kelly.Bartlett@cbsa-asfc.gc.ca>; Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>
Cc: Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Subject: RE: Meeting on CBSA tariff application

Hi – I can't tell from the exchanges below how the Ronsco request lead to a briefing on Sumitomo...

From: Bartlett, Kelly
Sent: June 19, 2018 3:38 PM
To: Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>
Cc: Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Subject: RE: Meeting on CBSA tariff application

Good Afternoon;

Please find below the link to the Issue Sheet on the Sumitomo Canada Ltd classification issue which has been updated.

[Issue Sheet Sumitomo Canada Ltd.](#)

Kelly Bartlett

Senior Advisor | Conseillère principale en matière de programmes
 Tariff Policy Unit "A" Chapters 1-21 Unité de Politique tarifaire "A" chapitres 1-21

Trade Policy Division | Division de la politique commerciale

Trade and Anti-dumping Programs Directorate|Direction des programmes commerciaux et antidumping

Programs Branch | Direction générale des programmes

Canada Border Services Agency | Agence des services frontaliers du Canada

222 Queen St. 4th floor

Ottawa, ON K1A 0L8

Tel: 613 954-6901

Please note that this information is for internal purposes only and is not to be published, shared or distributed without the CBSA's consent. This is an opinion only based solely on the information

provided. For an official ruling please apply for an Advance Ruling as prescribed in D11-11-3 located on the CBSAs website.

From: Carruthers, Tanya

Sent: June 18, 2018 8:00 AM

To: Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>; Bartlett, Kelly <Kelly.Bartlett@cbsa-asfc.gc.ca>

Subject: FW: Meeting on CBSA tariff application

Please prepare an Issue Sheet by EOD today

From: Johnston, Genevieve

Sent: June 15, 2018 3:51 PM

To: Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>

Cc: Nault, Lauren <Lauren.Nault@cbsa-asfc.gc.ca>

Subject: Fw: Meeting on CBSA tariff application

See below

Tx

Sent from my BlackBerry 10 smartphone on the Bell network.

From: Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>

Sent: Friday, June 15, 2018 3:46 PM

To: Johnston, Genevieve

Cc: Nault, Lauren

Subject: RE: Meeting on CBSA tariff application

please prepare some bullets outlining CBSA duties on items described below, and approach that will be taken at meeting – pas de BN / un document mais ccm / RS

Nathalie Blanchard

Chef de Cabinet du VP, direction générale des programmes

Agence des services frontaliers du Canada

Nathaliex.Blanchard@cbsa-asfc.gc.ca /tél.: 613-954-7527

Chief of staff for VP, Programs Branch

Canada Border Services Agency

Nathaliex.Blanchard@cbsa-asfc.gc.ca / Tel: 613-954-7527

From: Johnston, Genevieve

Sent: June 15, 2018 3:14 PM

To: Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>

Cc: Nault, Lauren <Lauren.Nault@cbsa-asfc.gc.ca>

Subject: FW: Meeting on CBSA tariff application

What format would you like it in? Issue sheet?

Merci

Gen

From: Blanchard, NathalieX

Sent: June 15, 2018 10:30 AM

To: Nault, Lauren <Lauren.Nault@cbsa-asfc.gc.ca>; CBSA-ASFC-DIST-

HQ_PRG_VPO_AVPO_STAFF <CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF@cbsa-asfc.gc.ca>

Cc: Johnston, Genevieve <Genevieve.Johnston@cbsa-asfc.gc.ca>; Kingsbury, Sonya <Sonya.Kingsbury@cbsa-asfc.gc.ca>

Subject: RE: Meeting on CBSA tariff application

We will get back to you

Please prepare material

BF in VPO June 20 Noon

Nathalie Blanchard

Chef de Cabinet du VP, direction générale des programmes

Agence des services frontaliers du Canada

Nathaliex.Blanchard@cbsa-asfc.gc.ca /tél.: 613-954-7527

Chief of staff for VP, Programs Branch

Canada Border Services Agency

Nathaliex.Blanchard@cbsa-asfc.gc.ca / Tel: 613-954-7527

From: Nault, Lauren

Sent: June 15, 2018 9:34 AM

To: CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF <CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF@cbsa-asfc.gc.ca>

Cc: Johnston, Genevieve <Genevieve.Johnston@cbsa-asfc.gc.ca>; Kingsbury, Sonya <Sonya.Kingsbury@cbsa-asfc.gc.ca>

Subject: FW: Meeting on CBSA tariff application

Hello,

Here are three possibilities for Doug's availability on the week of June 25, as requested.

Monday June 25 9:30-12:00

Tuesday June 26 9:30-12:00

Thursday June 28 9:30-12:00

Lauren

From: Blanchard, NathalieX

Sent: June 14, 2018 4:52 PM

To: Johnston, Genevieve <Genevieve.Johnston@cbsa-asfc.gc.ca>; Kingsbury, Sonya <Sonya.Kingsbury@cbsa-asfc.gc.ca>

Cc: Eves, David <David.Eves@cbsa-asfc.gc.ca>; Chaudhari, Saher <Saher.Chaudhari@cbsa-asfc.gc.ca>; Bruck, Mikaela <Mikaela.Bruck@cbsa-asfc.gc.ca>

Subject: FW: Meeting on CBSA tariff application

Importance: High

Please provide me with 3 time slot – by 11:00 tomorrow

Nathalie Blanchard

Chef de Cabinet du VP, direction générale des programmes

Agence des services frontaliers du Canada

Nathaliex.Blanchard@cbsa-asfc.gc.ca /tél.: 613-954-7527

Chief of staff for VP, Programs Branch

Canada Border Services Agency

Nathaliex.Blanchard@cbsa-asfc.gc.ca / Tel: 613-954-7527

From: Medalla, Rocio

Sent: June 14, 2018 4:18 PM

To: Blanchard, NathalieX <Nathaliex.Blanchard@cbsa-asfc.gc.ca>

Cc: Scott, Stephen <Stephen.Scott@cbsa-asfc.gc.ca>; Melchers, Charles <Charles.Melchers@cbsa-asfc.gc.ca>

Subject: FW: Meeting on CBSA tariff application

Hi Nathalie,

MinO has asked if Doug Band is available to participate in meeting as per below. They are looking to set up a meeting the week of June 25th, and their schedule is fairly flexible, so if there are days/times that work for Doug they can suggest those to the stakeholder

Can you please provide confirm availability and VP support?

BF by noon tomorrow please.

++++++

My name is Graeme McLaughlin from McMillan Vantage, and along with my colleague Richard Mahoney, we act for Ronsco Inc, which is Canada's largest supplier of products and services to the rail, mining and transit industries in Canada. Ronsco has over 100 employees and is planning an expansion into Western Canada in 2019 for a potential 100 new jobs.

Ronsco was recently notified by the Canada Border Service's Agency that the rough wheels which Ronsco purchases offshore would be subject to a 9.5% tax by the CBSA. This came as a complete surprise to the company and Ronsco has no alternative source of these products in Canada. By contrast, Ronsco's large US competitors do not pay duties for offshore sources of the same products

and Ronsco will now be struggling to compete with American rail part producers, which already benefit from Buy American rules and better economies of scale in the US.

We're hoping to have an opportunity to discuss this matter with you to understand how the CBSA determines the application of taxes and discuss possible solutions.

Would you be available in the next two weeks to meet and discuss this?

Look forward to hearing from you.

Graeme



Graeme McLaughlin

Principal

d 613.691.6134 | c 613.415.5961

Graeme.McLaughlin@mcmillanvantage.com

McMillan LLP

45 O'Connor Street, Suite 2000

Ottawa, Ontario K1P 1A4

mcmillanvantage.com

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This is **Exhibit “I”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.



Case No. C-2016-011118

July 24, 2018

PRIORITY POST

Ms. Mary Menanno
Traffic Manager
Ronsco inc.
75 Rue Industrielle
Coteau-du-Lac, Quebec J0P 1B0

Dear Ms. Menanno:

Subject: Trade Compliance Verification Final Report – Tariff Classification

This is the final report for the Trade Compliance Verification of selected transactions on goods imported by Ronsco Inc. -Business Number 104621065RM0001 - for the verification period of January 1, 2015 to December 31, 2015. The verification was conducted by the Canada Border Services Agency (CBSA) under the authority of sections 42 and 42.01 of the *Customs Act*.

The objective of this verification was to promote and ensure compliance with customs accounting obligations as they relate to the CBSA's Tariff Classification Program.

This report reflects the comments received from Ronsco inc. regarding the Trade Compliance Verification interim report that was sent on April 20, 2018 and the position expressed in the interim report have been modified for Sample #1. For Samples # 4, 5, 6, 10 and 13, the comments received have been reviewed, however, there have been no changes to the CBSA's position expressed in the interim report.

Based on the information that was made available to the CBSA, some of the goods were found to be classified incorrectly. The correct tariff classifications can be found in the "Findings, Requirements and Corrective Action" portion of this report. In addition, Detailed Adjustment Statements (DASs) have been issued to correct the tariff classification of the transactions in error for the samples verified and have been listed in the "Adjustment Summary" chart.

The tariff classification(s) specified affect not only the transactions verified but also:

- (i) other transactions of the goods verified; and
- (ii) other models of the goods verified, and any other goods that have the same function as the goods verified, that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Requirements

Under section 32.2 of the *Customs Act*, importers have an obligation to make a correction to a declaration of origin, tariff classification, or value for duty within 90 days after the importer has reason to believe that the original declaration is incorrect. Importers have reason to believe when specific information is available respecting the correct accounting of the goods. **The obligation under this section to make a correction ends four years after the goods are accounted for under subsection 32(1), (3) or (5).**

The period over which you are required to make corrections to incorrect declarations was determined on the basis of the Reassessment Policy.

Refer to Memorandum D 11-6-10, Reassessment Policy, which can be found on the CBSA website at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-10-eng.html>

Failure to make the required corrections within 90 days will result in administrative monetary penalties being applied. For details respecting the Administrative Monetary Penalty System (AMPS), refer to the CBSA website at: <http://www.cbsa-asfc.gc.ca/trade-commerce/amps/menu-eng.html>

Findings, Requirements and Corrective Actions

The following provides the results of the Trade Compliance Verification of the tariff classification program and a description of the errors found, along with requirements and corrective actions.

Summary of Errors

Tariff Item as Declared	Invoice Lines Verified	Invoice Lines In Error	VFD Declared	Total VFD In Error	Total Duties & Taxes Re-assessed
8607.19.11	7	0	\$5 098 380.06	\$0.00	\$0.00
8607.19.21	5	5	\$4 857 328.62	\$4 857 328.62	\$484 518.53
8607.19.50	5	1	\$359 932.79	\$175 668.20	\$0.00

Sample # 1- Roller Bearing NP633994F

Transaction 13003153110814 line 1

Classification declared: 8607.19.50.30 (0%)

Classification determined: 8482.20.00.14 (0%)

According to information provided, the verified goods are tapered roller bearings. The goods were classified under Tariff Number 8607.19.50.30 as «*Parts of railway or tramway locomotives or rolling-stock; Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof: Parts of bogies or bissel-bogies (truck assemblies); For non self-propelled rolling-stock*

Heading 84.82 provides for ball and roller bearings. In accordance with Note 2) e) of Section XVII, the expressions "parts" and "parts and accessories" do not apply to "articles of heading 84.81 or 84.82", whether or not they are identifiable as for the goods of this Section. Roller bearings are therefore excluded from Section XVII. The goods in issue are classified as «*Roller bearing; Tapered roller bearings; with cups having an outside diameter exceeding 102 mm*

Ronsco inc. had specific information available "reason to believe" with respect to the tariff classification of the goods verified. Different reassessment periods may apply depending on the type of the specific information.

Reassessment Period - for goods in error – **no customs duties payable** - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in subparagraph 1(a) of Memorandum D11-6-6, “Reason to Believe” and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. is required to correct, within 90 days of the date of this final report, all other transactions of the same goods that were accounted for during the verification period and forward up to the date of this final report, and all subsequent importations. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Conditional Relief Tariff Item 8607.19.21

Samples # 4, 5, 6, 10, 13 AAR approved H36 Wheels Class C, 8-3/8" bore diameter

Transactions:

- 13003172664734 line 1
- 13003172665074 line 1
- 13003704306035 line 1
- 13003704475201 line 1
- 13003705530245 line 1

Classification declared: 8607.19.21.00 (0%)

Classification determined: 8607.19.29.00 (9.5%)

According to information provided, the verified goods are H36 wide flange wheels for railway vehicles. They are not blanks. After import, the wheels were modified. The bore was widened and chamfered in order to fit either AAR Class F or K axles. The goods were classified under Tariff Number 8607.19.21.00 as «*Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; For self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic; For use in the repair of tramway vehicles (excluding subway cars) with magnetic track brakes*

As per Note 2 (a) to Chapter 86, heading 86.07 applies to: axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels.

In order to qualify for relief under tariff item 8607.19.21, the Imported Goods Records Regulations require certificates or other records, signed by the user of the commercial goods, indicating the actual use of the goods that have been released subject to conditional relief of duties. Two signed documents were provided by the importer to support the requirements of the conditional relief tariff item. One document was from *National Steel Car Limited* and the other one was from *Canadian National Railway*. Both documents confirmed that the wheel blanks purchased from Ronsco Inc. were used in the manufacture of wheelsets for railcars. As no satisfactory evidence that the actual use of the goods was for railway and tramway passenger coaches or self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic has been provided for the 5 sampled B3 transaction lines verified, the related goods below do not qualify for relief under tariff item 8607.19.21.

As a result, H36 Wheels Class C are classified as «*Parts of railway or tramway locomotives or rolling-stock; -Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof: Other, including parts; Wheels, whether or not fitted with axles : Other*» under Tariff Number 8607.19.29.00 of Canadian Customs Tariff in accordance with GIR 1 & 6.

Refer to Customs Memorandum D11-8-5 (End-Use Program) and D17-1-21 (Maintenance of Records in Canada by Importers), found on the CBSA website at:

<http://cbsa-asfc.gc.ca/publications/dm-md/d11/d11-8-5-eng.pdf>
<http://cbsa-asfc.gc.ca/publications/dm-md/d17/d17-1-21-eng.pdf>

Ronsco inc. had specific information available “reason to believe” with respect to the tariff classification of the goods verified.

Reassessment Period - for goods in error – customs duties payable - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in subparagraph 1(a) of Memorandum D11-6-6, “Reason to Believe” and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. is required to correct, within 90 days of the date of this final report, all other transactions of the same goods that were verified, back to the earliest date of the specific information, to a maximum of four years as provided for in the *Customs Act*. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Summary of Errors, Reassessment Requirements and AMPS Contraventions

Sample Number	Description or Issue	Basis of Specific Information providing Reason to Believe	Specific Information Date	Reassessment Period	AMPS Contravention
1	Roller Bearing NP633994F	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) Non-dutiable	Earliest import transaction date within the verification period:	Verification period start date to final report date: January 1, 2015 to July 24, 2018	C082 See below
4, 5, 6, 10, 13	AAR approved H36 Wheels Class C, 8-3/8" bore diameter	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) dutiable	Earliest import transaction date within the four year reassessment period.	Starting with the earliest import transaction date (to a maximum of 4 years) to the final report date. (July 24, 2018)	C352 See below

Administrative Monetary Penalty System Contraventions

Sample 1

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contravention C082 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

Samples 4, 5, 6, 10, 13

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contravention C352 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

For details respecting the Master Penalty Document (MPD), refer to the CBSA website at:
<http://www.cbsa-asfc.gc.ca/trade-commerce/amps/mpd-dmi-eng.html>

Corrections are required whether or not there is a financial impact.

The CBSA has issued the following adjustments to correct the transactions in error for the samples verified.

Adjustment Summary

Sample Number	Transaction Number	Line Number	Adjustment Number	VFD in Error	Duties Payable	GST/HST Payable	Adjustment Total (not including interest)
1	13003153110814	1	00001004088550	175668,20 \$	0,00 \$	0,00 \$	0,00 \$
4	13003172664734	1	00001004088561	1435455,00 \$	136 368,23 \$	6 818,41 \$	143 186,64 \$
5	13003172665074	1	00001004088572	1400769,72 \$	133 073,12 \$	6 653,65 \$	139 726,77 \$
6	13003704306035	1	00001004088583	908563,50 \$	86 313,53 \$	4 315,67 \$	90 629,20 \$
10	13003704475201	1	00001004088594	747385,20 \$	71 001,59 \$	3 550,08 \$	74 551,67 \$
13	13003705530245	1	00001004088607	365155,20 \$	34 689,74 \$	1 734,49 \$	36 424,23 \$

As an importer you are required, under section 32.2 of the *Customs Act*, to self-adjust all transactions affected by the tariff classification(s) specified in this report. These self-adjustments must be sent by registered mail, by courier, or delivered by hand, to any CBSA office in the region where the goods were released under this Act.

Within ninety (90) days of the date of this report, please forward all self-adjustments (Form B2) or copies of the self-adjustments, received and date stamped by the CBSA, to my attention at the address below. In the remarks section of the adjustment, make reference to the Case No. C-2016-011118.

Appeals and Redress

Appeal rights are available under the *Customs Act*, should you disagree with any of the tariff classification(s) specified in this report. You may file a request for a re-determination or further re-determination under section 60 of the *Act*, within 90 days from the date of the DAS.

For more information on how to submit a request, please refer to Memorandum D11-6-7, Request under Section 60 of the Customs Act for a Re-determination, a further Re-determination or a Review by the President of the Canada Border Services Agency, which can be found on the CBSA website at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-7-eng.html>

Clients wishing to appeal a Notice of Penalty Assessment (NPA) may request a Minister's decision pursuant to section 131 of the *Customs Act* **within 90 days** from the date of the NPA, provided they meet the criteria of subsection 129(1) of the *Customs Act*. Additional information concerning the redress process for AMPS can be found on the CBSA website at: <http://www.cbsa-asfc.gc.ca/recourse-recours/howto-commentfaire-2-eng.html>

Follow-up

The self-adjustments submitted as a result of this verification will be reviewed for accuracy and completeness. In addition, future importations may be monitored to ensure compliance with the recommendations contained in this report.

Thank you for the cooperation that Ronsco inc. extended to the CBSA during the course of this verification. Please contact me should you require additional information concerning this report.

Sincerely,



Lucie Gagné
Senior Officer Trade Compliance
Trade Operations Division
130 Rue Dalhousie
Québec, Québec G1K 4C4

Telephone: (418) 648-3401 ext.2413

Faxsimile: (418) 648-3040

E-mail address: lucie.gagne@cbsa-asfc.gc.ca

Enclosure: Sample Detail Sheet

c.c.: Peter Clark, Grey, Clark, Shih and Associates, Limited, 571 Blair Road, Ottawa, ON K1J 7M3

No d'échantillon	Date	Numéro Transaction	Numéro Ligne B3	Vendeur	Numéro Facture	Numéro Ligne Facture	Vendeur - Facture	Numéro Produit	Description du Produit	Unité M décl.	Unité M dét.	Quantité décl.	Quantité dét.	Numéro De Class Decl	Numéro De Class Det	Vd Decl	Taux De Droits Decl	Taux De Droits Det
1	2015-02-02	13003153110814	00001	TIMKEN/RAIL BEARING SERVICE	65160467	1	The Timken Corporation	NP633994F	Roller Bearing			0	0	8607.19.50.30	8482.20.00.14	175668,20\$	0,00%	0,00%
2	2015-02-03	13003702972971	00001	TAIYUAN HEAVY INDUSTRY CO.,L	30014820EX14084-7	1	Taiyuan Heavy Industry Railway Transit Equipment C	AAR M-101	7 x 12 Semi-Finished Class G Axles, Grade F			0	0	8607.19.11.00	8607.19.11.00	744820,22\$	0,00%	0,00%
3	2015-04-28	13003130139363	00001	COMET RAIL PRODUCTS	R00051808	1	Comet Rail P'sproducts	8607193010	Bolster			0	0	8607.19.50.30	8607.19.50.30	37273,99\$	0,00%	0,00%
3	2015-04-28	13003130139363	00001	COMET RAIL PRODUCTS	R00051808	2	Comet Rail P'sproducts	8607193020	Side Frame			0	0	8607.19.50.30	8607.19.50.30	37273,99\$	0,00%	0,00%
4	2015-05-15	13003172664734	00001	TAIYUAN HEAVY INDUSTRY RAILW	31014840EX15015-7	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8"	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	1435455,00\$	0,00%	9,50%
5	2015-05-25	13003172665074	00001	TAIYUAN HEAVY INDUSTRY CO.,L	31014840EX15015-8	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8"	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	1400769,72\$	0,00%	9,50%
6	2015-08-26	13003704306035	00001	TAIYUAN HEAVY INDUSTRY CO.,L	31014840EX15015-16	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8"	NMB	NMB	1500	1500	8607.19.21.00	8607.19.29.00	908563,50\$	0,00%	9,50%
7	2015-09-01	13003704662333	00001	REGION LTD	RR-8/2	1	Region Ltd		Semi-finished axles			0	0	8607.19.11.00	8607.19.11.00	593237,44\$	0,00%	0,00%
8	2015-09-14	13003704306649	00001	TAIYUAN HEAVY INDUSTRY RAILW	30014824EX14120-23	1	Taiyuan Heavy Industry Railway Transit Equipment C		6.5 x 12 Semi-Finished Class F Axles, Grade F			0	0	8607.19.11.00	8607.19.11.00	514382,40\$	0,00%	0,00%
9	2015-09-29	13003704467109	00001	TAIYUAN HEAVY INDUSTRY CO.,L	30015813EX15085-10	1	Taiyuan Industry Railway Transit Equipment		7 x 12 semi Finished Class G Axles, Grade F			0	0	8607.19.11.00	8607.19.11.00	787460,54\$	0,00%	0,00%
10	2015-10-23	13003704475201	00001	TAIYUAN HEAVY INDUSTRY CO.,L	31014840EX15015-23	1	Taiyuan Heavy Industry Railway transit Equipment C		AAR Approved H36 Wheels, Class C , 8.5"	NMB	NMB	1200	1200	8607.19.21.00	8607.19.29.00	747385,20\$	0,00%	9,50%
11	2015-11-02	13003704926115	00001	REGION LTD	RR-8/5	1	Region Ltd		Semi-Finished axles			0	0	8607.19.11.00	8607.19.11.00	634193,86\$	0,00%	0,00%
12	2015-11-16	13003704842250	00001	TAIYUAN HEAVY INDUSTRY CO.,L	34015823EX15095-3	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		6.5 x 12 Semi-Finished Axles, Class F Grade F			0	0	8607.19.11.00	8607.19.11.00	898118,40\$	0,00%	0,00%
13	2015-11-23	13003705530245	00001	HAIYUAN HEAVY INDUSTRY RAIL	31014840EX15015-27	1	Taiyuan Heavy Industry Railway transit Equipment C		AAR Approved H36 Wheels, Class C, 8.5"	NMB	NMB	600	600	8607.19.21.00	8607.19.29.00	365155,20\$	0,00%	9,50%
14	2015-12-08	13003705621666	00001	TAIYUAN HEAVY INDUSTRY CO.,L	34015823EX15095-4	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		6.5 X 12 SEMI-FINISHED AXLES, CLASS F			0	0	8607.19.11.00	8607.19.11.00	926167,20\$	0,00%	0,00%
15	2015-12-24	13003183279649	00001	COLUMBUS STEEL CASTINGS	14838	1	Colombus Steel Castings	F10107885-04	GRADE F Frames			0	0	8607.19.50.30	8607.19.50.30	54858,30\$	0,00%	0,00%
15	2015-12-24	13003183279649	00001	COLUMBUS STEEL CASTINGS	14838	2	Colombus Steel Castings	B10774AB85-05	Bolsters			0	0	8607.19.50.30	8607.19.50.30	54858,30\$	0,00%	0,00%

This is **Exhibit “J”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

Draft BN - Ronsco for EVP - Aug 10 revised.docx

From: "Mondy, Yannick" <yannick.mondy@cbsa-asfc.gc.ca>
To: "Band, Doug" <doug.band@cbsa-asfc.gc.ca>, "Tebbutt, Grant" <grant.tebbutt@cbsa-asfc.gc.ca>, "Trudel, Eric" <eric.trudel@cbsa-asfc.gc.ca>
Cc: "Lalande, Martin" <martin.lalande@cbsa-asfc.gc.ca>, "Carruthers, Tanya" <tanya.carruthers@cbsa-asfc.gc.ca>
Date: Fri, 10 Aug 2018 16:27:44 +0000
Attachments: Draft BN - Ronsco for EVP - Aug 10 revised.docx (96.55 kB)

Here is the revised BN. I have revised the considerations reworked by Grant with a view to further simplify and indicate that the final verification report can be amended in the considerations. Also redacted the reference to the AR being mentioned at the meeting. Please review and confirm if there are any issues.

This is **Exhibit “K”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



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Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
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Expires March 4, 2024.



CLASSIFICATION

For information

Verification audit of Ronsco Inc.

For the President

ISSUE

At a June 26, 2018 meeting between the Director General (DG) of the Trade and Anti-dumping Directorate (TAPD), Ronsco Inc. (Ronsco) representatives and the Minister's Office, the DG TAPD erred in providing the company with assurances that, pursuant to a compliance verification, the CBSA would not require the company to reassess their imports retroactively up to the full four year period provided for under the *Customs Act*.

BACKGROUND

Two audits are underway for companies (Ronsco and Sumitomo) importing goods described as rough railway wheels.

In the Ronsco verification, 6 of 17 sampled transaction lines were found to be in error; five had a revenue impact, for a total of \$484, 518 in duties and taxes. The change in classification caused the goods to be re-assessed at a 9.5% duty rate (as opposed to 0% as declared). It was determined that the relevant *Customs Tariff* provisions were clear and evident, providing Ronsco with specific information (reason to believe) as to the proper tariff classification of the goods verified; therefore, the interim verification report noted the reassessment period would cover all other transactions of the same goods to a maximum of four years. It is estimated this could cost the company upwards of \$4 million in duties and taxes owing.

The tariff classification findings for Sumitomo were the same; however, the key difference is that Sumitomo held an Advanced Ruling (AR) from 2005, which provided Sumitomo with a binding interpretation that the goods it described as rough railway wheels were classified as duty free. Until revoked or modified, Advance Rulings are binding on both the importer and the CBSA under the *Tariff Classification Advance Ruling Regulations*. In light of the AR, reason to believe was a moot point in this context. In support of the Sumitomo verification, TAPD provided advice as to the proper classification of the goods, which differs from that provided in the 2005 AR. The reason for this difference with the 2005 AR cannot be confirmed since records are only retained for 7 years and have since been purged. Following the results of the verification, the AR will be revoked and a new tariff classification ruling issued for the goods now being imported.

Page [APG] of [ANP]

CLASSIFICATION

Given Sumitomo acted in good faith in keeping with CBSA 2005 AR, under the *Tariff Classification Advance Ruling Regulations*, CBSA will honour the AR and Sumitomo will be notified, through the final verification report that the tariff classification of the goods need only be changed **on a go-forward basis**. Pursuant to the same regulations, CBSA will postpone the effective date of the new classification ruling by 90 days, the maximum period allowed. As with any tariff classification decision, should importers disagree with the classification of their goods, there are procedures available under the *Customs Act* to appeal.

In contrast, Ronsco did **not** have an AR upon which to rely and as such, would normally be expected to pay all duties and taxes owed.

On June 14, 2018, the DG of TAPD received a MinO request to participate in a June 26 meeting with representatives of Ronsco. The purpose was to discuss the company's concerns regarding the recent interim audit report that found the company had misclassified imports as duty free when they should be subject to a 9.5% tariff.

Unfortunately, the briefing material prepared for this meeting incorrectly presumed the company being met with was Sumitomo – not Ronsco. This resulted in incorrect information and advice being provided – namely that the company had been misclassifying its goods based on a 2005 Advance Ruling provided by CBSA. As noted, Ronsco had no such AR.

On June 26th Doug Band (DG TAPD), Charles Slowey (DG Commercial), Robin Quinn (Operations), Steven Scott (President's Office) and Ronsco representatives. The Minister's Office attended, but only in an observer capacity. The company representatives raised concerns that the revised tariff classification would put them at a significant disadvantage with U.S. competitors who access offshore imports for this same good duty free. A particular concern was that, requiring the company to correct their classification of these imports for the full four year period would jeopardize the company's existing jobs and planned expansion, with associated job creation. Based on the erroneous briefing material the DG TAPD informed the company that, should the final verification report confirm the classification errors identified at the interim report stage, CBSA would not require them to be corrected for the full four year period, but rather on a go forward basis only.

Deleted: , owing to the 2005 AR

Ronsco received the final verification report on July 20, 2018, which instructed them to self-correct their classification of the subject goods for up to four years where the same error was made; however, no detailed adjustment statement (DAS) has as yet been issued to Ronsco. The company has requested an explanation for why the final audit indicates self-corrections are required for up to four years given the assurances provided by the DG TAPD at the June 26 meeting. A call with the company has been tentatively set for Monday, August 13, 2018.

CLASSIFICATION

CONSIDERATIONS

Upon further review, it has been determined that the proper tariff classification of the goods at issue requires analysis too complex to be considered “clear and evident”, thereby changing the assumption that Ronsco had reason to believe as to the proper classification of the goods. Given this, Ronsco should not be required to self-correct their classification of the subject goods for up to four years, but rather apply the proper classification only on a go-forward basis.

The final verification report can and will be amended to reflect this revised analysis. While this outcome would spare the company from owing duties for the past four 4 years, Ronsco will be expected to self-assess its imports under a tariff classification subject to a 9.5% duty rate going forward. Should Ronsco feel that the new tariff classification of the goods at issue is incorrect, the company can avail itself of appeal rights under the *Customs Act*. CBSA Recourse advises that it would review the verification decision based solely on the merits of the tariff classification, of which the CBSA is confident.

NEXT STEPS

A call with the company has been tentatively set for Monday, August 13, 2018. As Ronsco has now been found to not have had reason to believe that their tariff classification was incorrect, the company will be advised that the final verification report will be amended to state that the tariff classification of the goods at issue need only be changed on a go-forward basis.

ATTACHMENT(S)

1. XXXXXXXXX
2. XXXXXXXXX

Approved by:

Vice-President: Name, phone number, signature _____

Director General: Doug Band phone number _____

Director: Yannick Mondy 613-941-4459

Author: Grant Tebbutt

Date: Date stamped upon Vice-President's approval

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Deleted: be made

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Deleted: will have
Deleted: If Recourse sustains the tariff classification, Ronsco will have the right to appeal that decision to the Canadian International Trade Tribunal (CITT).
Commented [GT1]: No options are any longer under consideration
Deleted: ¶
Deleted: (1) Solicitor- Client Privilege
(1) Solicitor- Client Privilege

(2) Litigation Privilege


This is **Exhibit “L”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

Fw: Call with Doug Band from CBSA

From: "Hill, PeterD(CBSA)" <peter.hill@cbsa-asfc.gc.ca>
To: "Vinette, Denis R." <denis.vinette@cbsa-asfc.gc.ca>
Cc: "Band, Doug" <doug.band@cbsa-asfc.gc.ca>
Date: Tue, 21 Aug 2018 17:30:36 +0000
 Sent from my BlackBerry 10 smartphone on the Bell network.

From: Band, Doug
Sent: Tuesday, August 21, 2018 12:59 PM
To: Hill, PeterD(CBSA)
Subject: FW: Call with Doug Band from CBSA

Fyi. Ronsco and Quebec regional office has been notified.

From: Band, Doug
Sent: August 21, 2018 12:58 PM
To: 'Richard Mahoney'
Cc: Nault, Lauren ; Carruthers, Tanya
Subject: RE: Call with Doug Band from CBSA
 Dear Mr Mahoney,
 Thank you for the information package sent from Peter Clark. I have concluded my review of the material and am satisfied that the tariff classification reflected in the final audit report is the appropriate one.
 I have informed the Quebec regional office of my decision and the associated DAS will be issued.
 Again, thank you for bringing the information provided to my attention. I sincerely appreciate it.
 Regards,
 Doug Band

From: Richard Mahoney [<mailto:Richard.Mahoney@mcmillan.ca>]
Sent: August 16, 2018 1:40 PM
To: Burnett, Calixte <Calixte.Burnett@cbsa-asfc.gc.ca>; Band, Doug <Doug.Band@cbsa-asfc.gc.ca>
Cc: Nault, Lauren <Lauren.Nault@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Subject: RE: Call with Doug Band from CBSA
 Hello Doug, Calixte et. Al:
 In light of the call that Peter Clark and I had with Doug today, we are sending Doug the book of materials on this matter today.
 Can you please confirm Doug's address so we can make sure he has this as soon as possible?

Thank you

mcmillan

Richard Mahoney
 Co-Chair, Government and Public Policy
 d 613.691.6128 | f 613.231.3191
Richard.Mahoney@mcmillan.ca

Assistant: *Kathy Boeyen-Landriault*
 d 613.691.6123 | f 613.231.3191
kathy.landriault@mcmillan.ca

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From: Burnett, Calixte [<mailto:Calixte.Burnett@cbsa-asfc.gc.ca>]

Sent: August-14-18 8:25 AM

To: Richard Mahoney

Cc: Nault, Lauren; Carruthers, Tanya

Subject: RE: Call with Doug Band from CBSA

Hello,

This is to confirm that an invitation has been sent out for the requested time and date (Thursday August 16th at 11:45-12:00).

Thank you,

Calixte

From: Richard Mahoney [<mailto:Richard.Mahoney@mcmillan.ca>]

Sent: August 13, 2018 2:01 PM

To: Burnett, Calixte <Calixte.Burnett@cbsa-asfc.gc.ca>; Richard Mahoney (McMillan Vantage)

<Richard.Mahoney@mcmillanvantage.com>

Cc: Nault, Lauren <Lauren.Nault@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>

Subject: RE: Call with Doug Band from CBSA

That is too bad but thank you for the heads up. I can make both those times work but would prefer Thursday as the team at Ronsco is anxious to resolve/hear more, given the circumstances so I know they would prefer the earlier time.

From: Burnett, Calixte [<mailto:Calixte.Burnett@cbsa-asfc.gc.ca>]

Sent: Monday, August 13, 2018 9:47 AM

To: Richard Mahoney (McMillan Vantage)

Cc: Nault, Lauren; Carruthers, Tanya

Subject: Call with Doug Band from CBSA

Dear Mr. Mahoney,

Regrettably we will have to move our discussion scheduled for this afternoon, to later this week.

Would you be available Thursday 11:45-12:00 or Friday 11:45-12:00 for the call?

Please confirm your availability. Thank you.

Calixte Burnett

Student Program Officer

Trade and Anti-dumping Programs Directorate

Programs Branch

Canada Border Services Agency

Calixte.Burnett@cbsa-asfc.gc.ca / 613-948-1106

Agent de programme étudiant

Direction des programmes commerciaux et antidumping

Direction générale des programmes

Agence des services frontaliers du Canada

Calixte.Burnett@cbsa-asfc.gc.ca / 613-948-1106

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This is **Exhibit “M”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

RTB for Ronsco Inc.

From: "Tebbutt, Grant" <grant.tebbutt@cbsa-asfc.gc.ca>
To: "Mondy, Yannick" <yannick.mondy@cbsa-asfc.gc.ca>
Date: Tue, 09 Oct 2018 17:38:19 +0000

Below is the e-mail chain with Kurtis Clifford about RTB on Ronsco; there was a slight misunderstanding that my original message (August 10, 2018 12:55 PM; also below) had implied that the Quebec Region Officer made a mistake in their initial RTB decision. While I do not believe that we sent this to Compliance, they were in the room with Doug, me et al for one of the meetings at which it was decided that there was no RTB.

From: Tebbutt, Grant
Sent: August 10, 2018 3:16 PM
To: Clifford, Kurtis
Cc: Lalande, Martin ; Trudel, Eric ; Band, Doug ; Mondy, Yannick ; Smida, Néjib ; Flamand, Genevieve ; Bartlett, Kelly
Subject: FW: Ronsco Inc.

Good Day Kurtis

I apologize, as I fear I may not have been clear.

The tariff classification of the goods at issue was correct. Further, it is only in retrospect, with full consideration of all the circumstances, including our having confused the Sumitomo AR with the Ronsco verification, that we came to realize that the clear and evident criterion for reason to believe (RTB), paragraph 1(a) in D11-6-6, was not applicable. This is always the most subjective and complex of the RTB criteria. I do not feel, nor did I mean to imply, that Lucie or anyone in the Quebec region made an error with respect to RTB.

Regards,
Grant

From: Tebbutt, Grant
Sent: August 10, 2018 12:55 PM
To: Clifford, Kurtis <Kurtis.Clifford@cbsa-asfc.gc.ca>
Cc: Lalande, Martin <Martin.Lalande@cbsa-asfc.gc.ca>; Trudel, Eric <Eric.Trudel@cbsa-asfc.gc.ca>; Band, Doug <Doug.Band@cbsa-asfc.gc.ca>; Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>; Smida, Néjib <Nejib.Smida@cbsa-asfc.gc.ca>; Flamand, Genevieve <Genevieve.Flamand@cbsa-asfc.gc.ca>; Bartlett, Kelly <Kelly.Bartlett@cbsa-asfc.gc.ca>

Subject: RE: Ronsco Inc.

Good Day Clifford

Thank you very much for the information, Yannick has asked me to respond.

Néjib's comments indicate that the tariff classification clearly was wrong and needed to be changed; but upon further review, we have determined that the choice at the tariff item level is too complex for the tariff classification to be considered "clear and evident". Therefore, Ronsco did not have prior reason to believe that the tariff classification was incorrect, and the verification report should be modified accordingly.

Bon weekend,
Grant

From: Tebbutt, Grant
Sent: Friday, August 10, 2018 11:35 AM
To: Mondy, Yannick
Cc: Lalande, Martin
Subject: RE: Ronsco Inc.

From: Clifford, Kurtis
Sent: August 10, 2018 11:27 AM

To: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>
Cc: Smida, Néjib <Nejib.Smida@cbsa-asfc.gc.ca>; Flamand, Genevieve <Genevieve.Flamand@cbsa-asfc.gc.ca>; Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>

Subject: Ronsco Inc.

Importance: High

Good morning Doug,

Below is the information you requested in terms of how the SOTC in Quebec came to the reason to believe. It seems as it was not based on advice from HQ, nor on the Sumitomo advanced ruling. Rather it was based on the SOTC verification of proof provided by the importer that was deemed insufficient, and thus the reason to believe.

Nejib has also provided some additional information as an FYI regarding the SUMITOMO advance rulings.

The Ronsco file is still currently on hold in our Montreal office. I will wait to hear back from you before we action it.

Please advise if you require additional information. We are available for a call if need be.

Kurtis

De : Smida, Néjib

Envoyé : August 10, 2018 11:11 AM

À : Clifford, Kurtis <Kurtis.Clifford@cbsa-asfc.gc.ca>

Objet : Ronsco Inc.

Bonjour Kurtis,

Dans sa vérification, Lucie a demandé à l'importateur des preuves que la marchandise est une « 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); Pour les véhicules pour voies ferrées autopropulsés pour le transport des passagers, des bagages, de la poste ou des messageries; Devant servir à la réparation des tramways (à l'exclusion des voitures de métro) avec sabots-freins électromagnétiques glissant sur le rail » ou « Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; For self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic; For use in the repair of tramway vehicles (excluding subway cars) with magnetic track brakes » comme le dit le libellé du # de classement déclaré dans le Tarif.

Les preuves fournies par l'importateur n'étaient pas satisfaisantes. Lucie s'est basée sur ça pour changer le classement.

Pour ce qui est de la DA :

Une DA a été émise par notre région en 2005 pour Sumitomo Canada ou on a classé un produit « Wheel blanks » sous le numéro de classement déclaré que Lucie a vérifié.

Le 20 juin 2018, un APOEC des Prairies a écrit à Brenda Campbell, Manager Regional Programs, lui mentionnant qu'il travaille sur un produit similaire dans sa vérification en classement (C-2017-008960 - SUMITOMO CANADA LIMITED), que l'importateur lui a fourni une copie de sa DA émise en 2005.

L'AC lui a confirmé que le classement de 2005 est erroné et que la DA doit être amendée.

Le 20 juin 2018, Brenda Campell a écrit à Geneviève pour que nous émettions une DA amendée à Sumitomo.

Geneviève a demandé à Sophie d'émettre la DA amendée, la décision n'est pas encore émise.

Voici ce qui résume le tout, n'hésitez pas à m'appeler si vous avez besoin d'autres détails.

Bonne journée,

Néjib Smida

Gestionnaire intérimaire, observation des échanges commerciaux, Division des opérations liées aux échanges commerciaux
 Agence des services frontaliers du Canada / Gouvernement du Canada

nejib.smida@cbsa-asfc.gc.ca / tél : 418-648-3401 poste 2203 / ATS : 866-335-3237

Acting manager, Trade Operations Division
 Canada Border Services Agency / Government of Canada

nejib.smida@cbsa-asfc.gc.ca / tél : 418-648-3401 ext. 2203 / TTY : 866-335-3237



Canada Border
Services Agency

Agence des services
frontaliers du Canada



This is **Exhibit “N”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

From: Ogilvie, Sue [mailto:Sue.Ogilvie@cbsa-asfc.gc.ca]

Sent: Thursday, November 8, 2018 1:24 PM

To: 'Peter Clark'

Subject: RE: Ronsco Inc.

Good Afternoon Mr. Clark,

Yes you are correct I do not have jurisdiction under a section 60 appeal to deal with reason to believe.

It is in the best interest of the company to make the corrections within the time limit approved by the CV officer.

Reason to believe can only be dealt with under the appeal of an AMPs penalty under Section 129 of the Customs Act.

I hope this clarifies the situation for you.

Sue Ogilvie

Appeals Officer, Toronto Trade Appeals Unit, Finance and Corporate Management Branch

Canada Border Services Agency / Government of Canada

sue.ogilvie@cbsa-asfc.gc.ca / Tel : 416-973-1787 / TTY: 866-335-3237

Agente d'appels, Unité des appels liés aux échanges commerciaux à Toronto, Direction générale des finances et de la gestion organisationnelle

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1, rue Front Ouest, 3^{ème} étage, Toronto, ON M5J 2X5 / Télécopieur : 416-954-6740

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From: Peter Clark [mailto:jpclark@greyclark.com]

Sent: November 8, 2018 11:47 AM

To: Ogilvie, Sue <Sue.Ogilvie@cbsa-asfc.gc.ca>

Cc: jpclark@greyclark.com

Subject: RE: Ronsco Inc.

Good afternoon Ms. Ogilvie,

Thank you for confirming that your records indicate that no NPA has been sent to Ronsco.

Ronsco has included the “reason to believe” issue in its appeal because it was addressed in Mme Gagné’s final report dated July 24, 2018, and has, as an ancillary consequence of her decision, required Ronsco to review and correct all of its import transactions of forged wheel bodies over the past four years. As you note in your email, Ronsco is in the process of completing this process.

Ronsco’s inclusion of the “reason to believe” issue in its appeal is therefore to address the requirement for it to correct these import transactions. Ronsco’s position is that the tariff items in question were not *prima facie*, evident, and transparent.

My client has asked me to confirm that you do not have jurisdiction to hear an appeal of this issue (reason to believe), please advise me of the same as soon as possible.

Best regards,

Peter Clark

From: Peter Clark [<mailto:jpclark@greyclark.com>]
Sent: Tuesday, November 6, 2018 2:28 PM
To: 'Ogilvie, Sue'
Cc: jpclark@greyclark.com
Subject: RE: Ronsco Inc.

Hi Sue

Thank you for drawing this matter to my attention

Best Regards

Peter

From: Ogilvie, Sue [<mailto:Sue.Ogilvie@cbsa-asfc.gc.ca>]
Sent: Tuesday, November 6, 2018 1:31 PM
To: 'jpclark@greyclark.com'
Subject: FW: Ronsco Inc.

Good Afternoon Mr. Clark,
 My apologies for addressing you as Mr. Grey in my previous email.

I contacted the CV officer who worked on C-2016-011118.
 You are correct they have not issued an NPA as yet.
 Apparently an extension was requested to submit the amended B2's and it was granted. The AMP(s) will be issued when they do the follow-up.

Sorry to have bothered you with this but I wanted to make sure that if you were appealing the AMP it got to the correct person.

Regards,
 Sue Ogilvie

Appeals Officer, Toronto Trade Appeals Unit, Finance and Corporate Management Branch
 Canada Border Services Agency / Government of Canada
sue.ogilvie@cbsa-asfc.gc.ca / Tel : 416-973-1787 / TTY: 866-335-3237

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From: Ogilvie, Sue

Sent: November 6, 2018 10:44 AM

To: 'jpclark@greyclark.com' <jpclark@greyclark.com>

Subject: Ronsco Inc.

Good Morning Mr. Grey,

I have been reviewing your appeal letter concerning tariff classification of the H36 wheels.

You also discuss Reason to Believe. Have you appealed the AMP penalty?

I will only be dealing with Tariff Classification.

If the appeal submitted is concerning tariff classification and the AMP penalty please advise the Notice of Penalty Assessment Number (NPA #).

Appeal of the AMP penalty would be assigned to another officer. I have not been able to find a record of an AMP appeal.

Regards

Sue Ogilvie

Appeals Officer, Toronto Trade Appeals Unit, Finance and Corporate Management Branch

Canada Border Services Agency / Government of Canada

sue.ogilvie@cbsa-asfc.gc.ca / Tel : 416-973-1787 / TTY: 866-335-3237

Agente d'appels, Unité des appels liés aux échanges commerciaux à Toronto, Direction générale des finances et de la gestion organisationnelle

Agence des services frontaliers du Canada / Gouvernement du Canada

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This is **Exhibit “O”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

RE: Security

From: "Alimohamed, Natasha" <natasha.alimohamed@cbsa-asfc.gc.ca>
To: Mimma Francescangeli <mfrancescangeli@ronesco.com>
Cc: jpclark@greyclark.com, "Tucker, JohnD" <john.tucker@cbsa-asfc.gc.ca>
Date: Mon, 17 Aug 2020 23:04:45 +0000
Attachments: Unnamed Attachment (68 bytes); Unnamed Attachment (68 bytes)

Good evening, Ms. Francescangeli,

Thank you for your of August 13th. We appreciate your concern regarding the outstanding amount that is required to be paid and I wish to provide some further clarifications.

The CBSA will not take any action to claim against the bond prior to the end of the 90-day appeal period to the CITT, which is October 28th, 2020. Similarly, the CBSA will not collect against the bond if a payment arrangement is made with CRA Collections. If neither of these two situations occur, however, CBSA will take action to claim against the security bond, though, as indicated, not before October 28th, 2020.

I also wish to clarify that the notice of claim letter that was issued that it is being construed as an intent to claim against the bond by a specific date should not be considered as such as the letter only establishes an intent to claim if the debt is not paid, and does not specify a particular date, but awaits a response from all the parties involved to the request for payment.

With respect to the decisions made under sections 60 and 131 and 132/133 of the *Customs Act*, they are indeed separate and distinct. The request under section 60 of the *Customs Act* was for a further re-determination by the President of the tariff classification of the H36 wheels for which the security bond was posted. This was an appeal of a decision related to the importation of specific goods. A decision under subsection 60(4) ensued on July 30, 2020 confirming the tariff classification of these goods to be the same as the tariff classification of similar goods determined by the CITT in appeal AP-2019-003. It must be noted that, since the CITT has made its decision, and it was not appealed further, the classification for the H36 Class C wheels is binding with respect to importations of these goods. Given this CITT decision, there is no ability for the CBSA to further re-determine the classification of the goods. In fact, based on the provisions of paragraph 61(1)(c), the CBSA is required to give effect of this decision to any subsequent importations of the same goods.

Finally, regarding your request as per section 129 of the *Custom Act*, it is a request for a Minister's decision regarding the issuance of the Notice of Penalty Assessment (NPA). I wish to clarify that the review of this NPA will solely review the infractions/contraventions, specifically whether the importer failed to submit the required corrections within 90 days after having reason to believe that their declaration was incorrect. It will not review the reassessment period determined by the CBSA under the reassessment policy outlined in D11-6-10 for which corrections were filed (July 24, 2014 to July 24, 2018). The outcome of this appeal will either overturn the penalty and return the amount paid on the NPA, or uphold it and determine if the quantum of the penalty assessed was reasonable. Most importantly, the outcome of the appealed NPA will not affect the amounts owed on the corrections submitted based on the verification report findings.

There is no review mechanism provided within the *Customs Act* that allows for an appeal or review of the application of the reassessment policy. As John Tucker has advised, where no review or appeal process exists in legislation and where a client believes that the CBSA has not exercised the available discretion in a fair and reasonable manner, the client may apply for judicial review under section 18.1 of the *Federal Courts Act*.

I trust that this helps to clarify the situation.

Natasha Alimohamed

From: Mimma Francescangeli
Sent: August 13, 2020 3:44 PM
To: Alimohamed, Natasha

Cc: jpclark@greyclark.com; Tucker, JohnD

Subject: RE: Security

Good afternoon Ms. Alimohamed,

Thank you for your email received earlier today. While I appreciate the explanation as to the rationale behind Mr. Tucker's July 30, 2020 letter, your response does not address Ronsco's concerns.

Ronsco is asking for an assurance that it will not be required to pay the duties in question until it has exhausted all of its appeal mechanisms. I understand your view that the current legislative regime under the *Customs Act* does not provide for this. However, information provided in your email below shows that there is a means of meeting both Ronsco's and the CBSA's interests in this interim period while we await a decision from the Montreal Trade Appeals Unit on Ronsco's "reason to believe" appeal.

While you characterize the decisions under sections 60 and 131 or 132/33 of the *Customs Act* as separate, one of the Appeals Officers under your supervision advised Ronsco in January 2019 that the requirement to pay duties on the basis of "reason to believe" could not be appealed to the CBSA President, and instead conclusions related to "reason to believe" had to be appealed via an appeal of the Notice of Penalty Assessment under section 131. We had to wait many months to bring that appeal, while waiting for the Notice of Penalty Assessment to be issued. When we finally were able to bring that appeal, we were told it could not move forward until the section 60 appeal was decided (that appeal having been made to preserve Ronsco's rights while the CITT appeal was ongoing). The Minister's decision under sections 132/133 of the *Customs Act* is absolutely connected to the payment of these duties. The CBSA's Memorandum D11-6-10, regarding retroactive corrections, specifies that these need not be made if there is no "reason to believe" (para 27). If Ronsco is successful in its request to the Minister, the corollary would be that para 27 of Memorandum D11-6-10 would apply. As such, it is clear that Ronsco is still pursuing its internal appeals within the CBSA with respect to the amounts in issue, as it was advised to do in January 2019.

Based on your email, it is entirely possible to accommodate Ronsco's interest while preserving the CBSA's interest in protecting the debt in the event that it is not paid. As you note, the bond requires that any notice of claim be provided within 90 days of the President's decision. Given the decision date of July 30, 2020, that leaves the CBSA until October 28, 2020 to give notice of claim (which is also Ronsco's deadline for appealing to the CITT). Despite having 90 days to make a notice of claim, Mr. Tucker issued a notice of claim on the same day that the President made his decision (in fact, before the decision was even communicated to us).

In order to accommodate both the CBSA's and Ronsco's interest, we ask that you confirm that the CBSA will not make a claim against the bond before October 14, 2020. The Montreal Trade Appeals Unit has advised that a decision will be made with regard to Ronsco's "reason to believe" appeal by September 18, 2020. As such, confirming that the CBSA will not make a claim against the bond before October 14, 2020 will provide Ronsco with sufficient time to receive this decision and, in the event it is unsuccessful in its appeal to the Minister, consider its options with respect to proceedings in Federal Court under section 135 of the *Customs Act*. This would also ensure that the CBSA still has a further two week window under the bond to ensure that a payment plan is in place between Ronsco and the CRA.

Given the concerns you note related to the current economic instability related to COVID-19 and the major impact of these duties on Ronsco's business, your prompt response would be appreciated.

Sincerely,

Mimma
Francescangeli



[Email me | Écrivez-moi](#)
 (514) 866-1033 Ext. 320
 (514) 235-1420
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[On célèbre nos 50 ans de service.](#)

From: Alimohamed, Natasha <Natasha.Alimohamed@cbsa-asfc.gc.ca>
Sent: Thursday, August 13, 2020 9:24 AM
To: Mimma Francescangeli <mfrancescangeli@ronesco.com>
Cc: jpclark@greyclark.com; Tucker, JohnD <John.Tucker@cbsa-asfc.gc.ca>
Subject: Security
Re : Security to permit Ronsco to exhaust all of its remedies under the Customs Act

Ms. Francescangeli:

This message is in response to your emailed letter of August 6 2020. I understand that this has been a lengthy situation in dealing with the Canada Border Services Agency (CBSA) over the issue of the requirement to pay a substantial amount that you identify as retroactive duties. I can appreciate your concerns in the current economic instability created by the COVID-19 pandemic should Ronsco be required to pay these retroactive duty amounts immediately.

As you have advised, John Tucker of the Recourse Directorate issued a notice of claim letter to the surety company that provided the bond to secure the retroactive duty amounts. The security bond was filed to cover the duties, taxes and interest owing for the submitted tariff classifications corrections related to the reassessment period determined by the CBSA, in lieu of payment to proceed with the section 60 appeal. This letter was issued as the clause for the security bond requires that any notice of claim be provided within 90 days of the date of the President's decision notice, which was issued on July 30th 2020. The letter advises that the amounts are due within 30 days of the decision or interest will accrue. The CBSA issues a notice of claim letter to ensure that its interest in the debt is protected in the event that a debt is not paid. It also provides notice that the security will be called upon if the debt is not paid and advises all parties of this but does not specify a time frame as that is based upon the response of the parties to the decision.

As our communication with your representative Mr. Clark advised, there are two options where the bond may be retained: 1) if an appeal is filed with the Canadian International Trade Tribunal; and 2) if a payment arrangement is made with the Canada Revenue Agency to pay the debt which I understand you are currently trying to put in place. As a President's decision has been rendered under subsection 60(4) of the *Customs Act*, the above two options are the only ones which allow us to retain the bond since it was submitted as part of the appeal process under section 60 of the *Customs Act*.

Please note that there is no requirement for payment or security to appeal a Notice of penalty under section 129 of the *Customs Act*. Consequently, it is not required to retain the security in place for the duty reassessments as it does not form part of the appeal as per section 129 of the *Customs Act*. The decisions made by Recourse appeals officers under section 60 and sections 131 or 132/133 of the *Customs Act* are separate and have distinct decision processes.

I trust that the above information is helpful.

Sincerely,

Natasha Alimohamed

From: Alimohamed, Natasha <Natasha.Alimohamed@cbsa-asfc.gc.ca>
Sent: August 7, 2020 10:37 AM
To: Mimma Francescangeli <mfrancescangeli@ronesco.com>
Cc: Lafourture, Cynthia <Cynthia.Lafourture@cbsa-asfc.gc.ca>; Tucker, JohnD <John.Tucker@cbsa-asfc.gc.ca>; jpclark@greyclark.com
Subject: Re: Security

Thank you for your message, Ms. Francescangeli. I will return to you shortly on this.

Natasha

Sent from my iPhone

On Aug 6, 2020, at 3:41 PM, Mimma Francescangeli <mfrancescangeli@ronsco.com> wrote:

Good Afternoon Ms. Alimohamed,
Please see attached correspondence for your consideration.
Kindly confirm receipt.
Thank You,

Mimma
Francescangeli



[Email me | Écrivez-moi](#)
(514) 866-1033 Ext. 320
(514) 235-1420

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This is **Exhibit “P”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

	Department of Justice Canada	Ministère de la Justice Canada	
National Litigation Sector NCR 50 O'Connor Street, Suite 500 Ottawa K1A 0E4	Section du contentieux des affaires civiles Secteur national du contentieux RCN 50, rue O'Connor, pièce 500 Ottawa (Ontario) K1A 0E4	Telephone/Téléphone: (613) 355-6985 Fax /Télécopieur: (613) 954-1920 Email/Courriel: Adrian.Johnston@justice.gc.ca	

Via Email

Our File Number: LEX-500033945

May 29, 2023

Chris Trivisonno
Conway Baxter Wilson LLP/s.r.l.
400-411 Roosevelt Avenue
Ottawa, Ontario
K2A 3X9

Dear Mr. Trivisonno,

Re: Ronesco Inc. v. His Majesty the King
Court File No.: T-1295-20

I write further to the letter sent to you by my co-counsel Charles Maher on May 5, 2023.

We received the discovery transcripts in this matter on May 24, 2023. We have reviewed the requests that the Defendant took under advisement during the examination of the Crown Representative, Kelly Bartlett. Please see the attached table confirming whether the Defendant undertakes to answer, or refuses to answer, each of those requests.

Yours sincerely,



Adrian Johnston
Counsel
Civil Litigation Section

Encl.

cc: Colin Baxter

Court File No.: T-1295-20

FEDERAL COURT

BETWEEN:

RONSCO INC.

Plaintiff

-and-

**HIS MAJESTY THE KING, THE MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS,
CANADA BORDER SERVICES AGENCY**

Defendant

**POSITION ON QUESTIONS TAKEN UNDER ADVISEMENT
EXAMINATION OF KELLY BARTLETT**

NO.	PAGE	LINE	ADVISEMENTS	POSITION
1.	23	18	To advise whether prior to the Ronsco trade verification, the CBSA had ever conducted a trade verification related to the import of rough bore wheels.	Undertaking to make best efforts.
2.	39	10	To provide anonymized information indicating the number of importers who were importing under Tariff .21 the goods in question, or substantially similar goods, under Tariff .29; and the volumes of those imports.	Refusal. <i>Federal Courts Rules</i> paragraph 242(1)(b), and <i>Customs Act</i> , section 107.
3.	40	4	To provide the number of other importers who were subject to verification audits prior to 2018 based on the importation of rough bore wheels.	Undertaking to make best efforts.
4.	40	9	To provide the number of importers who have ever been assessed retroactive duties based on the goods at issue.	Refusal. <i>Federal Courts Rules</i> paragraph 242(1)(b), and <i>Customs Act</i> , section 107.

NO.	PAGE	LINE	ADVISEMENTS	POSITION
5.	49	3	To provide all drafts of the interim report.	Undertaking to make best efforts.
6.	49	6	To provide all communications or other correspondence related to the drafting of the interim report.	Undertaking to make best efforts.
7.	59	8	To provide a list of anyone, those within CBSA and other government employees outside of CBSA, who reviewed the issue sheet before the June 26 th meeting with Ronsco.	Undertaking to make best efforts
8.	63	23	To advise what Mr. Band meant by “This is good news”.	Undertaking to make best efforts
9.	64	2	To advise whether Mr. Band thought this was particularly good news because he wouldn’t be imposing retroactive duties on a Canadian company.	Undertaking to make best efforts
10.	72	7	To advise whether all other government attendees apart from Mr. Band (Charles Slowey, David Hurl and Laura Labelle) believed they were meeting with Sumitomo or Ronsco.	Undertaking to make best efforts with respect to Mr. Band. Refusal with respect to the other individuals identified. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c) and (d), in light of the undertaking given with respect to Mr. Band.
11.	72	14	To advise the basis for each government attendee’s belief (Mr. Band, Charles Slowey, David Hurl, and Laura Labelle) that they were meeting with Sumitomo or Ronsco.	Undertaking to make best efforts with respect to Mr. Band. Refusal with respect to the other individuals identified. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c) and (d), in light of the undertaking given with respect to Mr. Band.
12.	73	10	To provide any documents that reflect Mr. Band’s understanding of who he was meeting with, including his or his assistant’s Outlook calendar entries or invitations, written day-planners, physical calendars, and any communications.	Undertaking to make best efforts
13.	73	22	To provide any documents that reflect Charles Slowey, David Hurl and Laura Labelle’s understanding of who they were meeting with, including their or their assistant’s Outlook calendar entries or invitations, written day-planners, physical calendars, and any communications.	Refusal. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c), and (d), in light of the undertaking given in response to advisement no. 12.

NO.	PAGE	LINE	ADVISEMENTS	POSITION
14.	74	23	To advise whether the Ronsco representatives introduced themselves as being from Ronsco.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
15.	75	3	To advise whether Ronsco presented a detailed presentation about its business, making clear that it was a Canadian business?	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
16.	75	11	To advise whether Ronsco made clear that the imposition of retroactive duties on its imports was going to have a significant impact on its business?	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
17.	75	15	To advise whether Ronsco made it clear that this was particularly so in a small industry?	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
18.	75	18	To advise whether anyone in the meeting expressed their gratitude to Ronsco for providing such a detailed description of their business?	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).

NO.	PAGE	LINE	ADVISEMENTS	POSITION
19.	75	22	To advise whether anyone from the government side emphasized the fact that because Ronsco was a Canadian business, they were happy to get these details from them.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
20.	76	2	To advise if Mr. Band referred to Sumitomo at all during the meeting.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
21.	76	5	To advise if anyone else at the meeting referred to Sumitomo.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
22.	76	8	To advise if Mr. Band referred to Ronsco during the meeting.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
23.	76	11	To advise if anyone else from the government referred to Ronsco during the meeting.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).

NO.	PAGE	LINE	ADVISEMENTS	POSITION
24.	77	5	To provide all documents that Mr. Band brought with him to the meeting.	Undertaking to make best efforts.
25.	78	5	To advise if at any point during the meeting did Mr. Band realize that he was meeting with Ronsco and not Sumitomo.	Undertaking to make best efforts.
26.	78	10	To advise if at any point during the meeting did any other government representatives realize that they were meeting with Ronsco and not Sumitomo.	Refusal. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c), and (d), in light of the undertaking given in response to advisement no. 25.
27.	78	13	To advise, if Mr. Band, Mr. Slowey, Mr. Hurl and Ms. Labelle realized that they were meeting with Ronsco, what it was that tipped them off that it was Ronsco and not Sumitomo.	Undertaking to make best efforts with respect to Mr. Band. Refusal with respect to the other individuals identified. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c), and (d), in light of the undertaking given with respect to Mr. Band.
28.	78	19	To advise if Mr. Band referred to the \$484,518 in duties owed by Ronsco for the five samples that were the subject of the verification during the meeting.	Undertaking to make best efforts.
29.	78	24	To ask all attendees at the meeting if Mr. Band referred to the \$484,518 in duties owed by Ronsco for the five samples that were the subject of the verification during the meeting.	Refusal. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d), in light of the undertaking given in response to advisement no. 28.
30.	79	2	To advise if anyone from CBSA or the Minister's office took notes during the meeting.	Undertaking to make best efforts.
31.	79	6	To provide the notes taken by anyone from CBSA or the Minister's office during the meeting.	Undertaking to make best efforts.
32.	80	15	To advise, if Mr. Band did mention the \$484,518 during the meeting, why he mentioned it.	Undertaking to make best efforts.
33.	81	17	To advise what Mr. Band meant when he said "going forward"?	Undertaking to make best efforts.
34.	83	19	To provide the Delegation of Authorities document.	Undertaking to make best efforts.

NO.	PAGE	LINE	ADVISEMENTS	POSITION
35.	84	14	To advise if Mr. Band discussed the wording of Tariff .21	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
36.	84	21	To advise if Mr. Band said anything to the effect that the wording of Tariff .21 was confusing or outdated.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
37.	84	25	To advise if Mr. Band referred to an Auditor General of Canada's report from the Spring of 2017 concerning CBSA, which noted the need for Canada's tariff items to be reviewed and updated.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
38.	85	21	To provide Mr. Band as a witness for examination	Refusal. <i>Federal Courts Rules</i> , subsection 237(2).
39.	85	24	To provide the full particulars of the meeting, from the recollection of Doug Band.	Undertaking to make best efforts.
40.	86	3	To provide the full particulars of the other witnesses from the governments' recollection of the meeting.	Undertaking to make best efforts to provide particulars of the meeting, including through the undertaking given in response to advisement no. 39. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
41.	87	20	To advise why Mr. Band didn't want to create a new note following the meeting.	Undertaking to make best efforts.

NO.	PAGE	LINE	ADVISEMENTS	POSITION
42.	88	22	To advise if the reason Mr. Band did not ask for a new note was because he thought the Sumitomo issue sheet equally applied to Ronsco.	Undertaking to make best efforts.
43.	100	13	To advise why Mr. Tebbutt provided the advice that the tariff was not clear or evident.	Undertaking to make best efforts.
44.	104	17	To advise if the meeting lasted longer than 30 minutes, why it went more than 30 minutes.	Undertaking to make best efforts.
45.	104	21	To advise what each of the government attendees' views and recollections were as to why the meeting went longer than 30 minutes.	Refusal. <i>Federal Courts Rules</i> , paragraphs 242(1)(c) and (d), in light of the undertaking given in response to advisement No. 44.
46.	109	14	To advise how and when members of Trade Policy, including but not limited to Ms. Mondy and Mr. Band, became aware that a Sumitomo issue sheet had been used for a meeting with Ronsco.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
47.	111	24	To advise, based on the recollection of each attendee what was discussed at the August 7, 2018 meeting between Ms. Mondy, Mr. Band, Ms. Dion, and Mr. Loynachan, specifically what way forward they were discussing.	Undertaking to make best efforts to answer the question. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).
48.	120	8	To advise if Mr. Band agrees to the accuracy of paragraph 5 of the memo at Tab 34 of the Defendants' AOD describing the June 26 th meeting.	Undertaking to make best efforts.
49.	120	13	If paragraph 5 of the memo at Tab 34 of the Defendants' AOD is accurate, to advise why Mr. Band believed the meeting was with Sumitomo.	Undertaking to make best efforts.

NO.	PAGE	LINE	ADVISEMENTS	POSITION
50.	123	11	To provide the native version of the memo, located at tab 34 of the Defendants' Affidavit of Documents.	Refusal. <i>Federal Courts Rules</i> paragraph 242(1)(a). It is not possible to provide the native version of the document without revealing information redacted for privilege. The Defendant is open to clarifying the content or metadata of the document in other ways which do not result in the disclosure of privileged information.
51.	128	18	To advise on what basis the Defendant asserts solicitor-client privilege for redactions to the memo, located at tab 34 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts, subject to the protection of privileged information. Privilege is expressly not waived.
52.	128	25	To provide a description of the contents of what was redacted for solicitor-client privilege in the memo, located at tab 34 of the Defendants' Affidavit of Documents.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
53.	130	22	To advise what the basis is for the litigation privilege in the memo located at tab 34 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts, subject to the protection of privileged information. Privilege is expressly not waived.
54.	131	15	To provide a description of the contents of what was redacted for litigation privilege in the memo located at tab 34 of the Defendants' Affidavit of Documents, sufficient to allow the Plaintiff to assess whether there is a proper claim for privilege.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
55.	133	17	To provide Brad Loynachan's last-known contact information.	Undertaking to make best efforts.
56.	134	21	To advise if the memo at tab 206 of the Defendants' Affidavit of Documents is the final version of the memo.	Undertaking to make best efforts.
57.	134	24	To provide any subsequent versions of the memo at tab 206 of the Defendants' Affidavit of Documents, if they exist.	Undertaking to make best efforts.
58.	135	2	To provide the native version of the memo at tab 206 of the Defendants' Affidavit of Documents.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a). It is not possible to provide the native version of the document without revealing information redacted for privilege. The Defendant is open to clarifying the content or metadata of the document in other ways which do not result in the disclosure of privileged information.

NO.	PAGE	LINE	ADVISEMENTS	POSITION
59.	135	6	To advise what the basis is for the litigation and solicitor-client privilege redactions in the memo located at tab 206 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts, subject to the protection of privileged information. Privilege is expressly not waived.
60.	135	10	To provide a description of the contents of what was redacted for litigation and solicitor-client privileges in the memo at tab 206 of the Defendants' Affidavit of Documents, sufficient for the Plaintiff to evaluate whether it is a valid claim of privilege.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
61.	142	24	To provide Ms. Mondy's recollection of when the meeting referred to in Grant Tebbutt's email occurred and what was discussed.	Undertaking to make best efforts.
62.	144	21	To advise why the call on August 13 th was cancelled.	Undertaking to make best efforts.
63.	146	14	To advise if Mr. Band approved the memo at tab 206 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts.
64.	146	18	To advise if the Vice President was provided the memo at tab 206 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts.
65.	146	21	To advise if the Vice President approved the memo located at tab 206 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts.
66.	146	24	To advise if the President was provided the memo at tab 206 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts.
67.	147	2	To advise if the President approved the memo at tab 206 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts.
68.	147	5	To provide the signed and approved versions of the memo located at tab 206 of the Defendants' Affidavit of Documents.	Undertaking to make best efforts.
69.	149	25	To advise how the decision was made not to amend the final verification report after the Trade Policy Division set out its position that Ronsco did not have the reason to believe.	Undertaking to make best efforts.
70.	153	16	To provide a description of the contents of the material redacted for solicitor-client privilege in the email chain at Tab 49 of the Defendants' Affidavit of Documents, sufficient for the Plaintiff to assess whether the contents are privileged.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).

NO.	PAGE	LINE	ADVISEMENTS	POSITION
71.	154	19	To provide the unredacted email chain at Tab 49 of the Defendants' Affidavit of Documents.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
72.	163	1	To provide the basis for redactions in emails dated August 10 th , found at Tab 54 of the Defendants' Affidavit of Documents, and a description of the contents sufficient for the Plaintiff to assess whether they are proper assertions of privilege.	Undertaking to make best efforts to provide the basis for the redactions, subject to the protection of privileged information. Privilege is expressly not waived. Refusal to provide a description of the redacted information. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
73.	164	5	To advise what litigation was contemplated at this point.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
74.	164	8	To provide the unredacted email chain at Tab 54 of the Defendants' Affidavit of Documents.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
75.	164	11	To advise whether the email chain at Tab 54 of the Defendants' Affidavit of Documents is related to the decision not to amend the final verification report.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
76.	164	15	To advise if the legal advice in the email chain at Tab 54 of the Defendants' Affidavit of Documents was the basis for the decision not to amend the final report.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
77.	169	3	To provide the full particulars of the recollections of those who attended the meeting where it was determined that Ronsco did not have reason to believe, referenced in the email chain at Tab 98 of the Defendants' Affidavit of Documents	Undertaking to make best efforts to provide particulars of the meeting. No undertaking as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).

This is **Exhibit “Q”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.



A LinkedIn profile header. On the left is a circular portrait of a man in a suit. To the right is a circular badge for 'ICF Credentials and Standards' featuring the letters 'ACC' in large yellow font, with 'ASSOCIATE CERTIFIED COACH' below it. Three small white dots are positioned to the right of the badge.

Doug Band

Director General at Canada Border Services Agency | Agence des services frontaliers du Canada
Greater Ottawa Metropolitan Area
1K followers · 500+ connections

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[Canada Border Services Agency |
Agence des services frontaliers ...](#)

About

Certified Executive Coach

(Royal Roads University &
International Coaching Federation)

Activity



I am thrilled to see the HFR project move forward. Today, the Minister of Transport, the Honourable Omar Alghabra, and the Minister of Canadian...

Liked by Doug Band

How do you think about yourself right now?

In this moment, are you focused on maximizing your strengths or navigating your growth edges? Which space should you be in?...

Liked by Doug Band



Officially (& proudly!) stepped into the Director role today and joined the #cbsa executive team for the #governmentofcanada Thank you to all the...

Liked by Doug Band

[Join now to see all activity](#)

Experience



Director General Trade and Anti Dumping Programs

Canada Border Services Agency | Agence des services frontaliers du Canada

Jul 2017 - Present · 6 years 2 months

Ottawa, Ontario, Canada



Executive Director (Advisor to the Associate Secretary), TBS Transformation Initiatives

Treasury Board of Canada Secretariat | Secrétariat du Conseil du Trésor du Canada

Dec 2016 - Jul 2017 · 8 months

Ottawa, Ontario

Advise the Associate Secretary on departmental and enterprise-wide change initiatives.



Treasury Board of Canada Secretariat

9 years

Executive Director, Federal Regulatory Policy



Developed and led government-wide implementation of reforms to the regulatory system to reduce red tape costs on business and improve transparency. Also responsible for central oversight, stakeholder relations, results measurement, public reporting, communications. Supported the work of a ministerial advisory committee on red tape reduction, comprised of senior Canadian business leaders and consumer group representatives. Spokesperson at domestic and international stakeholder events and OECD...

Show more ▾

Senior Director, Service Sector

2008 - 2010 · 2 years

Ottawa, Canada

In partnership with the ADM, responsible for organizational development, change management and corporate services for a newly created Government Services Sector. Built corporate management practices and processes that enabled effective risk management. Developed and led execution of the new organization's culture strategy - - profiled as a leadership best practice at a 2008 TBS executive conference. Provided advice on governance and policy issues related to improving internal service delivery.

Show more

A/Senior Director, Secretariat to the Independent Panel on Transferring Federal Labs

2007 - 2008 · 1 year

Ottawa, Canada

Led secretariat support to the Independent Expert Panel on transferring federal laboratories to universities and the private sector. Planned and delivered a national consultation process in three months. Directed policy research, analysis and provided advice to support the Panel's work. Played key role in developing the Government's Response to the Panel's recommendations.



2006 - 2007 · 1 year

Ottawa, Canada

Developed an emergency management plan to support Deputy Heads in providing effective management of the public service through large scale events.

Agriculture and Agri-Food Canada

13 years

Chief of Staff to the Associate Deputy Minister

2004 - 2006 · 2 years

Ottawa, Canada

Provided management support and advice to the Associate DM on policy, program and departmental management issues.

Deputy Director, Stakeholder Relations

2002 - 2004 · 2 years

Ottawa, Canada

Designed and led implementation of a national, industry-government consensus building process to strengthen Canada's competitive position in global markets. More than a decade later, industry-led, value chain roundtables continue to be a key mechanism for AAFC to build consensus and collaborate with agriculture and food industries on shared priorities. For example the beef roundtable enabled industry and government collaboration to restore markets following the BSE crises.

Responsible...

Show more

Senior Policy Analyst



Provided policy research, analysis and advice to senior management and the Minister on rural community development.

Senior Project Manager

1998 - 2001 · 3 years

Ottawa, Canada

Managed complex projects and multi-disciplinary teams to improve departmental management. Built and led an internal management consulting service that assisted managers in managing change and resolving organizational conflict. Led two annual assessments of the Department against quality management expectations. Reported findings to the senior executive committee. Conducted an assessment of the state of stakeholder relations for the Deputy Minister.

Departmental Liaison to the Auditor General of Canada

1996 - 1998 · 2 years

Ottawa, Canada

Established and maintained win-win corporate relations with the Office of the Auditor General of Canada on all audits of the Department. Developed public and parliamentary affairs strategies to respond to audit reports. Prepared senior officials for audit interviews and appearances before Parliamentary Committee.

Communications Strategist

1993 - 1996 · 3 years

Ottawa, Canada

Communications strategist and Ministerial speech writer for high profile domestic and international trade policy files (illegal grain shipments to the US, WTO implementation). Developed a weekly media monitoring report analyzing US Farm Bill developments - lauded by government and agriculture industry leaders.

Education



2021 - 2021

Carleton University

Master's Degree · Political Science

1995 - 1998

University of Guelph

Bachelor's Degree · Combined Honours, Political Science & English Literature

1988 - 1992

Volunteer Experience

Director of Competitive Hockey (AA)

Board of Directors, Ottawa Silver Seven Hockey Association

2013 - 2016 · 3 years

Children



Certificate in Public Sector Leadership and Governance

University of Ottawa

Issued Jan 2014 · Expires Jan 2016

Registered Public Policy Mediator

Association for Conflict Resolution

Issued Jan 2002 · Expires Jan 2004

Associate Certified Coach (ACC)

International Coaching Federation

Languages

English

French

More activity by Doug



Liked by Doug Band

I had the absolute honour today of standing next to these three superstars while being recognized by Public Safety for our work on Emergencies Act...

Liked by Doug Band

Thank you to my clients, sponsors, teachers, mentor coaches, the coaching community, and the International Coaching Federation. Without you, I would...

Liked by Doug Band

Proud parent alert. The Maiden is showing across Canada this month! I know many of my posts lately have started this way but some of you responded...

Liked by Doug Band



I am excited to take a pause to celebrate and mark the occasion that I am now EQ-i 2.0 & EQ360 certified. These new tools in my toolkit will enable...

Liked by Doug Band

I'VE BEEN PUBLISHED! Thank you to the team at Subkit for featuring UFINITY PERFORMANCE COACHING and sharing my voice with fellow...

Liked by Doug Band

Dec 14 update: I'm not a doctor and we have to wait until James's follow up appointment on Monday to talk to the professionals, BUT according to the...

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Director General at Canada Border Services Agency

Greater Ottawa Metropolitan Area

Johny S. Prasad, MBA

Director, Trade Operations at Canada Border Services Agency | All views are my own.

Canada

Julie (Burke) Nunez

Director General, Wellness, Labour Relations and Compensation at Canada Border Services Agency | Agence des services frontaliers du Canada

Greater Ottawa Metropolitan Area

Charles Melchers

Director, Regulatory Trade Programs at Canada Border Services Agency | Agence des services frontaliers du Canada

Kemptville, ON

Gloria Haché

Director General, Training and Development, Human Resources Branch, Canada Border Services Agency
Canada

Trishann Pascal

Executive I Director, Canada Border Services Agency | Agence des services frontaliers du Canada
Canada



Ottawa, ON

Tammy Edwards

Executive Director, Canada Border Services Agency

Ottawa, ON

Mike Leahy

Director General of CARM at Canada Border Services Agency | Agence des services frontaliers du Canada

Ottawa, ON

Daniel Tremblay

Director General at Canada Border Services Agency | Agence des services frontaliers du Canada

Ottawa, ON

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Doug Band

Executive Director, Treasury Board Secretariat

Ottawa, ON



Doug Band

-- at Band Family Office

New York, NY



Doug Band

The one and only at Myself

City of Johannesburg



Indianapolis, IN



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Doug Band

Director General at Canada Border Services Agency | Agence des services frontaliers du Canada

Director General Trade and Anti Dumping Programs at Canada Border Services Agency | Agence des services frontaliers du Canada

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Language

This is **Exhibit “R”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

From: Maher, Charles <Charles.Maher@justice.gc.ca>
Sent: January 27, 2023 12:51 PM
To: Chris Trivisonno; Susan Gutteridge
Cc: Colin Baxter; Sean Grassie
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Thank you Chris for the letter. I am fine with it.

We intend to make Karen Alford available.

Regarding the May dates, we are pretty open. I'll wait to hear from you.

Have a good week-end,
Charles

Charles Maher
Avocat | Counsel
Section du contentieux des affaires civiles | Civil Litigation Section
50, rue O'Connor, 5e étage | 50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8
Ministère de la Justice Canada | Department of Justice Canada
Gouvernement du Canada | Government of Canada
charles.maher@justice.gc.ca
Tél./Tel. : 438-871-7101
Téléc./Fax. : 613-954-1920

From: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>
Sent: January 27, 2023 12:27 PM
To: Maher, Charles <Charles.Maher@justice.gc.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Charles,

Thanks for the call. Please see the attached draft revised letter. Please confirm you are agreed to us sending this jointly to the court.

Please also provide the name of your proposed discovery witness.

You advised me in our conversation that you did not take steps to determine whether an alternative witness was available for March 20-24. We think this is unreasonable and creates an unnecessary delay.

We are disappointed that discoveries will not proceed in March and particularly the manner in which you and your client have delayed them, as set out in our previous correspondence.

We will be back to you about May dates.

Chris

Chris Trivisonno

Associate

613.780.2008

[View Bio](#)



From: Maher, Charles <Charles.Maher@justice.gc.ca>

Sent: Friday, January 27, 2023 9:30 AM

To: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Hi Chris, sorry for the delay.

I never contemplated using a typo to push the discoveries and find that suggestion troubling. I am aware that I originally said that the March 20-24 dates were fine for me but the circumstances have changed. As I've said my schedule is now more constrained. Furthermore, I also advised you that we had to ascertain the AGC deponent and their availability. The AGC deponent is not available March 20-24. I therefore kindly ask again that we find a suitable time for both of us. I also agree that this file needs to move forward, and that's what I intend to do.

Thank you,
Charles

Charles Maher
Avocat | Counsel
Section du contentieux des affaires civiles | Civil Litigation Section
50, rue O'Connor, 5e étage | 50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8
Ministère de la Justice Canada | Department of Justice Canada
Gouvernement du Canada | Government of Canada
charles.maher@justice.gc.ca
Tél/Tel. : 438-871-7101
Téléc./Fax. : 613-954-1920

From: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>

Sent: January 23, 2023 12:13 PM

To: Maher, Charles <Charles.Maher@justice.gc.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Charles,

There is no change of availability on our end. We need to move this action forward and you previously agreed to be available March 20-24. Though I appreciate that you now have a trial in April, that doesn't change your availability for March.

Who is your discovery witness? Is there someone else with the requisite knowledge available in March?

Chris

Chris Trivisonno

Associate

613.780.2008

[View Bio](#)



From: Maher, Charles <Charles.Maher@justice.gc.ca>

Sent: January 23, 2023 12:08 PM

To: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Hi Chris,

I appreciate the change of availability. However, as I said, my availability is now more constrained. Also, the deponent we are looking to put forward is not available on those dates. I am hopeful we can find an agreeable time in May.

Thank you,
Charles

Charles Maher
Avocat | Counsel
Section du contentieux des affaires civiles | Civil Litigation Section
50, rue O'Connor, 5e étage | 50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8
Ministère de la Justice Canada | Department of Justice Canada
Gouvernement du Canada | Government of Canada
charles.maher@justice.gc.ca
[Tél./Tel. : 438-871-7101](tel:438-871-7101)
Téléc./Fax. : 613-954-1920

From: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>

Sent: January 23, 2023 10:57 AM

To: Maher, Charles <Charles.Maher@justice.gc.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Hi Charles,

May was a typo. We will adjust the letter to list March 20-24, the dates we previously discussed. You confirmed your availability for those dates on Jan 11 and were to check with your client on their availability. Having not heard otherwise, I assume your client is available then.

We will also adjust the February dates according to your availability.

Thank,
Chris

Chris Trivisonno

Associate

613.780.2008

[View Bio](#)

CONWAY



From: Maher, Charles <Charles.Maher@justice.gc.ca>

Sent: January 23, 2023 10:52 AM

To: Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Hi,

Thank you for the letter. I have no issue with it. However, some May dates are mentioned in the letter for discoveries, while I think we were talking about late march? Or was I mistaken? In any event, I have many commitments that have since then been added to my schedule, including a 2 week trial in April, so dates in May would be preferable for me and my client actually. My calendar is pretty open for the month of May.

For the dates suggested for a case management conference, I am not available:

- February 9 PM
- February 16 AM
- February 21-23

Let me know if this works for you,
Charles

Charles Maher
 Avocat | Counsel
 Section du contentieux des affaires civiles | Civil Litigation Section
 50, rue O'Connor, 5e étage | 50 O'Connor Street, 5th Floor
 Ottawa, ON K1A 0H8
 Ministère de la Justice Canada | Department of Justice Canada
 Gouvernement du Canada | Government of Canada
charles.maher@justice.gc.ca
 Tél/Tel. : 438-871-7101
 Téléc./Fax. : 613-954-1920

From: Susan Gutteridge <SGutteridge@conwaylitigation.ca>
Sent: January 20, 2023 10:47 AM
To: Maher, Charles <Charles.Maher@justice.gc.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RONSCO Inc. v. His Majesty the King, et al. | Court File No. T-1295-20 - proposed joint letter to the Court

Good morning Charles,

Attached, please find the proposed joint letter to the Court in response to the Direction of Tabib AJ made on January 10th. Please use the track change function for any revisions to the attached letter and return same to us at your earliest convenience.

Kind regards,

Susan Gutteridge
 Litigation Law Clerk/Legal Assistant
 613.780.2016

CONWAY
conwaylitigation.ca



Conway Baxter Wilson LLP/s.r.l.

This is **Exhibit “S”** referred to in the Affidavit of Susan Gutteridge affirmed by Susan Gutteridge at the City of Ottawa, in the Province of Ontario, before me on August 15, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

Debra Ann Burke-Lachaine, a Commissioner, etc,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

From: Maher, Charles <Charles.Maher@justice.gc.ca>
Sent: February 27, 2023 11:11 AM
To: Susan Gutteridge
Cc: Colin Baxter; Chris Trivisonno; Sean Grassie
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Hi,

My client is agreeable to conduct the examinations in person.

For your information, we intend to put forward Kelly Bartlett, instead of Karen Alford.

Thank you,
Charles

Charles Maher
Avocat | Counsel
Section du contentieux des affaires civiles | Civil Litigation Section
50, rue O'Connor, 5e étage | 50 O'Connor Street, 5th Floor
Ottawa, ON K1A 0H8
Ministère de la Justice Canada | Department of Justice Canada
Gouvernement du Canada | Government of Canada
charles.maher@justice.gc.ca
Tél/Tel. : 438-871-7101
Téléc./Fax. : 613-954-1920

From: Susan Gutteridge <SGutteridge@conwaylitigation.ca>
Sent: February 23, 2023 12:35 PM
To: Maher, Charles <Charles.Maher@justice.gc.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Hi Charles,

Can you please confirm your agreement with respect to conducting the examinations for discovery in person in Ottawa?

Kind regards,

Susan Gutteridge
Litigation Law Clerk/Legal Assistant
613.780.2016

CONWAY
conwaylitigation.ca



Conway Baxter Wilson LLP/s.r.l.

From: Maher, Charles <Charles.Maher@justice.gc.ca>
Sent: February 16, 2023 11:19 AM
To: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Let me talk to my client and get back to you.

Thanks,
Charles

From: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>
Sent: February 15, 2023 1:32 PM
To: Maher, Charles <Charles.Maher@justice.gc.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Hi Charles,

We would like to conduct examinations for discovery in person and our client is willing to do so in Ottawa to accommodate your client and counsel.

We are happy to go ahead and book Catana Court Reporting for the discoveries.

Please confirm your agreement.

Chris

Chris Trivisonno

Associate

613.780.2008

[View Bio](#)

CONWAY



From: Chris Trivisonno
Sent: Wednesday, February 1, 2023 11:46 AM
To: Maher, Charles <Charles.Maher@justice.gc.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <SGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Thanks, Charles. Let's proceed with discoveries on May 2-4. Our client is available then.

We will be back to you with a draft joint letter to the Court. I take your point re the motion deadline and will incorporate into the letter.

Chris

Chris Trivisonno

Associate

613.780.2008

[View Bio](#)



From: Maher, Charles <Charles.Maher@justice.gc.ca>

Sent: Wednesday, February 1, 2023 10:46 AM

To: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Yes both are fine.

From: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>

Sent: February 1, 2023 9:00 AM

To: Maher, Charles <Charles.Maher@justice.gc.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>

Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>

Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Thanks. Please canvass May 2-4 and 16-19 with your client.

If Ms. Alford is not available, then we'll expect you to produce another witness so that we can move this proceeding forward.

Chris

Chris Trivisonno

Associate

613.780.2008

[View Bio](#)

CONWAY



From: Maher, Charles <Charles.Maher@justice.gc.ca>
Sent: Tuesday, January 31, 2023 4:35 PM
To: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Susan Gutteridge <SGutteridge@conwaylitigation.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

All dates are fine except May 11, and 22-26.

Thanks

From: Chris Trivisonno <CTrivisonno@conwaylitigation.ca>
Sent: January 31, 2023 4:07 PM
To: Susan Gutteridge <SGutteridge@conwaylitigation.ca>; Maher, Charles <Charles.Maher@justice.gc.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RE: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Charles,

May we please hear from you on the dates below? I'd like to confirm counsel availability so we can go back to our clients and wrap this all up in one letter to the court.

Thanks,
Chris

Chris Trivisonno

Associate

613.780.2008

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CONWAY



From: Susan Gutteridge <SGutteridge@conwaylitigation.ca>
Sent: Monday, January 30, 2023 3:44 PM
To: Maher, Charles <Charles.Maher@justice.gc.ca>
Cc: Colin Baxter <CBaxter@conwaylitigation.ca>; Chris Trivisonno <CTrivisonno@conwaylitigation.ca>; Sean Grassie <sGrassie@conwaylitigation.ca>
Subject: RONSCO Inc. v. His Majesty the King, et al. - proposed dates for discoveries

Hello Charles,

The following are dates where our office is available for discoveries in the above-referenced matter:

May 2-4, 8, 11-12, 16-19, 22-26

Ideally, we would like to have the discoveries held on 3 consecutive days. Please advise which dates are available on your calendar and we will canvass those dates with our client.

Kind regards,

Susan Gutteridge
Litigation Law Clerk/Legal Assistant
613.780.2016

CONWAY

conwaylitigation.ca



Conway Baxter Wilson LLP/s.r.l.

AFFIDAVIT OF JAMES PETER CLARK
(Affirmed January 17, 2020)

I, JAMES PETER CLARK, of the City of Ottawa, in the Province of Ontario, HEREBY SOLEMNLY AFFIRM:

1. I am the President of Grey, Clark, Shih and Associates, Limited (“GCS”), a multidisciplinary consultancy for international trade, investment and regulatory matters. In this capacity, I act as an international trade practitioner, providing consulting and advisory services to numerous clients.
2. My role as a consultant and as President of GCS involves providing strategic advice to my clients on issues related to Canadian and foreign trade, tariff, commodity tax, and regulatory developments, as well as multilateral and regional trade negotiations. In this role, I have provided such advice to Ronsco Inc. (“Ronsco”) regarding its dealings with the Canada Border Services Agency (“CBSA”).
3. As such, I have personal knowledge of the facts deposed to below, except for those matters that are stated to be based upon information provided by others, all of which information I believe to be true.

Background

4. Since in or around May 2018, I have provided strategic advice to Ronsco regarding a trade compliance verification (the “Verification”) conducted by the CBSA with respect to five of Ronsco’s import transactions from 2015. In the course of this Verification, Ronsco received an interim report from the CBSA dated April 20, 2018 (the “Interim Report”), setting out the CBSA’s preliminary conclusions regarding the tariff classification of the goods at issue. A copy of the Interim Report is attached to this affidavit as **Exhibit “A”**.

5. One of the two types of goods addressed in the Verification was wheel bodies for use in the manufacture of wheels for railway rolling-stock (“Wheel Bodies”). After importation, Wheel Bodies are (and must be) further manufactured into finished wheels, which are then press-fitted onto axles so that they can function as railway wheels. Bearings are attached to the axles to form finished wheelsets, which are then incorporated into “truck assemblies” or “bogies” that are installed under railway rolling-stock.

6. The CBSA’s Interim Report concluded that the Wheel Bodies, originally imported by Ronsco under tariff item 8607.19.21 of the Schedule to Canada’s *Customs Tariff*, SC 1997, c 36 (0% duty), should have been classified under tariff item 8607.19.29 (9.5% duty). The Interim Report also stated that Ronsco had “specific information available”, such that it had “reason to believe” that the original tariff classification of these goods was incorrect.

7. The basis indicated for the CBSA’s finding of “specific information available” was the tariff items at issue (that is, 8607.19.21 and 8607.19.29) in the *Customs Tariff* itself. The Interim Report stated, “**Reassessment Period - for goods in error – customs duties payable** - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in subparagraph 1(a) of Memorandum D11-6-6 [...].” The Interim Report also indicated that Ronsco would have to correct “all other transactions of [Wheel Bodies], back to the earliest date of the specific information, to a maximum of four years as provided in the *Customs Act*.”

8. In or around May 2018, I assisted Ronsco in preparing submissions to the CBSA, responding to the “Interim Report”. Since this time, I have also represented Ronsco in its dealings with the CBSA and other government departments, as well as at meetings with government representatives.

9. Since in or around June 2018, Ronsco has also been represented by Richard Mahoney, a lawyer at McMillan LLP and the Managing Director of McMillan Vantage Policy Group. I understand from Mr. Mahoney that, in or around June 2018, he reached out to ministerial staff in the Office of the Honourable Ralph Goodale, then the Minister of Public Safety and Emergency Preparedness, with the aim of ensuring that Minister Goodale and the CBSA were aware of Ronsco's situation and the broader implications of the CBSA's decision.

10. Specifically, the conclusions in the Interim Report were contrary to widespread industry practice with respect to Wheel Bodies as well as the United States of America's tariff treatment of these goods. The imposition of a 9.5% duty on Wheel Bodies, and the requirement for Ronsco to pay retroactive duties on its imports of Wheel Bodies going back four years, would place Ronsco at a significant competitive disadvantage with respect to American companies within the highly integrated North American railway industry.

11. Mr. Mahoney ultimately arranged a meeting with representatives from Minister Goodale's ministerial office in order to familiarize them with these issues. I attended this meeting.

Attendance at a Meeting on or about June 26, 2018

12. On or about June 26, 2018 at 11:00 AM, I attended a meeting with Mr. Mahoney at 269 Laurier Avenue West, Ottawa, ON (the "Meeting"). Two of Ronsco's senior officers attended with us: Kent Montgomery, Ronsco's Executive Vice President & Chief Operating Officer; and Mimma Francescangeli, Ronsco's Executive Vice President & Chief Financial Officer.

13. Prior to our arrival, Mr. Mahoney, Mr. Montgomery, Ms. Francescangeli and I expected to meet only with representatives from Minister Goodale's ministerial office and did not expect any CBSA representatives to be in attendance. Although Ronsco had already submitted its response to the CBSA's Interim Report by this time, it had not yet received the CBSA's final report resulting from the Verification (the "Final Report"). However, in addition to Mr. Mahoney, Mr. Montgomery, Ms. Francescangeli, and myself, two representatives from Minister Goodale's ministerial office and two CBSA representatives also attended the Meeting:

- (a) Doug Band (Director General, Trade and Anti-Dumping Programs Directorate, CBSA);
- (b) Charles Slowey (Director General, Commercial Program Directorate, CBSA);
- (c) David Hurl (Office of the Minister of Public Safety and Emergency Preparedness); and
- (d) Laura Lebel (Office of the Minister of Public Safety and Emergency Preparedness).

Conduct of the Meeting

14. When the Meeting began and Mr. Band arrived, he entered the room carrying a file folder containing various documents. The folder appeared to be approximately one inch thick. My impression was that this file contained documents related to Ronsco's file, and specifically the CBSA's Verification of Ronsco's import transactions. Based on Mr. Band's handling of the documents in the folder during the meeting, I understood that the documents were related to Ronsco.

15. At the outset of the meeting, Mr. Montgomery provided a brief overview of Ronsco and its operations. He explained the difficult situation in which the CBSA's Verification and Interim Report had left Ronsco, as well as Ronsco's resulting competitive disadvantage in Canada's railway rolling-

stock market. Throughout this explanation, and indeed the entire Meeting, Mr. Band's reactions to, and participation in, the discussions suggested that he was familiar with Ronsco and with the issues in Ronsco's file.

16. Following Mr. Montgomery's overview, Mr. Mahoney and I addressed the Verification, the Interim Report, and Ronsco's response to the Interim Report with Mr. Band and the other government representatives at this Meeting. In response, Mr. Band informed us that the conclusions in the Interim Report were likely to be confirmed in the CBSA's forthcoming Final Report.

17. However, Mr. Band stated that "retroactivity" would not be an issue. He informed us in no uncertain terms that this issue was within his authority and that, although Ronsco would have to pay duties on the Wheel Bodies imported through the five import transactions that were the subject of the Verification, as well as going forward from the date of the forthcoming Final Report, Ronsco would not have to correct all of its transactions involving Wheel Bodies over the past four years. Ronsco would therefore not have to pay duties on all of those transactions. At no point did Mr. Band connect his certainty that "retroactivity" would not be an issue to any CBSA "Advance Ruling for Tariff Classification", nor did it seem that Mr. Band was in any way confusing Ronsco for any other company.

18. During our discussions of Ronsco's concerns going forward from the Verification, Mr. Band also acknowledged that the wording of tariff item 8607.19.21 was confusing and outdated. He appeared to be sympathetic to Ronsco's situation and suggested that Ronsco also make submissions to Canada's Department of Finance to request a tariff change, which would eliminate the duties payable on future importations of Wheel Bodies. In this respect, Mr. Band referred to the Auditor

General of Canada's report from 2017 concerning the CBSA ("Report 2–Customs Duties"), which notes the need for Canada's tariff items to be reviewed and updated.

The Final Report

19. Following the Meeting, Ronsco received the CBSA's Final Report dated July 24, 2018. A copy of the Final Report is attached to this affidavit as **Exhibit "B"**.

20. The Final Report confirmed all of the conclusions set out in the Interim Report, including the requirement for Ronsco to correct all of its import transactions involving Wheel Bodies going back four years, and to pay duties on all of those goods. As this was contrary to Mr. Band's statements at the Meeting, Mr. Mahoney reached out to Mr. Band again to enquire as to whether an error had been made in the Final Report and arranged a telephone call with Mr. Band and me to discuss this issue.

Subsequent Interactions with Mr. Band

21. On or about August 16, 2018, I attended at Mr. Mahoney's offices and we spoke again with Mr. Band, this time by telephone. Mr. Band acknowledged that he had told us at the in-person Meeting on or about June 26, 2018 that "retroactivity" would not be an issue for Ronsco. He admitted that he had informed Mr. Mahoney, Mr. Montgomery, Ms. Francescangeli and me that Ronsco would not have to correct all import transactions involving Wheel Bodies going back four years.

22. However, Mr. Band stated that the Final Report had not been an error; instead, he claimed that his statements at the Meeting had been made in error. Mr. Band claimed that this was because

he had been briefed on the wrong file prior to the Meeting, and that he could not make a ruling that did not require Ronsco to correct all of its import transactions involving Wheel Bodies going back four years. Ultimately, Mr. Band confirmed to Mr. Mahoney and me on this call that Ronsco would have to pay duties on all Wheel Bodies it had imported over the past four years, and that he could not change this conclusion.

23. I informed Mr. Band during this telephone conversation that Ronsco's liability to the CBSA could potentially be around \$3.5 million. This did not impact Mr. Band's decision. He stated that, based on his consultations with CBSA staff, Ronsco's liability was more likely "north of four [million dollars]". We requested at this time that Mr. Band review Ronsco's arguments, as set out in its detailed submissions responding to the Interim Report. Mr. Band agreed to do so.

24. In emails dated August 21 and 22, 2018, Mr. Band advised Mr. Mahoney that his staff had reviewed the file, that they had confirmed the conclusions set out in the Interim Report, and that this included the requirement for Ronsco to correct its prior importations of Wheel Bodies, such that Ronsco would have to pay duties on all of its imports of Wheel Bodies going back a maximum of four years. This was confirmed in a further email Mr. Mahoney received from Alex Lawton, Director of the CBSA's Programs Branch, on or about August 28, 2018. Mr. Mahoney forwarded me these emails from Mr. Band and Mr. Lawton.

25. I am informed by Ronsco's representatives, and I believe, that Ronsco has since paid duties on the import transactions that were the subject of the Verification (\$461,446.21), and that it also filed corrections with the CBSA on or about December 20, 2018 for all transactions involving Wheel

Bodies over the preceding four years. The total duties that Ronsco has paid or will pay on the corrected transactions alone is \$2,497,478.74, plus \$63,476.43 in interest and \$121,700.10 in GST.

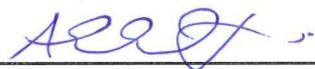
AFFIRMED BEFORE ME at the City of
Ottawa, in the Province of Ontario
on January 17, 2020


Commissioner for Taking Affidavits
(or as may be)
LSO# 74272 A




JAMES PETER CLARK

This is Exhibit "A"
to the affidavit of
James of James Peter Clark
sworn before me this
17th day of January, 2020



A Commissioner for Taking Affidavits



PROTECTED B

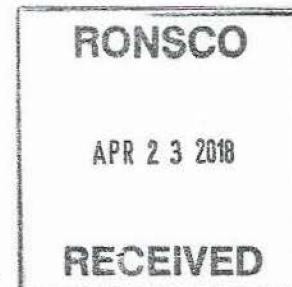
Case No. C-2016-011118

April 20, 2018

PRIORITY POST

Ms. Mary Menanno
Traffic Manager
Ronsco inc.
75 Rue Industrielle
Coteau-du-Lac, Quebec J0P 1B0

Dear Ms. Menanno:



Subject: Trade Compliance Verification Interim Report – Tariff Classification

The Canada Border Services Agency (CBSA) has concluded the Trade Compliance Verification of selected transactions on goods imported by RONSCO INC. - Business Number 104621065RM0001 - for the verification period of January 1, 2015 to December 31, 2015. The verification was conducted under the authority of sections 42 and 42.01 of the *Customs Act*.

As stated in our letter of July 11, 2017, the objective of this verification was to promote and ensure compliance with customs accounting obligations as they relate to the CBSA's Tariff Classification Program.

This interim report is being sent for your review and comments prior to the issuance of the Trade Compliance Verification Final Report.

Based on the information that was made available to the CBSA, some of the goods were found to be classified incorrectly. The tariff classification specified can be found in the "Findings, Requirements and Corrective Actions" portion of this report.

We will correct the transaction in error for the samples verified if there is no additional information provided that would modify our findings. The tariff classifications may be modified should additional information be made available to the CBSA. Once a Detailed Adjustment Statement (DAS) is issued, appeal rights are available under section 60 of the *Customs Act*, should you disagree with any of the determinations resulting from this verification.

The tariff classifications specified will affect not only the transactions verified but also:

- (i) other transactions of the goods verified; and
- (ii) other models of the goods verified, and any other goods that have the same function as the goods verified, that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Requirements

Under section 32.2 of the *Customs Act*, importers have an obligation to make a correction to a declaration of origin, tariff classification, or value for duty within 90 days after the importer has reason to believe that the original declaration is incorrect. Importers have reason to believe when specific information is available respecting the correct accounting of the goods. The obligation under this section to make a correction ends four years after the goods are accounted for under subsection 32(1), (3) or (5). The period over which you will be required to make corrections to incorrect declarations will be determined on the basis of the Reassessment Policy.

Refer to [Memorandum D 11-6-10, Reassessment Policy](#), which can be found on the CBSA website at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-10-eng.html>

Failure to make the required corrections within 90 days will result in administrative monetary penalties being applied. For details respecting the Administrative Monetary Penalty System (AMPS), refer to the CBSA website at: <http://www.cbsa-asfc.gc.ca/trade-commerce/amps/menu-eng.html>

Section 3 of the Imported Goods Records Regulations requires that:

A person who imports or causes to be imported commercial goods that have been released free of duty or at a reduced rate of duty because of their intended use or because they were intended to be used by a specific person shall keep records for six years following the importation;

- (a) a certificate or other record signed by the user of the commercial goods that shows the user's name, address and occupation and indicates the actual use made of the commercial goods; or
- (b) in the case where the commercial goods have been diverted to a use other than that on the basis of which they were released free of duty or at a reduced rate of duty or have been sold or otherwise disposed of to a person not entitled to have the commercial goods so released, records that contain information sufficient to confirm that the full applicable duties have been paid.

Findings, Requirements and Corrective Actions

The following provides the results of the Trade Compliance Verification of the tariff classification program and a description of the errors found, along with requirements and corrective actions.

Summary of Errors

Tariff Item as Declared	Invoice Lines Verified	Invoice Lines In Error	VFD Declared	Total VFD In Error	Total Duties & Taxes Re-assessed
8607.19.11	7	0	\$5 098 380.06	\$0.00	\$0.00
8607.19.21	5	5	\$4 857 328.62	\$4 857 328.62	\$484 518.53
8607.19.50	5	1	\$359 932.79	\$175 668.20	\$0.00

Sample # 1- Roller Bearing NP633994F**Transaction 13003153110814 line 1****Classification declared:** 8607.19.50.30 (0%)**Classification determined:** 8482.50.00.90 (0%)

According to information provided, the verified goods are cylindrical roller bearings. The goods were classified under Tariff Number 8607.19.50.30 as «*Parts of railway or tramway locomotives or rolling-stock; Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof: Parts of bogies or bissel-bogies (truck assemblies); For non self-propelled rolling-stock*

Heading 84.82 provides for ball and roller bearings. In accordance with Note 2) e) of Section XVII, the expressions "parts" and "parts and accessories" do not apply to "articles of heading 84.81 or 84.82", whether or not they are identifiable as for the goods of this Section. Roller bearings are therefore excluded from Section XVII. The goods in issue are classified as «*Roller bearing; Other cylindrical roller bearings; Other*

Ronsco inc. had specific information available "reason to believe" with respect to the tariff classification of the goods verified. Different reassessment periods may apply depending on the type of the specific information.

Reassessment Period - for goods in error – no customs duties payable - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in subparagraph 1(a) of Memorandum D11-6-6, "Reason to Believe" and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. will be required to correct, within 90 days of the date of the final report, all other transactions of the same goods that were accounted for during the verification period and forward up to the date of the final report, and all subsequent importations. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Conditional Relief Tariff Item 8607.19.21

Samples # 4, 5, 6, 10, 13 AAR approved H36 Wheels Class C, 8-3/8" bore diameter

Transactions:

- 13003172664734 line 1
- 13003172665074 line 1
- 13003704306035 line 1
- 13003704475201 line 1
- 13003705530245 line 1

Classification declared: 8607.19.21.00 (0%)

Classification determined: 8607.19.29.00 (9.5%)

According to information provided, the verified goods are H36 wide flange wheels for railway vehicles. The goods were classified under Tariff Number 8607.19.21.00 as «*Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; For self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic; For use in the repair of tramway vehicles (excluding subway cars) with magnetic track brakes.*

As per Note 2 (a) to Chapter 86, heading 86.07 applies to: axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels.

In order to qualify for relief under tariff item 8607.19.21, the Imported Goods Records Regulations require certificates or other records, signed by the user of the commercial goods, indicating the actual use of the goods that have been released subject to conditional relief of duties. Two signed documents were provided by the importer to support the requirements of the conditional relief tariff item. One document was from *National Steel Car Limited* and the other one was from *Canadian National Railway*. Both documents confirmed that the wheel blanks purchased from Ronsco Inc. were used in the manufacture of wheelsets for railcars. As no satisfactory evidence that the actual use of the goods was for railway and tramway passenger coaches or self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic has been provided for the 5 sampled B3 transaction lines verified, the related goods below do not qualify for relief under tariff item 8607.19.21.

As a result, H36 Wheels Class C are classified under Tariff Number 8607.19.29.00 of Canadian Customs Tariff in accordance with GIR 1 & 6.

Refer to Customs Memorandum D11-8-5 (End-Use Program) and D17-1-21 (Maintenance of Records in Canada by Importers), found on the CBSA website at:

<http://cbsa-asfc.gc.ca/publications/dm-md/d11/d11-8-5-eng.pdf>
<http://cbsa-asfc.gc.ca/publications/dm-md/d17/d17-1-21-eng.pdf>

Ronsco inc. had specific information available “reason to believe” with respect to the tariff classification of the goods verified.

Reassessment Period - for goods in error – customs duties payable - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in

subparagraph 1(a) of Memorandum D11-6-6, "Reason to Believe" and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. will be required to correct, within 90 days of the date of the final report, all other transactions of the same goods that were verified, back to the earliest date of the specific information, to a maximum of four years as provided for in the *Customs Act*. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Summary of Errors, Reassessment Requirements and AMPS Contraventions

Sample Number	Description or Issue	Basis of Specific Information providing Reason to Believe	Specific Information Date	Reassessment Period	AMPS Contravention
1	Roller Bearing NP633994F	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) Non-dutiable	Earliest import transaction date within the verification period.	January 1, 2015 to Final Report Date	C082 See below
4, 5, 6, 10, 13	AAR approved H36 Wheels Class C, 8-3/8" bore diameter	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) dutiable	Earliest import transaction date within the four year reassessment period.	Starting with the earliest import transaction date (to a maximum of 4 years) to Final Report Date	C352 See below

Administrative Monetary Penalty System Contraventions

Sample 1

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contraventions C082 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

Samples 4, 5, 6, 10, 13

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contravention C352 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

For details respecting the Master Penalty Document (MPD), refer to the CBSA website at:
<http://www.cbsa-asfc.gc.ca/trade-commerce/amps/mpd-dmi-eng.html>

Corrections will be required whether or not there is a financial impact.

Please forward your comments to the undersigned by May 22, 2018. Your comments should make reference to Case No. C-2016-011118. If comments are not received by the date indicated above, a final report will be issued.

Thank you for the cooperation that Ronsco inc. extended to the CBSA during the course of this verification. Please contact me should you require additional information.

Sincerely,



Lucie Gagné
Senior Officer Trade Compliance
Trade Operations Division
130 Rue Dalhousie
Québec, Québec G1K 4C4

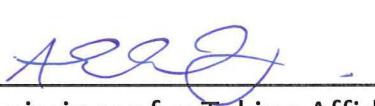
Telephone: (418) 648-3401 ext.2413
Facsimile: (418) 648-3040
E-mail address: lucie.gagne@cbsa-asfc.gc.ca

Enclosure: Sample Detail Sheet

c.c.: Jaime Seidner, Pricewaterhouse Cooper (PWC), 18 York street, Suite 2600, Toronto, Ontario M5J 0B2.

No d'Enchâssillon	Date	Numéro Transaction	Numéro Ligne 83	Vendeur	Date E/D décl.	Numéro Facture	Numéro Ligne Facture	Vendeur - Facture	Numéro Produit	Description du Produit	UdeM décl.	UdeM dét.	Quantité décl.	Quantité dét.	Numéro De Class Det.	Numéro De Class Det.	Traitement Tarifaire Decl	VD Decl	Taux De Droits Decl	Taux De Droits Det
1	2015-02-02	13003153110814	00001	TIMKEN/RAIL BEARING SERVICE	2015-01-23	65160467	1	The Timken Corporation	NP633994F	Roller Bearing	0	0	8607.19.50.30	8482.50.00.90	10	175668,20\$	0,00%	0,00%		
2	2015-02-03	13003702972971	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2014-12-30	90014820EX14084-7	1	Taiyuan Heavy Industry Railway Transit Equipment C	AAR M-101	7 x 12 Semi-Finished Class G Axles, Grade F	0	0	8607.19.11.00	8607.19.11.00	02	744820,22\$	0,00%	0,00%		
3	2015-04-28	13003130139363	00001	COMET RAIL PRODUCTS	2015-04-20	R00051808	1	Comet Rail PProducts	8607193010	Bolster	0	0	8607.19.50.30	8607.19.50.30	10	37273,99\$	0,00%	0,00%		
3	2015-04-28	13003130139363	00001	COMET RAIL PRODUCTS	2015-04-20	R00051808	2	Comet Rail PProducts	8607193020	Side Frame	0	0	8607.19.50.30	8607.19.50.30	10	37273,99\$	0,00%	0,00%		
4	2015-05-15	13003172664734	00001	TAIYUAN HEAVY INDUSTRY RAILW	2015-04-23	31014840EX15015-7	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8" bore diameter	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	02	1435455,00\$	0,00%	9,50%
5	2015-05-25	13003172665074	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-04-30	31014840EX15015-8	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8" bore diameter	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	02	1400769,72\$	0,00%	9,50%
6	2015-08-26	13003704306035	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-07-23	31014840EX15015-16	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8" bore diameter	NMB	NMB	1500	1500	8607.19.21.00	8607.19.29.00	02	908563,50\$	0,00%	9,50%
7	2015-09-01	13003704662333	00001	REGION LTD	2015-07-27	RR-8/2	1	Region Ltd		Semi-finished axles	0	0	8607.19.11.00	8607.19.11.00	02	593237,44\$	0,00%	0,00%		
8	2015-09-14	13003704306649	00001	TAIYUAN HEAVY INDUSTRY RAILW	2015-08-08	30014824EX14120-23	1	Taiyuan Heavy Industry Railway Transit Equipment C		6.5 x 12 Semi-Finished Class F Axles, Grade F	0	0	8607.19.11.00	8607.19.11.00	02	514382,40\$	0,00%	0,00%		
9	2015-09-29	13003704467109	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-09-05	30015813EX15085-10	1	Taiyuan Industry Railway Transit Equipment		7 x 12 semi Finished Class G Axles, Grade F	0	0	8607.19.11.00	8607.19.11.00	02	787460,54\$	0,00%	0,00%		
10	2015-10-23	13003704475201	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-10-01	31014840EX15015-21	1	Taiyuan Heavy Industry Railway transit Equipment C		AAR Approved H36 Wheels, Class C, 8.5" bore diameter	NMB	NMB	1200	1200	8607.19.21.00	8607.19.29.00	02	747385,20\$	0,00%	9,50%
11	2015-11-02	13003704926115	00001	REGION LTD	2015-09-18	RR-8/5	1	Region Ltd		Semi-Finished axles	0	0	8607.19.11.00	8607.19.11.00	02	634193,86\$	0,00%	0,00%		
12	2015-11-16	13003704842250	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-10-16	34015823EX15095-3	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		6.5 x 12 Semi-Finished Axles, Class F Grade F	0	0	8607.19.11.00	8607.19.11.00	02	898118,40\$	0,00%	0,00%		
13	2015-11-23	13003705530245	00001	HAIYUAN HEAVY INDUSTRY RAIL	2015-10-23	31014840EX15015-27	1	Taiyuan Heavy Industry Railway transit Equipment C		AAR Approved H36 Wheels, Class C, 8.5" bore diameter	NMB	NMB	600	600	8607.19.21.00	8607.19.29.00	02	365155,20\$	0,00%	9,50%
14	2015-12-08	13003705621666	00001	TAIYUAN HEAVY INDUSTRY CO.,L	2015-11-13	34015823EX15095-4	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		6.5 X 12 SEMI-FINISHED AXLES, CLASS F GRADE F	0	0	8607.19.11.00	8607.19.11.00	02	926167,20\$	0,00%	0,00%		
15	2015-12-24	13003183279649	00001	COLUMBUS STEEL CASTINGS	2015-12-18	14838	1	Colombus Steel Castings	F10107B85-04	Frames	0	0	8607.19.50.30	8607.19.50.30	10	54858,30\$	0,00%	0,00%		
15	2015-12-24	13003183279649	00001	COLUMBUS STEEL CASTINGS	2015-12-18	14838	2	Colombus Steel Castings	B10774AB85-05	Bolsters	0	0	8607.19.50.30	8607.19.50.30	10	54858,30\$	0,00%	0,00%		

This is Exhibit "B"
to the affidavit of
James of James Peter Clark
sworn before me this
17th day of January, 2020


A Commissioner for Taking Affidavits

**PRIORITY POST**

Ms. Mary Menanno
Traffic Manager
Ronsco inc.
75 Rue Industrielle
Coteau-du-Lac, Quebec J0P 1B0

Dear Ms. Menanno:

Subject: Trade Compliance Verification Final Report – Tariff Classification

This is the final report for the Trade Compliance Verification of selected transactions on goods imported by Ronsco Inc. -Business Number 104621065RM0001 - for the verification period of January 1, 2015 to December 31, 2015. The verification was conducted by the Canada Border Services Agency (CBSA) under the authority of sections 42 and 42.01 of the *Customs Act*.

The objective of this verification was to promote and ensure compliance with customs accounting obligations as they relate to the CBSA's Tariff Classification Program.

This report reflects the comments received from Ronsco inc. regarding the Trade Compliance Verification interim report that was sent on April 20, 2018 and the position expressed in the interim report have been modified for Sample #1. For Samples # 4, 5, 6, 10 and 13, the comments received have been reviewed, however, there have been no changes to the CBSA's position expressed in the interim report.

Based on the information that was made available to the CBSA, some of the goods were found to be classified incorrectly. The correct tariff classifications can be found in the "Findings, Requirements and Corrective Action" portion of this report. In addition, Detailed Adjustment Statements (DASs) have been issued to correct the tariff classification of the transactions in error for the samples verified and have been listed in the "Adjustment Summary" chart.

The tariff classification(s) specified affect not only the transactions verified but also:

- (i) other transactions of the goods verified; and
- (ii) other models of the goods verified, and any other goods that have the same function as the goods verified, that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Requirements

Under section 32.2 of the *Customs Act*, importers have an obligation to make a correction to a declaration of origin, tariff classification, or value for duty within 90 days after the importer has reason to believe that the original declaration is incorrect. Importers have reason to believe when specific information is available respecting the correct accounting of the goods. The obligation under this section to make a correction ends four years after the goods are accounted for under subsection 32(1), (3) or (5).

The period over which you are required to make corrections to incorrect declarations was determined on the basis of the Reassessment Policy.

Refer to Memorandum D 11-6-10, Reassessment Policy, which can be found on the CBSA website at: <http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-10-eng.html>

Failure to make the required corrections within 90 days will result in administrative monetary penalties being applied. For details respecting the Administrative Monetary Penalty System (AMPS), refer to the CBSA website at: <http://www.cbsa-asfc.gc.ca/trade-commerce/amps/menu-eng.html>

Findings, Requirements and Corrective Actions

The following provides the results of the Trade Compliance Verification of the tariff classification program and a description of the errors found, along with requirements and corrective actions.

Summary of Errors

Tariff Item as Declared	Invoice Lines Verified	Invoice Lines In Error	VFD Declared	Total VFD In Error	Total Duties & Taxes Re-assessed
8607.19.11	7	0	\$5 098 380.06	\$0.00	\$0.00
8607.19.21	5	5	\$4 857 328.62	\$4 857 328.62	\$484 518.53
8607.19.50	5	1	\$359 932.79	\$175 668.20	\$0.00

Sample # 1- Roller Bearing NP633994F

Transaction 13003153110814 line 1

Classification declared: 8607.19.50.30 (0%)

Classification determined: 8482.20.00.14 (0%)

According to information provided, the verified goods are tapered roller bearings. The goods were classified under Tariff Number 8607.19.50.30 as «*Parts of railway or tramway locomotives or rolling-stock; Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof: Parts of bogies or bissel-bogies (truck assemblies); For non self-propelled rolling-stock*

Heading 84.82 provides for ball and roller bearings. In accordance with Note 2) e) of Section XVII, the expressions "parts" and "parts and accessories" do not apply to "articles of heading 84.81 or 84.82", whether or not they are identifiable as for the goods of this Section. Roller bearings are therefore excluded from Section XVII. The goods in issue are classified as «*Roller bearing; Tapered roller bearings; with cups having an outside diameter exceeding 102 mm*

Ronsco inc. had specific information available "reason to believe" with respect to the tariff classification of the goods verified. Different reassessment periods may apply depending on the type of the specific information.

Reassessment Period - for goods in error – **no customs duties payable** - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in subparagraph 1(a) of Memorandum D11-6-6, “Reason to Believe” and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. is required to correct, within 90 days of the date of this final report, all other transactions of the same goods that were accounted for during the verification period and forward up to the date of this final report, and all subsequent importations. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Conditional Relief Tariff Item 8607.19.21

Samples # 4, 5, 6, 10, 13 AAR approved H36 Wheels Class C, 8-3/8" bore diameter

Transactions:

- 13003172664734 line 1
- 13003172665074 line 1
- 13003704306035 line 1
- 13003704475201 line 1
- 13003705530245 line 1

Classification declared: 8607.19.21.00 (0%)

Classification determined: 8607.19.29.00 (9.5%)

According to information provided, the verified goods are H36 wide flange wheels for railway vehicles. They are not blanks. After import, the wheels were modified. The bore was widened and chamfered in order to fit either AAR Class F or K axles. The goods were classified under Tariff Number 8607.19.21.00 as «*Blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches; For self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic; For use in the repair of tramway vehicles (excluding subway cars) with magnetic track brakes*

As per Note 2 (a) to Chapter 86, heading 86.07 applies to: axles, wheels, wheel sets (running gear), metal tyres, hoops and hubs and other parts of wheels.

In order to qualify for relief under tariff item 8607.19.21, the Imported Goods Records Regulations require certificates or other records, signed by the user of the commercial goods, indicating the actual use of the goods that have been released subject to conditional relief of duties. Two signed documents were provided by the importer to support the requirements of the conditional relief tariff item. One document was from *National Steel Car Limited* and the other one was from *Canadian National Railway*. Both documents confirmed that the wheel blanks purchased from Ronsco Inc. were used in the manufacture of wheelsets for railcars. As no satisfactory evidence that the actual use of the goods was for railway and tramway passenger coaches or self-propelled railway vehicles for the transport of passengers, baggage, mail or express traffic has been provided for the 5 sampled B3 transaction lines verified, the related goods below do not qualify for relief under tariff item 8607.19.21.

As a result, H36 Wheels Class C are classified as «*Parts of railway or tramway locomotives or rolling-stock; -Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof: Other, including parts; Wheels, whether or not fitted with axles : Other*» under Tariff Number 8607.19.29.00 of Canadian Customs Tariff in accordance with GIR 1 & 6.

Refer to Customs Memorandum D11-8-5 (End-Use Program) and D17-1-21 (Maintenance of Records in Canada by Importers), found on the CBSA website at:

<http://cbsa-asfc.gc.ca/publications/dm-md/d11/d11-8-5-eng.pdf>
<http://cbsa-asfc.gc.ca/publications/dm-md/d17/d17-1-21-eng.pdf>

Ronsco inc. had specific information available “reason to believe” with respect to the tariff classification of the goods verified.

Reassessment Period - for goods in error – customs duties payable - specific information previously available was a legislative provision that was *prima facie*, evident, and transparent as identified in subparagraph 1(a) of Memorandum D11-6-6, “Reason to Believe” and Self-Adjustments to Declarations of Origin, Tariff Classification, and Value for Duty.

Ronsco inc. is required to correct, within 90 days of the date of this final report, all other transactions of the same goods that were verified, back to the earliest date of the specific information, to a maximum of four years as provided for in the *Customs Act*. Corrections will also be required for other models of the goods verified, and any other goods that have the same function as the goods verified that differ in a manner (e.g., size, colour, capacity, etc.) that is not relevant to the tariff classification of the goods to the tariff item level.

Summary of Errors, Reassessment Requirements and AMPS Contraventions

Sample Number	Description or Issue	Basis of Specific Information providing Reason to Believe	Specific Information Date	Reassessment Period	AMPS Contravention
1	Roller Bearing NP633994F	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) Non-dutiable	Earliest import transaction date within the verification period:	Verification period start date to final report date: January 1, 2015 to July 24, 2018	C082 See below
4, 5, 6, 10, 13	AAR approved H36 Wheels Class C, 8-3/8" bore diameter	Customs Tariff, clear legislative provision D11-6-6 criteria 1(a) dutiable	Earliest import transaction date within the four year reassessment period.	Starting with the earliest import transaction date (to a maximum of 4 years) to the final report date. (July 24, 2018)	C352 See below

Administrative Monetary Penalty System Contraventions

Sample 1

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contravention C082 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

Samples 4, 5, 6, 10, 13

Memorandum D11-6-6 Reason to Believe – Criteria 1. (a)

Ronsco inc. will receive a Notice of Penalty Assessment (NPA) for the AMPS contraventions applicable to the goods verified. Contravention C352 will be assessed per issue to each tariff classification error of a good that is corrected and submitted within the 90 days of the date of the final report. Per occurrence penalties will be assessed on each declaration (B3) in error not corrected within the 90 days.

For details respecting the Master Penalty Document (MPD), refer to the CBSA website at:

<http://www.cbsa-asfc.gc.ca/trade-commerce/amps/mpd-dmi-eng.html>

Corrections are required whether or not there is a financial impact.

The CBSA has issued the following adjustments to correct the transactions in error for the samples verified.

Adjustment Summary

Sample Number	Transaction Number	Line Number	Adjustment Number	VFD in Error	Duties Payable	GST/HST Payable	Adjustment Total (not including interest)
1	13003153110814	1	00001004088550	175668,20 \$	0,00 \$	0,00 \$	0,00 \$
4	13003172664734	1	00001004088561	1435455,00 \$	136 368,23 \$	6 818,41 \$	143 186,64 \$
5	13003172665074	1	00001004088572	1400769,72 \$	133 073,12 \$	6 653,65 \$	139 726,77 \$
6	13003704306035	1	00001004088583	908563,50 \$	86 313,53 \$	4 315,67 \$	90 629,20 \$
10	13003704475201	1	00001004088594	747385,20 \$	71 001,59 \$	3 550,08 \$	74 551,67 \$
13	13003705530245	1	00001004088607	365155,20 \$	34 689,74 \$	1 734,49 \$	36 424,23 \$

As an importer you are required, under section 32.2 of the *Customs Act*, to self-adjust all transactions affected by the tariff classification(s) specified in this report. These self-adjustments must be sent by registered mail, by courier, or delivered by hand, to any CBSA office in the region where the goods were released under this Act.

Within ninety (90) days of the date of this report, please forward all self-adjustments (Form B2) or copies of the self-adjustments, received and date stamped by the CBSA, to my attention at the address below. In the remarks section of the adjustment, make reference to the Case No. C-2016-011118.

Appeals and Redress

Appeal rights are available under the *Customs Act*, should you disagree with any of the tariff classification(s) specified in this report. You may file a request for a re-determination or further re-determination under section 60 of the *Act*, within 90 days from the date of the DAS.

For more information on how to submit a request, please refer to Memorandum D11-6-7, Request under Section 60 of the Customs Act for a Re-determination, a further Re-determination or a Review by the President of the Canada Border Services Agency, which can be found on the CBSA website at:
<http://www.cbsa-asfc.gc.ca/publications/dm-md/d11/d11-6-7-eng.html>

Clients wishing to appeal a Notice of Penalty Assessment (NPA) may request a Minister's decision pursuant to section 131 of the *Customs Act* **within 90 days** from the date of the NPA, provided they meet the criteria of subsection 129(1) of the *Customs Act*. Additional information concerning the redress process for AMPS can be found on the CBSA website at:
<http://www.cbsa-asfc.gc.ca/recourse-recours/howto-commentfaire-2-eng.html>

Follow-up

The self-adjustments submitted as a result of this verification will be reviewed for accuracy and completeness. In addition, future importations may be monitored to ensure compliance with the recommendations contained in this report.

Thank you for the cooperation that Ronsco inc. extended to the CBSA during the course of this verification. Please contact me should you require additional information concerning this report.

Sincerely,



Lucie Gagné
Senior Officer Trade Compliance
Trade Operations Division
130 Rue Dalhousie
Québec, Québec G1K 4C4

Telephone: (418) 648-3401 ext.2413

Faxsimile: (418) 648-3040

E-mail address: lucie.gagne@cbsa-asfc.gc.ca

Enclosure: Sample Detail Sheet

c.c.: Peter Clark, Grey, Clark, Shih and Associates, Limited, 571 Blair Road, Ottawa, ON K1J 7M3

No d'échantillon	Date	Numeró Transaction	Numeró Ligne B3	Vendeur	Numeró Facture	Numeró Ligne Facture	Vendeur - Facture	Numeró Produit	Description du Produit	UdèM décl.	UdèM dét.	Quantité décl.	Quantité dét.	Numeró De Class Decl	Numeró De Class Det	Vd Decl	Taux De Droits Decl	Taux De Droits Det
1	2015-02-02	13003153110814	00001	TIMKEN/RAIL BEARING SERVICE	65160467	1	The Timken Corporation	NP633994F	Roller Bearing			0	0	8607.19.50.30	8482.20.00.14	175668,20\$	0,00%	0,00%
2	2015-02-03	13003702972971	00001	TAIYUAN HEAVY INDUSTRY CO.,L	30014820EX14084-7	1	Taiyuan Heavy Industry Railway Transit Equipment C	AAR M-101	7 x 12 Semi-Finished Class G Axles, Grade F			0	0	8607.19.11.00	8607.19.11.00	744820,22\$	0,00%	0,00%
3	2015-04-28	13003130139363	00001	COMET RAIL PRODUCTS	R00051808	1	Comet Rail P'sproducts	8607193010	Bolster			0	0	8607.19.50.30	8607.19.50.30	37273,99\$	0,00%	0,00%
3	2015-04-28	13003130139363	00001	COMET RAIL PRODUCTS	R00051808	2	Comet Rail P'sproducts	8607193020	Side Frame			0	0	8607.19.50.30	8607.19.50.30	37273,99\$	0,00%	0,00%
4	2015-05-15	13003172664734	00001	TAIYUAN HEAVY INDUSTRY RAILW	31014840EX15015-7	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8"	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	1435455,00\$	0,00%	9,50%
5	2015-05-25	13003172665074	00001	TAIYUAN HEAVY INDUSTRY CO.,L	31014840EX15015-8	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8"	NMB	NMB	2520	2520	8607.19.21.00	8607.19.29.00	1400769,72\$	0,00%	9,50%
6	2015-08-26	13003704306035	00001	TAIYUAN HEAVY INDUSTRY CO.,L	31014840EX15015-16	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		AAR approved H36 Wheels Class C, 8-3/8"	NMB	NMB	1500	1500	8607.19.21.00	8607.19.29.00	908563,50\$	0,00%	9,50%
7	2015-09-01	13003704662333	00001	REGION LTD	RR-8/2	1	Region Ltd		Semi-finished axles			0	0	8607.19.11.00	8607.19.11.00	593237,44\$	0,00%	0,00%
8	2015-09-14	13003704306649	00001	TAIYUAN HEAVY INDUSTRY RAILW	30014824EX14120-23	1	Taiyuan Heavy Industry Railway Transit Equipment C		6.5 x 12 Semi-Finished Class F Axles, Grade F			0	0	8607.19.11.00	8607.19.11.00	514382,40\$	0,00%	0,00%
9	2015-09-29	13003704467109	00001	TAIYUAN HEAVY INDUSTRY CO.,L	30015813EX15085-10	1	Taiyuan Industry Railway Transit Equipment		7 x 12 semi Finished Class G Axles, Grade F			0	0	8607.19.11.00	8607.19.11.00	787460,54\$	0,00%	0,00%
10	2015-10-23	13003704475201	00001	TAIYUAN HEAVY INDUSTRY CO.,L	31014840EX15015-23	1	Taiyuan Heavy Industry Railway transit Equipment C		AAR Approved H36 Wheels, Class C , 8.5"	NMB	NMB	1200	1200	8607.19.21.00	8607.19.29.00	747385,20\$	0,00%	9,50%
11	2015-11-02	13003704926115	00001	REGION LTD	RR-8/5	1	Region Ltd		Semi-Finished axles			0	0	8607.19.11.00	8607.19.11.00	634193,86\$	0,00%	0,00%
12	2015-11-16	13003704842250	00001	TAIYUAN HEAVY INDUSTRY CO.,L	34015823EX15095-3	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		6.5 x 12 Semi-Finished Axles, Class F Grade F			0	0	8607.19.11.00	8607.19.11.00	898118,40\$	0,00%	0,00%
13	2015-11-23	13003705530245	00001	HAIYUAN HEAVY INDUSTRY RAIL	31014840EX15015-27	1	Taiyuan Heavy Industry Railway transit Equipment C		AAR Approved H36 Wheels, Class C, 8.5"	NMB	NMB	600	600	8607.19.21.00	8607.19.29.00	365155,20\$	0,00%	9,50%
14	2015-12-08	13003705621666	00001	TAIYUAN HEAVY INDUSTRY CO.,L	34015823EX15095-4	1	TAIYUAN HEAVY INDUSTRY RAILWAY TRANSIT EQUIPMENT C		6.5 X 12 SEMI-FINISHED AXLES, CLASS F			0	0	8607.19.11.00	8607.19.11.00	926167,20\$	0,00%	0,00%
15	2015-12-24	13003183279649	00001	COLUMBUS STEEL CASTINGS	14838	1	Colombus Steel Castings	F10107885-04	GRADE F Frames			0	0	8607.19.50.30	8607.19.50.30	54858,30\$	0,00%	0,00%
15	2015-12-24	13003183279649	00001	COLUMBUS STEEL CASTINGS	14838	2	Colombus Steel Castings	B10774AB85-05	Bolsters			0	0	8607.19.50.30	8607.19.50.30	54858,30\$	0,00%	0,00%

CATANA REPORTING SERVICES,
Tel: (613) 231-4664

800-170 Laurier Ave. W., Ottawa, ON K1P 5V5
1-800-893-6272
Fax: (613) 231-4605

Examination No. 23-0515.2

Court File No. T-1295-20

1

FEDERAL COURT

B E T W E E N:

RONSCO INC.

PLAINTIFF

- and -

HIS MAJESTY THE KING, THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS, CANADA BORDER SERVICES AGENCY

DEFENDANTS

EXAMINATION FOR DISCOVERY OF KELLY BARTLETT,
pursuant to an appointment made on consent of the
parties to be reported by Catana Reporting Services,
on May 3, 2023, commencing at the hour of
10:39 in the forenoon.

APPEARANCES:

Colin Baxter
Chris Trivisonno
Sean Grassie

for the Plaintiff

Charles Maher
Adrian Johnston

for the Defendant

Also in Attendance: Karen Alford
Kent Montgomery
Don Regan

This Examination was taken down by sound recording by
Catana Reporting Services Ltd.

CATANA REPORTING SERVICES,
Tel: (613) 231-4664

800-170 Laurier Ave. W., Ottawa, ON K1P 5V5
1-800-893-6272 Fax: (613) 231-4605

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EXAMINATION BY: MR. TRIVISONNO

NUMBER OF PAGES: 174

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EXHIBITS

EXHIBIT NO. 2: Excerpt from Verification
File at Tab 204 of the Affidavit of
Documents of the Defendant, titled "Request
for Functional Guidance" 47

DATE TRANSCRIPT ORDERED: May 3, 2023

DATE TRANSCRIPT COMPLETED: May 24, 2023

KELLY BARTLETT, AFFIRMED:**EXAMINATION BY MR. TRIVISONNO:**

1 1. Q. Good morning, Ms. Bartlett. My name is
2 Chris Trivisonno, I am counsel to the Plaintiff in this
3 action, and I am going to ask you a few questions today.

4 I am just going to go over some of the ground
5 rules first. As I ask the questions, I would ask that
6 you wait until I am finished my question before you
7 answer. Do you understand that?

8 A. Yes.

9 2. Q. And please make sure to vocalize your
10 answers. Don't nod or say "M'hmm". That's so that the
11 court reporter can get your answer.

12 A. Yes.

13 3. Q. And if you don't understand any of my
14 questions, please let me know. Otherwise, I am going to
15 take it that you understood my questions. Do you
16 understand that?

17 A. Yes.

18 4. Q. What is your current position?

19 A. Acting Manager, Trade Appeals Processing and
20 Policy.

21 5. Q. You said that you are an acting manager?

22 A. Yes.

23 6. Q. That, I take it, is a temporary position

CATANA REPORTING SERVICES,
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1 while someone else is off as manager?

2 A. It's a new unit, so it came about in a
3 reorg.

4 7. Q. As I understand it, if I understand the
5 government hierarchy correctly, a manager reports,
6 generally, to a director?

7 A. Yes.

8 8. Q. And then a director reports to a director
9 general?

10 A. Yes.

11 9. Q. And then, depending on the organization, the
12 director general might report to a vice-president.

13 A. Yes.

14 10. Q. And that is the case within CBSA, correct?

15 A. Yes.

16 11. Q. How long have you been with CBSA?

17 A. Since 2006.

18 12. Q. In 2018 you were an advisor at that point.

19 Correct?

20 A. Yes.

21 13. Q. And that was within the Trade Policy
22 Division?

23 A. Yes.

24 14. Q. And now you are in another division?

25 A. Yes.

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1 15. Q. What is the Trade Policy Division?

2 A. The division is responsible for policy
3 advice to the regions for valuation, origin and tariff
4 classification.

5 16. Q. What do you mean by policy advice?

6 A. We provide guidance to regional officers who
7 ask us questions on how to interpret something.
8 Basically, we are just the one spot to come to when
9 someone doesn't understand something within the CBSA
10 related to tariff classification, origin or valuation.

11 17. Q. Does Trade Policy have lawyers internal to
12 it?

13 A. No.

14 18. Q. So, it receives advice from lawyers within
15 CBSA?

16 A. I don't understand, sorry.

17 19. Q. Does CBSA have lawyers within the
18 organization?

19 A. I believe so, yes.

20 20. Q. So, when Trade Policy needs advice, does it
21 receive advice from lawyers just internal to CBSA?

22 A. We can request legal advice, yes, if
23 necessary.

24 21. Q. Okay. I am not going to ask you about the
25 contents of any legal advice. I am just trying to

1 understand the structure of the organization, and that
2 will be relevant as we go along.

3 You listed a few areas on which Trade Policy
4 provides policy advice, but you didn't mention Reason to
5 Believe.

6 A. So, Reason to Believe -- I'm sorry, what is
7 the question?

8 22. Q. I hadn't gotten to the question yet.

9 A. Okay, sorry.

10 23. Q. Does Trade Policy provide policy advice on
11 the issue of Reason to Believe?

12 A. Yes.

13 24. Q. Does it provide policy advice on the issue
14 of Reason to Believe as it affects the reassessment
15 period?

16 A. Yes.

17 25. Q. What were your responsibilities specifically
18 as a policy advisor within Trade Policy?

19 A. I was responsible for policy advice on
20 tariff classification issues, primarily Chapters 1 to 25
21 of the *Customs Tariff*.

22 26. Q. Does that include advice on issues of Reason
23 to Believe?

24 A. As it applies, yes.

25 27. Q. Because that is related to tariff

1 classification, correct?

2 A. In some instances, yes.

3 28. Q. And related to reassessment policies?

4 A. They flow, yes.

5 29. Q. Understood. Now, I just want to understand

6 the hierarchy within the Trade Policy division in 2018.

7 I believe that as a policy advisor you reported to Grant
8 Tebbutt, correct?

9 A. Yes.

10 30. Q. He was a manager?

11 A. Yes.

12 31. Q. And Mr. Tebbutt, in turn, reported to
13 Yannick Mondy?

14 A. Yes.

15 32. Q. She was a director?

16 A. Yes.

17 33. Q. And Ms. Mondy, then, reported to Doug Band,
18 correct?

19 A. Yes.

20 34. Q. And Doug Band was director general?

21 A. Yes.

22 35. Q. Then, at that time, did Doug Band report to
23 Martin Bolduc?

24 A. To be honest, I don't remember who the vice-
25 president was at that time.

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1 36. Q. In 2018?

2 A. Yes. I don't directly deal with the vice-
3 president at the time, so I don't remember who would
4 have been the VP.

5 37. Q. I see. You didn't deal directly with the
6 vice-president at the time.

7 A. Yes.

8 38. Q. Putting aside who it was, which VP within
9 CBSA would Doug Band have reported to at the time?

10 A. The Commercial and Trade Branch is held by a
11 VP.

12 39. Q. So, it's the VP of Commercial and Trade?

13 A. Branch.

14 MR. TRIVISONNO: Perfect, thank you.

15 I would like an undertaking to know who the VP
16 was at the time.

17 MR. JOHNSTON: Yes, we can get that for you.

18 You are saying in 2018? *U*

19 MR. TRIVISONNO: Well, let's go from the time of
20 the verification report all the way to ---

21 I didn't think it was going to be an issue that
22 we wouldn't know who the VP was.

23 Until September of 2018. And I don't know if
24 the person will have changed or not.

25 MR. JOHNSTON: Yes, we will undertake to provide

1 that to you.

2 BY MR. TRIVISONNO:

3 40. Q. I take it, then, in 2018, when you were an
4 analyst on matters such as reassessment period, you
5 wouldn't have been the ultimate decision-maker?

6 A. No.

7 41. Q. And specifically in the case of Ronsco, when
8 it came to determining what the reassessment period was
9 going to be, you weren't the ultimate decision-maker.

10 A. No.

11 42. Q. Similarly, when it came to decisions like
12 "Are we going to amend the final report", the final
13 verification report, you wouldn't have been the ultimate
14 decision-maker.

15 A. No.

16 43. Q. And in the case of Ronsco, you weren't the
17 ultimate decision-maker when it came to the choice of
18 whether or not to amend the final report, correct?

19 MR. MAHER: Sorry; are you asking me?

20 MR. TRIVISONNO: No, I'm asking the witness.

21 MR. MAHER: Because you are looking at me.

22 MR. TRIVISONNO: I understand that; I am asking
23 the witness the question.

24 THE WITNESS: Sorry; can you repeat the
25 question?

1 BY MR. TRIVISONNO:

2 44. Q. In the case of Ronsco, when the issue of
3 whether or not the final verification report was going
4 to be amended, that wasn't for you to ultimately decide,
5 correct?

6 A. No, it was not.

7 45. Q. You understand that the Defendants in this
8 lawsuit are putting you forward as their discovery
9 representative?

10 A. Yes.

11 46. Q. And your answers, of course, bind CBSA?

12 A. Yes.

13 47. Q. You weren't involved in the verification
14 audit conducted on Ronsco in 2017?

15 A. No.

16 48. Q. Were you involved in drafting the interim
17 verification report?

18 A. No.

19 49. Q. Were you involved in drafting the final
20 verification report?

21 A. No.

22 50. Q. Did you attend the June 26 meeting between
23 Ronsco and Doug Band?

24 A. No.

25 51. Q. Did you participate in the August 16 phone

1 call between Ronsco's representative and Doug Band?

2 A. No.

3 52. Q. Were you involved at all when Ms. Sue
4 Ogilvie made representations to Ronsco concerning the
5 CBSA president's jurisdiction to deal with Reason to
6 Believe?

7 A. No.

8 53. Q. Did Ms. Ogilvie consult with you at all on
9 that?

10 A. No.

11 54. Q. Were you involved in Ms. Alimohamed's
12 representations to Ronsco regarding the commencement of
13 a judicial review?

14 A. No.

15 55. Q. Did Ms. Alimohamed consult with you on that?

16 A. No.

17 56. Q. Have you ever met with anyone from Ronsco
18 before?

19 A. No.

20 57. Q. Have you ever communicated directly with
21 anyone from Ronsco before?

22 A. No.

23 MR. TRIVISONNO: Counsel, I am going to raise my
24 objection now. I am going to continue with my
25 examination -- and I mean no insult at all to the

1 witness, who I know is going to answer my questions to
2 the best of her ability, but I have grave concerns that
3 CBSA is not putting forward an appropriate discovery
4 representative. In particular, I am concerned that CBSA
5 has made a strategic choice to put forward someone who
6 was not involved in any of the issues that are raised in
7 my client's Statement of Claim.

O

8 As I said, I will continue with my discovery to
9 see what this witness knows and what information they
10 can provide, but I want to make that clear now in case
11 motions are necessary in the future.

12 MR. MAHER: May I respond, briefly?

13 First of all, the Crown has the prerogative to
14 choose the representative that it sees fit; and second
15 of all, as you will go along with your examination, you
16 will see that Ms. Bartlett is entirely appropriate to
17 help you during these discoveries. She was involved
18 around the events surrounding the June 26, 2018 meeting.
19 She was briefed. You may ask questions about that.

20 As a Trade Policy employee, she is also very
21 well versed in the policies that are at the heart of
22 your claim, which are the Reason to Believe policy and
23 the reassessment policy, and she also has looked over
24 all the documents, so that she can be of assistance on
25 that front, as well.

1 I note your objection, and I invite you to
2 continue with your questioning.

3 BY MR. TRIVISONNO:

4 58. Q. In preparation for today's examination, did
5 you speak with Doug Band?

6 A. No.

7 59. Q. Did you speak with Yannick Mondy?

8 A. No.

9 60. Q. Did you speak with Scott Winter?

10 A. No.

11 61. Q. Did you speak with the VP -- I guess you
12 didn't know who the VP was in 2018, so I assume you
13 didn't speak with that person?

14 A. No.

15 62. Q. Did you speak with Charles Slowey?

16 A. No.

17 63. Q. Did you speak with David Hurl?

18 A. No.

19 64. Q. Did you speak with Lucie Gagné?

20 A. No.

21 65. Q. Did you speak with Sue Ogilvie?

22 A. No.

23 66. Q. Did you speak with Natasha Alimohamed?

24 A. No.

25 67. Q. Do you understand that as the discovery

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1 representative you have an obligation to inform yourself
2 by making inquiries of any present or former officer,
3 servant, agent or employee of the party you are
4 representing?

5 A. I don't really understand the question, I'm
6 sorry.

7 68. Q. Do you understand that you have the
8 obligation to inform yourself by making inquiries,
9 speaking to present and former officers, servants,
10 agents and employees of the party you are representing?

11 Do you understand that you have that obligation?

12 A. Yes.

13 69. Q. Were you aware of that obligation before I
14 asked you about it today?

15 MR. JOHNSTON: Counsel, objection. Are you
16 asking the representative about her communications with
17 counsel for the Attorney General of Canada in preparing
18 for today's examination? *O*

19 MR. TRIVISONNO: Well, I would like to
20 understand who is sitting with the witness today and who
21 is defending them, because I am not going to take
22 objections from multiple counsel. That is not an
23 appropriate way to conduct an examination and I am not
24 going to allow it to happen today.

25 I am going to ask my questions. I am not asking

1 for any legal conclusions.

2 70. Q. What I want to understand is, before I asked
3 that question, did you understand that you had that
4 obligation?

5 A. I had an obligation to understand the file,
6 and I was involved in this -- maybe not in the writing
7 specifically of the document, but I was briefing,
8 understanding, reading, and I read through all the
9 documentation, and I recall all of those steps that
10 occurred within the documentation.

11 I didn't have extra questions, basically, of
12 understanding.

13 71. Q. I am going to ask a few questions about the
14 trade compliance verification. Who within CBSA makes
15 the determination to initiate a trade compliance
16 verification against an importer?

17 A. There are multiple areas within the CBSA
18 that would put forward the recommendation.

19 72. Q. What areas would put forward that
20 recommendation?

21 A. Border Service officers. Trade risk
22 management officers, who regularly review import data.
23 There are Headquarters officers who have seen ---

24 73. Q. I'm sorry, there was a lot of squeaking of a
25 chair there, I didn't pick up the last one.

1 A. Headquarters officers. We have a
2 verification team at Headquarters that also reviews
3 data.

4 74. Q. Any others?

5 A. Regional officers. So, your risk management
6 officer would include any regional officer who notes an
7 anomaly.

8 And Headquarters officers, whether from the
9 verification unit, from tariff classification, origin or
10 valuation units.

11 75. Q. In the case of Ronsco, do you know where the
12 initiation came from?

13 A. Yes, a BSO, Border Service officer.

14 76. Q. In what circumstances do Border Service
15 officers initiate verifications?

16 A. Upon review of documentation. There are
17 many circumstances in which a Border Service officer may
18 flag a trade verification to what we call an ICECAP
19 officer, who is a liaison between the Border Service
20 officers and the risk management unit.

21 77. Q. What are some examples of those situations?

22 A. A review of an invoice that is not what is
23 described when a driver crosses the border.

24 A review of an entry -- what we call the interim
25 entry -- at the time of crossing the border, versus the

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1 final entry that is submitted.

2 Border Service officers are trained to note
3 anomalies and anything that would be that kind of -- in
4 a trade-related environment he would refer to the ICECAP
5 officer, and the ICECAP officer would then follow
6 through with documentation, et cetera.

7 78. Q. What is an ICECAP officer?

8 A. I don't remember what the acronym is, but
9 they are, like, the liaison.

10 So, basically, Border Service officers are
11 responsible, primarily, for seizures, the flow through
12 of people, and ICECAP officers are trade officers. So,
13 they would be the officer that would take that
14 information and work it up as a trade-related -- so,
15 tariff classification, origin or valuation. When I say
16 trade, those are the programs I am talking about.

17 79. Q. So, those ICECAP trade officers, they are
18 the individuals who would do the verification itself, as
19 well?

20 A. No. They would do an analysis based on
21 import documentation, import trends, run a variety of
22 reports, request information.

23 They have a list of areas that they would
24 review, and then it would be given a risk score against
25 a matrix, and that would go to the verification team for

1 acceptance and review.

2 80. Q. And then that verification team would
3 conduct the verification itself?

4 A. Yes.

5 81. Q. When the ICECAP officer, the liaison as you
6 put it, looks at import trends, do they look at trends
7 specific to the importer or to the importation of the
8 goods more broadly?

9 A. Depending on the circumstances, it could be
10 both and it could be either-or. It is really on a case-
11 by-case basis.

12 82. Q. So, then, CBSA does keep data on import
13 trends related to goods more broadly than just a
14 particular importer.

15 A. Yes.

16 83. Q. As we know, in July of 2017, CBSA informed
17 Ronsco that it would be conducting its trade compliance
18 verification, and the period of that verification was
19 January 1st, 2015 to December 31st, 2015. Correct?

20 A. Yes.

21 84. Q. And that is the case even though the
22 verification was only initiated in July of 2017.

23 A. I don't understand. Sorry; what is the
24 question? What do you mean, "even though"?

25 85. Q. You know what, we will come back to that.

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1 The goods at issue you understand, of course, to
2 be the AAR-approved H36 wheels, Class C, 8 and 3/8-inch
3 bore diameter. Correct?

4 A. Yes.

5 86. Q. If I refer to those today as rough bore
6 wheels, you will understand what I am talking about?

7 A. Yes.

8 87. Q. I am going to ask you a few questions about
9 those import trends we were talking about before.

10 Between 2005 and 2017, how many other importers
11 were importing rough bore wheels ---

12 MR. MAHER: Sorry; I object. I don't think that
13 is relevant.

O

14 MR. TRIVISONNO: Mr. Maher, before you object,
15 let me finish my question, please. I don't ---

16 MR. MAHER: Okay, finish your question. Sorry.

17 MR. TRIVISONNO: Mr. Maher, you have just
18 interrupted me a second time, and I really don't
19 appreciate it.

20 MR. MAHER: Finish your question.

21 BY MR. TRIVISONNO:

22 88. Q. Between 2005 and 2017, how many other
23 importers were importing rough bore wheels or
24 substantially similar goods?

25 MR. MAHER: Don't answer that.

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1 We will object to that question on the basis
2 that it's not relevant. The importations of other
3 importers are not at issue here, except what we know
4 about Sumitomo in the documentation. And, also, we will
5 not disclose it because it is protected Customs
6 information under section 107.10 of the *Customs Act*.

O

7 MR. TRIVISONNO: Relevance is determined by the
8 Pleadings, and this is, of course, in my client's
9 Pleadings. But, you know what, I'll take the refusal.

10 I would like an undertaking, specifically, to
11 look back at CBSA records to see if the following
12 companies imported substantially similar goods between
13 2005 and 2017 -- and I know what Mr. Maher's answer is
14 going to be, but I am going to read out all of the
15 companies for you: Canadian National Railway Company,
16 Canadian Pacific Railway, IEC Holden Inc., The
17 Greenbrier Companies ---

18 MR. JOHNSTON: I'm sorry, could you slow down,
19 as I am noting the undertaking you are seeking?

20 MR. TRIVISONNO: Of course. So, Canadian
21 National Railway Company, Canadian Pacific Railway, IEC
22 Holden Inc., The Greenbrier Companies, Progress Rail,
23 ORX Rail, Sumitomo, United Metallurgical Company, EVRAZ
24 Holding, and KLW Wheelco.

25 MR. JOHNSTON: Could I get the language of the

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1 undertaking again, please?

2 MR. TRIVISONNO: To look back at CBSA records to
3 see which of the following companies imported rough bore
4 wheels or substantially similar goods between 2005 and
5 2017.

6 MR. JOHNSTON: Thank you.

7 MR. TRIVISONNO: Okay. Thank you for that
8 undertaking.

9 MR. JOHNSTON: No, I'm sorry, I did not accept
10 the undertaking.

11 MR. MAHER: No, no, it's a refusal. *O*

12 MR. JOHNSTON: We have already stated the
13 objection, it's a refusal.

14 MR. TRIVISONNO: Counsel, you just referred to
15 it as an undertaking.

16 MR. JOHNSTON: I took the language of what you
17 were seeking for my records, and we are refusing that
18 undertaking.

19 MR. TRIVISONNO: I would also like to know
20 whether the importers who were importing rough bore
21 wheels between 2005 and 2017 were doing so tariff-free,
22 under Tariff Item 8607.19.21.

23 MR. MAHER: So, we note your undertaking
24 request, and we refuse it. *O*

25 BY MR. TRIVISONNO:

1 89. Q. Just for the sake of clarity, I am going to
2 refer to that as Tariff Item .21 today, and you will
3 understand what I am talking about?

4 A. Yes.

5 90. Q. CBSA's position is that the goods at issue
6 should have been imported under 8607.19.29. Correct?

7 A. Correct.

8 91. Q. I will just refer to that as Tariff Item .29
9 today.

10 Is CBSA aware of any importers who were
11 importing rough bore wheels under Tariff Item 8607.19.29
12 between 2005 and 2017?

13 MR. MAHER: Is that an undertaking request?

14 MR. TRIVISONNO: Yes.

15 MR. MAHER: Okay. Well, we still think it's a
16 refusal, for the same reason we started earlier.

O

17 MR. TRIVISONNO: I would like a full list of the
18 importers who were importing rough bore wheels under
19 Tariff Item .29 between 2005 and 2017.

20 MR. MAHER: Undertaking request noted; refusal
21 given.

O

22 MR. TRIVISONNO: I would like to know the volume
23 of their imports under that tariff item.

24 MR. MAHER: Refusal.

O

25 MR. TRIVISONNO: And, similarly, to go back to

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1 my earlier undertakings with respect to Tariff Item .21,
2 I would also like to know the volume of the imports of
3 rough bore wheels for any company that was importing
4 under Tariff Item .21 between 2005 and 2017.

5 MR. MAHER: That's a refusal, too. *O*

6 BY MR. TRIVISONNO:

7 92. Q. Is CBSA aware of any importers who were
8 paying any tariffs on rough bore wheels before 2018?

9 MR. MAHER: Refusal, sorry. *O*

10 Don't answer that.

11 BY MR. TRIVISONNO:

12 93. Q. Have any other companies ever been compelled
13 to self-correct for similar goods imported under Tariff
14 Item .21?

15 MR. MAHER: Don't answer that. That's not
16 relevant, and it's protected Customs information under
17 section 107 of the *Customs Act*. *O*

18 BY MR. TRIVISONNO:

19 94. Q. Prior to the Ronsco trade verification, had
20 CBSA ever conducted a trade verification related to the
21 importation of rough bore wheels?

22 MR. MAHER: Didn't you already ask that?

23 MR. TRIVISONNO: No, I asked the question with
24 respect to any other company that had been compelled to
25 self-correct for similar goods. I am now asking whether

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1 CBSA has even ever conducted a trade verification
2 related to the importation of rough bore wheels.

3 MR. MAHER: We will take that under advisement. *A*

4 MR. TRIVISONNO: We would also like to know, if
5 there have been no such verifications, why not?

6 MR. MAHER: Yeah, that's a refusal. *O*

7 BY MR. TRIVISONNO:

8 95. Q. Why did CBSA choose to initiate a trade
9 compliance verification against Ronsco?

10 A. Based on the information that was received
11 by the BSO and the workup from the ICECAP officer, where
12 we noted some changes in the Across versus CCS
13 declaration. Those are a trigger to further verify
14 where the goods would be classified, at the time of
15 importation declaration or at the time of accounting.

16 96. Q. Let's open up your compendium to page 712,
17 which is Tab 31. I believe that these are excerpts from
18 CBSA's verification file.

19 MR. MAHER: Just for clarity, this is Exhibit 1?

20 MR. TRIVISONNO: We are at page 712, please.

21 MR. MAHER: Oh, sorry.

22 BY MR. TRIVISONNO:

23 97. Q. Could you help me identify this document?

24 A. It's an exception report.

25 98. Q. What is an exception report?

1 A. When there is a distinction between data
2 that changes between the time of interim accounting --
3 so that top number, the thing that says "Release Data".
4 So, at the time it actually crossed the border versus
5 the B3 data, which is the time of what we consider final
6 accounting. That's their 32.2 Declaration.

7 99. Q. Who generates an exception report?

8 A. It's system -- it comes up as a flag. Every
9 time this happens it comes up as a flag and is printed
10 out on a report.

11 100. Q. So, this is system-generated.

12 A. Yes.

13 101. Q. Why did this come up?

14 A. Because there was a difference between what
15 was declared at the time of interim versus what was
16 declared at the time of accounting.

17 102. Q. So, looking at the document, it's because at
18 the time of interim, the wheels were declared under
19 Tariff Item .29, and at the time of accounting, they
20 were declared under Tariff Item .21. Is that right?

21 A. Yes.

22 103. Q. Whose handwriting is this?

23 A. I'm sorry, I don't know.

24 MR. TRIVISONNO: I would like to know whose
25 handwriting this is, please.

1 MR. MAHER: Yes, we will undertake to make best
2 efforts if we can know who did that.

U

3 BY MR. TRIVISONNO:

4 104. Q. There is a date at the bottom of the
5 document, 2016-08-29. Is that ---

6 MR. MAHER: On the right?

7 MR. TRIVISONNO: Yes, the bottom right.

8 105. Q. Is that when this document would have been
9 generated?

10 A. Yes.

11 106. Q. Just to be clear, the exception document is
12 only generated when there is a difference between the
13 two tariffs?

14 A. No, not necessarily. It's when there is a
15 difference between information that was declared at the
16 time of interim and at the time of accounting.

17 107. Q. So, any discrepancy in information between
18 the time of interim and the time of accounting will
19 generate an exception report?

20 A. Yes. They are just titled differently
21 depending on what the difference is. This one, in
22 particular, is called an HS exception.

23 108. Q. And what does that mean?

24 A. Harmonized System.

25 109. Q. What is the significance of the Harmonized -

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1 --

2 A. Tariff classification.

3 110. Q. I'm sorry, I would ask you again to just let
4 me finish my question. It's just for the court
5 reporter, so that we have a clean transcript.

6 So, Harmonized System is what?

7 A. Tariff classification.

8 111. Q. What happens after an exception report is
9 generated? Who does this go to?

10 A. There are a variety of ways that this could
11 be dealt with. It could be reviewed by Border Services,
12 for their purposes. It could be sent to an ICECAP
13 officer, for their purposes.

14 It's an information piece that the CBSA uses for
15 a variety of information.

16 112. Q. So, in the case of Ronsco, who reviewed
17 this, and what did they do as a result of reviewing
18 this?

19 A. I don't have that specific answer ---

20 MR. MAHER: Sorry; let's just take one -- there
21 were two questions. So, do you know who reviewed this?
22 Would you know that?

23 THE WITNESS: No, I do not know right now who
24 reviewed this.

25 MR. MAHER: Okay. And, sorry, what is your

1 second question?

2 MR. TRIVISONNO: I would like to know, in the
3 context of the series of events that leads up to a
4 verification audit being conducted on Ronsco, who first
5 reviews this document, and what steps do they take as a
6 result.

7 113. Q. This discrepancy, though, this is the
8 catalyst? This starts the chain of events that leads to
9 the verification being conducted on Ronsco, correct?

10 A. Correct.

11 THE COURT REPORTER: I'm sorry, counsel, I
12 didn't get an undertaking on the last ---

13 MR. MAHER: No, there was no undertaking.

14 MR. TRIVISONNO: So, what position did you take?

15 MR. MAHER: I'm sorry, I am not sure. Was there
16 an undertaking asked?

17 MR. TRIVISONNO: My apologies.

18 Counsel, I had asked you: In the context of the
19 series of events that leads to the verification report,
20 I wanted to know who reviewed this document, and what
21 steps did they take as a result.

22 MR. MAHER: So, you want to know -- like, I'm
23 just not sure if you are talking in general who would
24 review that or in this specific case the name of the
25 individual.

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1 MR. TRIVISONNO: If you know the individual, I
2 will take that information. If you don't know the
3 individual and you just know the position -- whatever is
4 the best information you can provide as to who reviewed
5 it, and then what steps were taken as a result.

6 MR. MAHER: Okay. So, you are asking
7 specifically about the exceptions report at page 712?

8 MR. TRIVISONNO: That is the document we are
9 looking at.

10 MR. MAHER: Okay.

U

11 BY MR. TRIVISONNO:

12 114. Q. Ms. Bartlett, can you help me with the
13 document on the other side here, on page 711? It's
14 titled "Trade Referral Submission Form", and it seems to
15 be dated 2016 August 30th.

16 What is this document?

17 A. This is a document that I typically see from
18 the region -- from, excuse me, the border going to the
19 ICECAP officer. So, the liaison trade officer.

20 115. Q. If we look at the notes here, "Issues of
21 Concern: This company is declaring HS codes with a duty
22 rate of 9.5 percent in Across, but confirming in CCS
23 with HS codes that have a zero percent duty rate."

24 This seems to be referring to the information
25 that is identified in the HS exceptions form, correct?

1 A. Correct.

2 116. Q. There are two names here, there is Sean
3 Whitehouse, and then above that there is a heading that
4 we can't read. Do you know what would be there?

5 A. Unfortunately I don't, I'm sorry.

6 MR. TRIVISONNO: Counsel, could you provide me
7 with that information?

8 MR. MAHER: Yeah. So, it's to know the category
9 name -- the first one that we can see at page 711.

U

10 BY MR. TRIVISONNO:

11 117. Q. It seems to be -- because if you look down,
12 you have another heading underneath that says "Manager".
13 So, it seems to me that that first category is probably
14 the person who reports to the manager.

15 Does that make sense?

16 MR. MAHER: I mean, there is no way for sure to
17 know for now, but we can undertake to...

U

18 MR. TRIVISONNO: Understood.

19 118. Q. Under "Manager", the name here is Ali
20 Mohammed.

21 A. Yes.

22 119. Q. Is this Ms. Natasha Alimohamed, who we deal
23 with later, or is this someone else within the CBSA?

24 A. No. So, the name is Ali, and then the last
25 name is Mohammed.

1 120. Q. Understood. But, presumably, this Sean
2 Whitehouse and this Mr. or Ms. Ali Mohammed, these are
3 the individuals who would have reviewed the HS
4 exceptions report and identified the discrepancy.
5 Correct?

6 A. I can't confirm that.

7 MR. TRIVISONNO: I would like an undertaking to
8 confirm that.

9 MR. MAHER: So, just to clarify the undertaking
10 -- can you rephrase your undertaking request?

11 MR. TRIVISONNO: I am asking you to confirm
12 whether it was Ali Mohammed and Sean Whitehouse who
13 reviewed the HS exceptions report, identified the
14 discrepancy, and then took further actions.

15 MR. MAHER: Okay. So, there are a lot of steps
16 in your question, and I just want to make sure that we
17 respond to it correctly. It's just that there may be
18 someone who noticed the discrepancy, and maybe they
19 referred it to someone else, with the HS report. So, I
20 don't know all of the details of how that came about,
21 but we can provide an undertaking to...

22 MR. TRIVISONNO: I would like to know whose
23 handwritten note this is, which says "Reviewed" --
24 illegible -- August 30th, 2016.

25 MR. MAHER: Yes, we will make best efforts to

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1 get that information.

U

2 BY MR. TRIVISONNO:

3 121. Q. Then, at the bottom, the document indicates
4 that someone spoke with Adrien Anger on August 30th,
5 2016. Now, based on this document, Mr. Anger is someone
6 from Unit Risk Management/ICECAP. Is that correct?

7 A. Based on the information in the document,
8 yes.

9 MR. TRIVISONNO: I would like to know who spoke
10 with Mr. Anger.

11 MR. MAHER: We will make best efforts to locate
12 and identify that information.

U

13 MR. TRIVISONNO: I would like to know what was
14 discussed.

15 MR. MAHER: We will make best efforts to locate
16 that information.

U

17 MR. TRIVISONNO: And I would like to know what
18 steps were taken as a result of that discussion.

19 MR. MAHER: Maybe you could ask the witness.
20 Maybe she knows that.

21 BY MR. TRIVISONNO:

22 122. Q. What steps were taken as a result of the
23 discussion with Mr. Anger on August 30th, 2016?

24 A. The referral formally to ICECAP, to have
25 them work up on this question of the transactions that

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1 had been identified in this referral submission.

2 MR. TRIVISONNO: Counsel, have you produced the
3 ICECAP workup in the verification file that you
4 provided? I note that it's only excerpts of the
5 verification file.

6 MR. MAHER: I think we provided the full
7 verification file that we have at Tab 204 of the
8 Defendant's production.

9 MR. TRIVISONNO: I would like you to identify
10 the ICECAP workup within that document, because it is
11 quite an unwieldy document and it is difficult to
12 identify documents within it without government
13 expertise.

14 MR. MAHER: So, we will make best efforts to try
15 to answer that.

U

16 And just to understand your request, you are
17 asking, in the verification file, for the portion that
18 was actually related to the referral? Is that what you
19 are asking?

20 MR. TRIVISONNO: I am looking for the ICECAP
21 workup. That is what the witness has referred to. If
22 there is a more technical term, I don't know it, but I
23 am looking for the ICECAP workup within the verification
24 file.

25 MR. MAHER: Thank you.

1 BY MR. TRIVISONNO:

2 123. Q. Was Ronsco ever informed that this
3 discrepancy was the source and the reason for the
4 verification audit that was conducted against it?

5 A. I don't know. It may have been a trigger,
6 but it certainly wouldn't have been the only -- like,
7 that's why we do the analysis and the workup and
8 everything like that.

9 124. Q. But my question was: Was Ronsco ever
10 informed that this discrepancy was what set off the
11 chain of events leading up to the verification audit.

12 A. I can't confirm that.

13 MR. TRIVISONNO: I would like to know whether
14 Ronsco was ever informed about this.

15 MR. MAHER: Okay. We will provide an answer. *U*

16 BY MR. TRIVISONNO:

17 125. Q. Was Ronsco ever given the opportunity to
18 explain this discrepancy to CBSA?

19 A. I am unaware of that.

20 MR. TRIVISONNO: I would like to know whether
21 Ronsco was ever given the opportunity to explain this
22 discrepancy to CBSA.

23 MR. MAHER: Yes, the answer to that question
24 will probably flow from the answer to your preceding
25 question.

1 MR. TRIVISONNO: It's a separate undertaking,
2 and I am requesting it of you.

3 MR. MAHER: Yes, we will make best efforts. *U*

4 BY MR. TRIVISONNO:

5 126. Q. Let's look at the interim verification
6 report.

7 Actually, let's step back for a second. Are
8 there communications and emails reflecting the lead-up
9 from when this HS exceptions report comes out and when
10 the verification audit is commenced?

11 I would like you to take a look for those emails
12 and produce them.

13 MR. MAHER: Yes, we will ---

14 MR. BAXTER: I'm sorry, could you repeat it?

15 MR. TRIVISONNO: I am looking for any emails or
16 other communications -- in fact, any other notes,
17 analyses or any other documents that you haven't
18 produced related to the sequence of events between when
19 that HS exceptions report is generated and when the
20 verification audit is launched against Ronsco.

21 MR. MAHER: And, sorry, just to be clear, what
22 date do you mean by the verification launch?

23 MR. TRIVISONNO: The date that Ronsco is
24 informed that it is subject to a verification audit.

25 MR. MAHER: Okay. So, if those exist, we will

1 provide them.

U

2 BY MR. TRIVISONNO:

3 127. Q. On April 20th, 2018, CBSA issued an interim
4 verification report to Ronsco, and that report concluded
5 that the rough bore wheels should have been classified
6 under Tariff Item .29. Correct?

7 A. Correct.

8 128. Q. That report also concluded that Ronsco had
9 reason to believe that its tariff classification was
10 incorrect.

11 A. Can I look, just to remind myself of the
12 details of the interim?

13 129. Q. Of course. Why don't we bring up the
14 document for you?

15 It's at Tab 1. This is Tab 1 of the Plaintiff's
16 Affidavit of Documents. It's an April 20th, 2018
17 interim verification report, sent to Mary Menanno at
18 Ronsco.

19 If we turn to page 4, there is a heading --
20 right at the bottom of page 4 the heading says ---

21 Well, actually, let's go to the paragraph
22 before. It says: "Ronsco Inc. had specific information
23 available, Reason to Believe, with respect to tariff
24 classification of the goods verified." (As read)

25 So, the conclusion was that Ronsco had reason to

1 believe at the time of import. Correct?

2 A. Yes.

3 130. Q. Reason to Believe is based on specific
4 information, correct? The whole concept of Reason to
5 Believe is, once you have the specific information that
6 would indicate to you that your tariff classification is
7 incorrect, you have reason to believe. Do I have that
8 right?

9 A. The specific information can be multiple
10 items, it's not ---

11 131. Q. No, I do understand that specific
12 information can be many different things, but that
13 concept of specific information, once you have that
14 specific information, you, the importer, then have
15 reason to believe.

16 Do I have that correct?

17 A. Generally speaking, yes.

18 132. Q. We can get into the types of specific
19 information in a bit. I think there is only one kind of
20 specific information that will be relevant here, but we
21 will get into that.

22 In the next paragraph it says: "Reassessment
23 period for goods in error; Customs Duties payable:
24 specific information previously available was a
25 legislative provision that was *prima facie* evident and

1 transparent, as identified in subparagraph 1(a) of
2 Memorandum D11-66." (As read)

3 So, here the determination of Reason to Believe
4 was based specifically on the drafting of Tariff .21 and
5 the language in Tariff .21, correct? That was the
6 specific information?

7 A. I am not sure that I understand "drafting",
8 but it's the specific information in the tariff item,
9 correct.

10 133. Q. Did Ms. Gagné conduct any analysis of the
11 tariff item to come to that conclusion?

12 A. I'm sorry, I don't understand what you mean
13 by did she do any analysis.

14 134. Q. Did she analyze the language of the tariff
15 item to determine whether it provided reason to believe
16 or not?

17 A. Yes. Part of the verification process is to
18 review the tariff classification and the goods at issue.

19 MR. TRIVISONNO: Has that analysis been
20 produced, because I didn't see it in the verification
21 file?

22 MR. MAHER: In the verification file -- please
23 correct me if I'm wrong, but the verification file is
24 the file that Lucie worked with, Lucie Gagné?

25 THE WITNESS: Yes.

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1 MR. MAHER: We can confirm that for sure, but
2 that's my presumption.

3 THE WITNESS: Yes.

4 MR. MAHER: So, if you look into that file,
5 which is at Tab ---

6 MR. TRIVISONNO: It's at 204.

7 MR. MAHER: Yes, of the Defendant's production -
8 - that would be her analysis.

9 MR. TRIVISONNO: Let's take a five-minute break.

10 (SHORT RECESS)

11 MR. TRIVISONNO: During the break we found what
12 we believe to be Madam Gagné's analysis, and we will get
13 to that in a moment.

14 Or, at least, related to the analysis.

15 Before we get there, though, I asked for a
16 number of undertakings related to the importation of
17 rough bore wheels between 2005 and 2017 under Tariff .21
18 and under Tariff .29, and those requests were all
19 refused on the basis of relevance and privacy related to
20 Customs information, as I understood it.

21 As an alternative to all of those undertakings,
22 we would accept anonymized information indicating the
23 number of importers who were importing under Tariff .21
24 the goods in question, or substantially similar goods;
25 the number of importers who were importing the goods in

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1 question, or substantially similar goods, under Tariff
2 .29; and the volumes of those imports.

3 MR. MAHER: Yes, we will take that under
4 advisement. We will consider your request.

A

5 MR. TRIVISONNO: Similarly, the number of other
6 importers who were subject to verification audits prior
7 to 2018 based on the importation of rough bore wheels.

8 MR. MAHER: The same answer, we will take that
9 under advisement.

A

10 MR. TRIVISONNO: And the number of importers who
11 have ever been assessed retroactive duties, or, as you
12 put it, a retroactive reassessment period based on the
13 goods at issue.

14 MR. MAHER: Yes, we will take that under
15 advisement.

A

16 MR. TRIVISONNO: Just to help you with the
17 relevance; of course, relevance is determined by the
18 Pleadings, and paragraph 49 of our Statement of Claim
19 alleges "That by imposing retroactive duties on Ronsco,
20 CBSA treated Ronsco differently than similarly situated
21 competitors who were importing identical or
22 substantially similar goods under the same tariff as
23 Ronsco, including Sumitomo and other companies. In
24 doing so, CBSA unfairly favoured certain importers over
25 others, to the detriment of Ronsco, and affected the

1 competitive landscape of the industry."

2 MR. MAHER: Yes, so we have something to respond
3 to your position. Why we are saying it is not relevant
4 is because it is well established in the jurisprudence
5 of the Federal Court of Appeal that the tax treatment of
6 other taxpayers is of no relevance in tax proceedings or
7 to determine tax liability.

8 So, our position is that this principle applies,
9 *mutatis mutandis*, to importers who are importing and who
10 are imposed duties and taxes on their goods.

11 So, a Plaintiff must prove that they meet the
12 requirements of the legislation on their own terms and
13 not by comparison to the treatment of others. And this
14 was confirmed by the Federal Court in the motion to
15 strike decision, as well.

16 And for your reference, if you want to know the
17 ---

18 MR. TRIVISONNO: No, Mr. Maher, we will have an
19 argument about this another day.

20 MR. MAHER: No, I will just state my objection -
21 - or my response to your objection -- to your response.

22 It is the case of *Ford Motor Co. of Canada v.*
23 *Minister of National Revenue*, 1997, 3FC, 103, at
24 paragraph 48.

25 BY MR. TRIVISONNO:

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1 135. Q. Okay. We have another document, which is
2 from Tab 204 of the Defendant's Affidavit of Documents,
3 which we understand to be the verification file, and we
4 are at page 412 of that document.

5 This is a document entitled "Request for
6 Functional Guidance - Tariff Classification". Is this a
7 document generated by the Trade Policy Division?

8 A. This is a document that is used to make a
9 request to the Trade Policy Division, specifically
10 Tariff Classification.

11 136. Q. So, in this case, is this someone who is
12 working on the verification audit of Ronsco requesting
13 advice from the Trade Policy Division?

14 We have a paper copy of the document.

15 A. Thank you.

16 Can you show me the interim verification report,
17 please?

18 MR. MAHER: Sure.

19 THE WITNESS: Can you look at the interim
20 verification report?

21 BY MR. TRIVISONNO:

22 137. Q. You are going to show me the case number?

23 A. Yes.

24 So, this is not about Ronsco. The document you
25 are asking me about at 412 is not specific to Ronsco,

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1 it's a different case.

2 138. Q. But it was part of the Ronsco file, because
3 it has been produced in the verification file for
4 Ronsco.

5 Do I have that right, counsel?

6 MR. MAHER: It is part of the verification file.
7 The reason why it is part of it, I'm not sure yet.

8 BY MR. TRIVISONNO:

9 139. Q. Well, why is it part of the Ronsco
10 verification file?

11 A. To be honest, I'm not sure why this would be
12 in there, unless officers ---

13 This is in a database of information, where
14 another officer could go and research, that this had
15 been requested. So, Ms. Gagné -- I can't speak to the
16 fact that she did or did not, but she may have gone to
17 look in our database for a document.

18 MR. TRIVISONNO: I would like to know whether or
19 not Madam Gagné reviewed this document in her
20 determinations related to Ronsco.

21 MR. MAHER: Yes, we will make best efforts to
22 confirm.

U

23 MR. TRIVISONNO: I would like to know, as well,
24 whether Ms. Ogilvie reviewed this document in her
25 considerations on the reassessment.

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U

1 MR. MAHER: Okay. We will make best efforts.

2 BY MR. TRIVISONNO:

3 140. Q. Let's look at page 2, under "Officer's
4 Analysis". This would have been the analysis of the
5 officer conducting the verification audit of Sumitomo?

6 A. I don't have the Sumitomo verification, so I
7 can't say yes specifically, but it's about a rail ---

8 It's about a verification, yes, about an ICECAP
9 referral.

10 Yes, "Description of the Goods".

11 141. Q. It says "Sumitomo".

12 A. Yes, it does.

13 142. Q. Okay. So, this is all in the context of the
14 Sumitomo verification case.

15 A. Yes.

16 143. Q. And it says here: "For my verification, the
17 importer attached the advance ruling letter (attached);
18 however, it does not go into detail on what information
19 was provided to the CBSA at the time the ruling was
20 issued." (As read)

21 That is referring to the advance ruling given to
22 Sumitomo -- correct -- with respect to the goods at
23 issue?

24 A. Yes.

25 144. Q. If we turn to page 3, the officer has two

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1 questions. One, what is the definition of a wheel
2 blank? Does it have any production processing started
3 on it other than the circular shape?

4 And, two, if the classification turns out to be
5 8607.19.29, what is the reassessment period, since there
6 was an advance ruling?

7 Those are the questions that she is directing to
8 Trade Policy.

9 A. Correct.

10 145. Q. Then, beginning at page 6, this is the Trade
11 Policy response, and if you go to page 8, this was
12 generated by Emerson Barrios. Do I have that right?

13 A. Correct, the responding officer.

14 146. Q. And that would have been someone who also
15 reported to Grant Tebbutt, like you.

16 A. Yes.

17 147. Q. Were you aware of this analysis when it was
18 conducted?

19 A. No.

20 148. Q. Have you reviewed this analysis before in
21 your work on the Ronsco file?

22 A. No.

23 MR. MAHER: Just to be clear, before preparing
24 for the examination?

25 MR. TRIVISONNO: That's exactly what I mean.

1 149. Q. In your work on the Ronsco file, back in
2 2018, for example, when you were preparing for Doug
3 Band's meeting with Ronsco, or afterwards, did you
4 review this document?

5 A. I reviewed this document in the context of
6 this proceeding only.

7 150. Q. And when you say this proceeding, you mean
8 in preparing for discoveries today.

9 A. Yes.

10 151. Q. Ms. Gagné was aware of the Sumitomo advance
11 ruling when she was conducting the verification audit of
12 Ronsco, correct?

13 A. I cannot confirm that.

14 MR. TRIVISONNO: I would like to know, please.

15 MR. MAHER: Yes, we will make best efforts.

16 MR. TRIVISONNO: And, similarly, I would like to
17 know if Ms. Ogilvie was aware of it, as well, when she
18 was doing the reassessment.

19 MR. MAHER: Why is that relevant?

20 MR. TRIVISONNO: Because my client didn't find
21 out about the Sumitomo advance ruling until afterwards,
22 and the fact that CBSA was classifying the goods as
23 wheel blanks since 2005 has a significant effect on the
24 interpretation of the tariff, and is evidence that is
25 very relevant to the interpretation of the tariff.

U

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1 So, I would like to know if Ms. Ogilvie was
2 aware of it when she was conducting the reassessment.

3 MR. MAHER: Okay. We will make best efforts. *U*

4 MR. TRIVISONNO: Okay. Let's go back to the
5 interim verification report, where we were.

6 We can mark this document as Exhibit 2. It's an
7 excerpt from the verification file, at Tab 204 of the
8 Defendant's Affidavit of Documents, titled "Request for
9 Functional Guidance".

10 **EXHIBIT NO. 2:** Excerpt from Verification
11 File at Tab 204 of the Affidavit of
12 Documents of the Defendant, titled "Request
13 for Functional Guidance"

14 BY MR. TRIVISONNO:

15 152. Q. Turning back to Tab 1 of the Plaintiff's
16 Affidavit of Documents, this is the interim verification
17 report. We were just looking at "Reassessment Period",
18 at the bottom of page 4, and "Reason to Believe", and I
19 think we had already established that those two concepts
20 are connected. The reassessment period is determined,
21 in part, by when the importer received specific
22 information that gave it reason to believe.

23 Is that correct?

24 A. Correct.

25 MR. MAHER: Received or had, it's not -- just to

1 | be clear.

2 MR. TRIVISONNO: Thank you, Mr. Maher.

3 153. Q. At page 5, the second paragraph says:

4 "Ronsco Inc. will be required to correct, within 90 days
5 of the date of the final report, all other transactions
6 of the same goods that were verified, back to the
7 earliest date of the specific information, to a maximum
8 of four years, as provided for in the *Customs Act*." (As
9 read)

10 My understanding here, where it says "back to
11 the earliest date of the specific information", is that
12 Ms. Gagné is saying that the reassessment period only
13 extends back to the earliest date that an importer
14 receives the specific information that gives them reason
15 to believe.

16 | Is that correct?

A. It's not about receiving, it's ---

18 154. Q. "Had" or "received", we will use those
19 interchangeably, and I appreciate the distinction.

A. Okay. Correct.

21 155. Q. In this case, that is why a four-year
22 reassessment period was established. It was based on
23 the finding that Ronsco had reason to believe at the
24 time of import.

25 A. Correct.

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1 156. Q. I think we have already established that you
2 weren't involved in drafting this at all, of course.

3 A. No.

4 MR. TRIVISONNO: So, I would like an undertaking
5 for all drafts of the interim report.

6 MR. MAHER: We will take that under advisement. *A*

7 MR. TRIVISONNO: I would like all communications
8 or other correspondence related to the drafting of the
9 interim report.

10 MR. MAHER: We will make best efforts to locate
11 those. *A*

12 BY MR. TRIVISONNO:

13 157. Q. I would like to understand, too -- we were
14 just talking about the language here ---

15 MR. MAHER: Sorry; it was all under advisement,
16 both requests. I'm sorry if that wasn't clear.

17 MR. TRIVISONNO: That's what I understood.

18 Thank you, Mr. Maher.

19 158. Q. Back to the second paragraph on page 5 of
20 the interim report. Is this standard language from a
21 template, the first sentence, which includes the "back
22 to the earliest date of the specific information"?

23 A. Sorry; you are talking about, like -- taking
24 out "Ronsco", but, like, "within 90 days of the date of
25 the final report, all transactions of the same goods",

1 et cetera, et cetera, is very standard language.

2 159. Q. And that is because it is consistent with
3 CBSA policy?

4 A. Correct.

5 160. Q. I want to move ahead to the time period
6 after the interim report is delivered, leading up to the
7 meeting between Ronsco and CBSA.

8 If we could turn to Tab 9 of the Defendant's
9 Affidavit of Documents, I want to go to the first email
10 in the chain, so it will be right at the end.

11 The top email is from Rocio Medalla to Nathalie
12 Blanchard, and it has copied into the email the text of
13 an email from Graham McLaughlin of McMillan Vantage. Do
14 you see that?

15 A. Under the plus signs.

16 161. Q. That's right.

17 A. Yes.

18 162. Q. Mr. McLaughlin introduces himself and he
19 says that he acts for Ronsco Inc., which is Canada's
20 largest supplier of products and service to the rail,
21 mining and transit industries in Canada. "Ronsco has
22 over 100 employees and is planning an expansion into
23 western Canada in 2019, for a potential 100 new jobs."

24 As I understand it, this email from Mr.
25 McLaughlin is the first reach-out from my client to the

1 government broadly in relation to the interim
2 verification report. Is that right?

3 A. To the best of my understanding, yes.

4 163. Q. Do you know who this email from Graham
5 McLaughlin was received by?

6 A. No.

7 MR. TRIVISONNO: Counsel, could you let me know?

8 MR. MAHER: Yes, we will make best efforts to
9 identify that.

U

10 BY MR. TRIVISONNO:

11 164. Q. In this first reach-out, Ronsco makes it
12 clear to whoever it is that receives it that they are a
13 Canadian company that conducts business in Canada, that
14 has a plan to expand into western Canada. Correct?

15 A. Correct.

16 165. Q. And this email is forwarded on to Nathalie
17 Blanchard at CBSA. So, CBSA is aware of that from the
18 moment that Ronsco reaches out to the government.
19 Correct?

20 MR. MAHER: Aware of what, sorry?

21 BY MR. TRIVISONNO:

22 166. Q. The fact that Ronsco is a Canadian company,
23 with the intent to expand into western Canada.

24 A. Based on the information in front of me,
25 yes.

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1 167. Q. Now, I want to understand some of the
2 internal mechanics here. Who is Rocio Medalla?

3 A. I'm not aware.

4 168. Q. Is he in the minister's office?

5 A. I don't know the participants in the
6 minister's office. That is not part of my reporting
7 structure or communications structure.

8 169. Q. You wouldn't communicate with the minister's
9 office?

10 A. No, I would not be communicating with the
11 minister's office.

12 170. Q. And that was true in 2018, as well?

13 A. Correct.

14 171. Q. The abbreviation "MinO" refers to
15 "Minister's Office", correct?

16 A. Typically, yes.

17 172. Q. And in the context of an email to someone
18 from CBSA, that would be the Minister of Public Safety?

19 A. Yes. However, another minister could send
20 it along. It is a bit of a generic acronym, just to
21 take note of that.

22 173. Q. Okay. Ms. Blanchard, what is her role?

23 A. I know the name; I couldn't tell you exactly
24 about her specifics. She is either in the president's
25 office or the VPO's office. I don't remember.

1 174. Q. Again, not someone who you had
2 communications with?

3 A. No, not directly.

4 175. Q. And that's true in your role in 2018, as
5 well. Correct?

6 A. Correct.

7 MR. TRIVISONNO: So, I would like to know what
8 Rocio Medalla's role was at this time?

9 MR. MAHER: Yes, we will make best efforts. *U*

10 BY MR. TRIVISONNO:

11 176. Q. And, similarly -- I mean, Ms. Blanchard, it
12 says right up top that she was the chief of staff to the
13 vice-president -- *Direction Générale des Programmes* --
14 the Programs Branch.

15 And that's the vice-president who we haven't
16 been able to identify. Correct?

17 A. Correct.

18 177. Q. And we see that the email gets forwarded on,
19 seeking Mr. Band's availability for June 25th for a
20 meeting with Ronsco?

21 A. Correct.

22 178. Q. I want to go to the first page. There is an
23 email -- it is the third one down, to Brad Loynachan, on
24 June 15th, 2018: "Hi, Brad: Please prep information by
25 June 19th, end of day. Include the Fin explanation, et

1 cetera."

2 Is this referring to preparatory materials for
3 Mr. Band's meeting with Ronsco?

4 A. Yes.

5 179. Q. What is a Fin explanation?

6 A. Typically a Finance Canada explanation.

7 180. Q. What does that mean?

8 A. I'm not entirely sure what it means in this
9 context, but in general it is typically the context of a
10 tariff classification history, because tariff
11 classification is Finance's...

12 181. Q. So, here, Ms. Johnston, and others at CBSA,
13 believed that it was important to look at the tariff
14 classification history before speaking with Ronsco?

15 A. It would appear so.

16 182. Q. These preparatory materials that are being
17 referred to here by Ms. Johnston, I understand that you
18 are the one who ended up drafting those materials. Is
19 that right?

20 A. Along with officers, yes.

21 183. Q. Were you the primary drafter of the issue
22 sheet that was prepared for Mr. Band?

23 A. Yes.

24 184. Q. How did you become involved in the
25 preparation for that meeting?

1 A. So, Grant Tebbutt took his holidays. Brad
2 Loynachan moved on to a new position, which is why you
3 see "EC MODI" at the top. I was acting for Grant while
4 he was away on holidays, and this would have been my
5 responsibility as part of the acting manager role, to
6 develop the issue sheet.

7 185. Q. I have a copy of the issue sheet here. This
8 is Tab 11 from the Defendant's Affidavit of Documents.
9 And I specify that, because I know there are multiple
10 versions in the Affidavit of Documents.

11 But this is the document we are talking about
12 that you prepared. Correct?

13 A. Correct.

14 186. Q. And, of course, it refers to Sumitomo.

15 A. Correct.

16 187. Q. Did you confuse Ronsco and Sumitomo because
17 they were importing the same goods, under the same
18 tariff?

19 A. Because we had the awareness of the advance
20 ruling that was being discussed, I confused Sumitomo's -
21 - thinking that Sumitomo was requesting clarification
22 about the advance ruling, revocation, modification, and
23 I did not appropriately realize that it was actually
24 Ronsco that requested the meeting.

25 188. Q. Were you ever sent that email from Graham

McLaughlin, which clearly identified that it was Ronesco
that was requesting the meeting?

3 A. I believe so, yes. I made an error, yes.

4 189. Q. Did other people that you were working with
5 tell you that it was Ronsco that was requesting the
6 meeting?

7 A. No. I recall it being primarily by email.

8 Q. I am not sure that we have the emails to you
9 requesting you to undertake the work, so I would like an
10 undertaking to go back and check for those. And mainly
11 what I am concerned with is whether the request was to
12 prepare something for Ronco or not.

MR. MAHER: Yes, we will make best efforts.

* U *

BY MR. TRIVISONNO:

15 Q. So, of course, this memo was prepared,
16 though, for the meeting with Ronsco, it clearly refers
17 to the advance ruling for Sumitomo, because of the error
18 you made. Is that right?

A. Correct.

20 192. Q. And CBSA's position is that that advance
21 ruling does not apply to Ronsco?

A. Correct.

23 Q. Then, if we turn to page 2, going down four
24 paragraphs, it says: "The CBSA will accept that the AR
25 was valid and not require retroactive..."

1 MR. MAHER: Sorry ---

2 THE WITNESS: I have it.

3 BY MR. TRIVISONNO:

4 194. Q. Do you see where I am?

5 A. Yes.

6 195. Q. "...and not require retroactive
7 reassessments by the importer. Rather, the importer
8 will only be required to change the tariff
9 classification of the goods on a go-forward basis."

10 So, this was the position that Mr. Band was
11 advised to take at the meeting with Ronsco?

12 A. Correct.

13 196. Q. When it says "on a go-forward basis", did
14 that mean going forward from the meeting with Ronsco?

15 A. According to the regulations for the tariff
16 classification, it's from the date of the decision where
17 we revoke or modify the advance ruling.

18 So, the legislation -- the regulations tell us
19 what that going-forward basis means.

20 197. Q. Is it from the date of the revocation or the
21 effective date of the revocation? Because I understand
22 that those can be two different things.

23 A. Correct. It's the effective date.

24 198. Q. This language here, "retroactive
25 reassessments", is this language that is typically used

1 within CBSA?

2 A. Correct.

3 199. Q. And that is referring to reassessments of
4 what? Temporally, what does it mean by "retroactive"?

5 A. Retroactive going back.

6 200. Q. Going back before when?

7 A. The date of the decision, whatever decision
8 you are talking about. So, retroactive going back.

9 201. Q. So, any duties being reassessed before
10 whenever the decision is made, those are considered
11 retroactive duties by the CBSA?

12 A. Yes.

13 202. Q. Every version of this issue sheet mistakenly
14 referred to Sumitomo instead of Ronsco. Correct?

15 A. Correct.

16 203. Q. The memo was reviewed by a number of other
17 CBSA employees before the meeting. Correct?

18 A. Correct.

19 204. Q. And it was reviewed by a number of other
20 government employees outside of CBSA. Correct?

21 A. Not that I'm aware of. Outside of CBSA, no.

22 205. Q. It went through multiple levels of approval,
23 though -- manager, director, director general?

24 A. Correct.

25 206. Q. And all of them signed off on the memo?

1 A. Correct.

2 207. Q. None of them detected the error.

3 A. Correct.

4 MR. TRIVISONNO: I would like an undertaking for
5 a list of everyone who reviewed this document before the
6 June 26th meeting with Ronsco.

7 MR. MAHER: We will make best efforts. *U*

8 MR. TRIVISONNO: And that includes everyone
9 within CBSA and anyone else in government outside of
10 CBSA.

11 MR. MAHER: Under advisement. *A*

12 BY MR. TRIVISONNO:

13 208. Q. I will turn up Tab 12 of the Defendant's
14 Affidavit of Documents. This is an email chain. The
15 top email is dated June 26, 2018, but for now I want to
16 look at an email on page 2, of June 25, 2018, from
17 Nathalie Blanchard to Genevieve Johnston and others,
18 including Doug Band. She says: "MinO has confirmed
19 that CBSA would lead this meeting. They will be in
20 listening mode for this."

21 Were you aware at the time that CBSA was going
22 to be leading the meeting with Ronsco?

23 A. No.

24 209. Q. But that is what this means -- correct --
25 CBSA is leading the meeting and the minister's office is

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1 just there to listen?

2 A. Correct.

3 210. Q. And the VP's office, whom Nathalie Blanchard
4 represents, asks a few questions about the memo: "What
5 will we be telling them at the meeting? What is the
6 timing when considering steel? Should we not focus on
7 process, rather than specific case information that is
8 still ongoing, i.e., interim CV report? Can we please
9 rearrange the information to a higher level that is more
10 succinct and focuses on process?"

11 She is asking Mr. Band a number of questions
12 about the issue sheet and a number of revisions to that
13 issue sheet. Correct?

14 A. Correct.

15 MR. MAHER: She is also asking other people, but
16 Mr. Band is on this email list.

17 MR. TRIVISONNO: Oh, Mr. Maher, thank you, I
18 appreciate that clarification.

19 211. Q. Then, where she says, "Should we not focus
20 on process, rather than specific case information that
21 is still ongoing," is that a caution to Mr. Band that he
22 should be focusing on just the process, and not getting
23 into the details of a case that is still ongoing?

24 Isn't that the caution she is providing to Doug
25 Band?

1 A. To be completely honest, I don't take it as
2 a caution. It is a typical question that we would have
3 received from VPO, asking whether or not this is high
4 level or detailed information.

5 She is asking the question, how Doug feels -- or
6 how people on the two lists would take a second look at
7 the information that has been provided in the issue
8 sheet.

9 212. Q. So, if this is a typical question that is
10 put to you within Trade Policy, can you explain to me
11 what the distinction between "process" and "specific
12 case information" is?

13 A. I can't think for -- it's actually David
14 that asked the question, David Eves, for Nathalie, but I
15 can't speak for David.

16 Typically a process would be the process of a
17 verification or revocation of an advance ruling, and the
18 specifics of, versus the details that were in the issue
19 sheet.

20 213. Q. Okay. Now, Mr. Band responds and says:
21 "David, we won't have time to adjust the document. Team
22 swamped on steel prep stuff. I will be telling them we
23 would not intend to apply an increased duty rate of 9.5
24 percent retroactively for four years. This is good
25 news."

1 Is it true that no adjustments were made to the
2 issue sheet after this request from the VP's office?

3 A. I was not specifically involved in an
4 amendment between the two, but usually when Doug -- Doug
5 seems to indicate that we don't have time to make a
6 change to it.

7 MR. MAHER: Sorry; may we orient the witness?

8 This is dated June 25th, 2018, at 4:38 p.m.

9 THE WITNESS: And the meeting was the following
10 day.

11 BY MR. TRIVISONNO:

12 214. Q. Right. I just want to understand; were
13 there any edits made to the issue sheet between those
14 two times?

15 A. Not that I was involved in.

16 215. Q. I am going to take it that there were no
17 edits made, unless the Defendants tell me otherwise.

18 Then he says, "Team swamped on steel prep
19 stuff." What do you understand that to mean?

20 A. I do believe that was the time that the
21 steel surtax was being developed. I would have to go
22 back and check the dates on that, but...

23 216. Q. What implications did that have for your
24 team?

25 A. None on tariff classification.

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1 217. Q. So, you, personally, were not swamped at all
2 on steel prep stuff?

3 A. Personally, no.

4 218. Q. Then Doug says, "I will be telling them we
5 would not intend to apply an increased duty rate of 9.5
6 percent retroactively for four years. This is good
7 news."

8 What did he mean by "This is good news"?

9 A. Recognizing that an increase of 9.5 percent,
10 going back four years, would have had an effect on any
11 company.

12 219. Q. Of course it would.

13 CBSA also saw this as good news because they
14 were happy not to impose retroactive duties on a
15 Canadian company. Correct?

16 MR. MAHER: So, that is asking for speculation
17 for what Mr. Band was thinking.

18 MR. TRIVISONNO: Well, if Mr. Band were here
19 today, he could tell me what he was thinking. I've got
20 this witness, so I am going to ask this witness my
21 questions.

22 MR. MAHER: Okay. And this is our answer.

23 MR. TRIVISONNO: Okay. I would like you to ask
24 Mr. Band what he meant by good news.

25 MR. MAHER: Yes, we will take that under

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1 advisement.

A

2 MR. TRIVISONNO: And, specifically, I would like
3 to know whether he thought this was particularly good
4 news because he wouldn't be imposing retroactive duties
5 on a Canadian company.

6 MR. MAHER: Under advisement.

A

7 MR. TRIVISONNO: You gave me the first one as an
8 undertaking and the second one as an under advisement?

9 MR. MAHER: No, I said under advisement for
10 both.

11 MR. TRIVISONNO: You are not going to check with
12 Mr. Band what he meant in this email?

13 MR. MAHER: I am not providing you with a final
14 answer; under advisement.

15 MR. BAXTER: That's a refusal under the rules.

16 MR. TRIVISONNO: Understood. That's a refusal
17 for today, Mr. Maher.

O

18 MR. JOHNSTON: Could I ask a question for
19 clarification on process, given what you have just said?

20 Does this also apply to your under advisements
21 that you gave, that they are all refusals?

22 MR. BAXTER: All advisements are refusals under
23 the rules, Mr. Johnston. It's either an undertaking or
24 a refusal.

25 MR. JOHNSTON: Thank you.

1 BY MR. TRIVISONNO:

2 220. Q. What Mr. Band says in this email, "...we
3 would not intend to apply an increased duty rate of 9.5
4 percent retroactively for four years," that is, of
5 course, what Mr. Band ends up telling Ronsco at the
6 meeting. Correct?

7 A. From the debrief that I received post-
8 meeting, that is what I understand transpired.

9 221. Q. The other thing I want to understand is, at
10 the time that Mr. Band writes this email, does he know
11 that he is meeting with Ronsco, or does he believe that
12 he is meeting with Sumitomo?

13 A. Based on the information that we sent up, he
14 probably thinks he is meeting with Sumitomo.

15 MR. TRIVISONNO: I want to know Mr. Band's
16 evidence on this, because Mr. Band clearly did receive
17 that email from Graham McLaughlin, which clearly sets
18 out that he is reaching out on behalf of Ronsco, that
19 describes Ronsco's business, that describes the
20 competitive impact that it is going to have on Ronsco,
21 that describes Ronsco's plans to expand into western
22 Canada, and that it has nothing to do with Sumitomo.

23 So, I want to understand who Mr. Band thought he
24 was meeting with on June 25th, 2018.

25 MR. MAHER: Yes, we will provide you with that

1 information. I think in the documents that were
2 produced, and the discussion after, when the confusion
3 was discovered, Mr. Band explained to Ronsco the
4 confusion. So, we can only presume that he thought he
5 would be meeting with Sumitomo, but we will confirm
6 that.

U

7 MR. TRIVISONNO: Again, if Mr. Band were here
8 today, if the witness had spoken to Mr. Band, then I
9 think we would have an answer to that question.

10 MR. MAHER: Mr. Band said after, in August of
11 the same year, that he confused the two files, and
12 that's in the records.

13 So, we will confirm that with him, but you
14 already have the start of an answer.

15 MR. TRIVISONNO: I appreciate the clarification.
16 Thank you, Mr. Maher.

17 222. Q. I would like to turn back to Tab 11 of the
18 Affidavit of Documents, which I printed out for you.

19 THE WITNESS: It's the issue sheet.

20 MR. MAHER: No, it's here.

21 MR. TRIVISONNO: No, there is another version.

22 Let's look at the version at Tab 17, or Tab 18.

23 223. Q. I just have two questions on the last page.

24 Actually, it's a specific question related to
25 the redaction. I understand that there is a redaction

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1 related to privacy. Could I understand the full basis
2 for that redaction?

3 MR. MAHER: We will get back to you with our
4 position.

U

5 BY MR. TRIVISONNO:

6 224. Q. Then it says: "...is not something that the
7 CBSA can take into account when it classifies goods."

8 What is not something that the CBSA can take
9 into account when it classifies goods; answering in
10 general terms that do not compromise the privacy
11 redaction.

12 A. Generally speaking, we don't classify based
13 on duty -- rate of duty. That is not taken into
14 consideration under the tariff classification rules.

15 225. Q. Why did you write that in the memo?

16 MR. MAHER: Sorry; so ---

17 THE WITNESS: I don't know that that's what that
18 says.

19 MR. MAHER: Yes.

20 THE WITNESS: I don't know right now. I don't
21 have the memory that goes back to 2018 to say that
22 that's what is under the privacy part, something about a
23 rate of duty. I am just answering your general
24 question. Generally speaking, we don't classify based
25 on rate of duty. That's something we get asked a lot.

1 BY MR. TRIVISONNO:

2 226. Q. What you mean by that is: Someone might ask
3 you to reclassify something just because the duty is too
4 high?

5 A. Yes. Like, they would question the
6 classification associated to duty. Typically, a
7 harmonized system, no duty rates in there. Like, when
8 we use the harmonized system to classify goods, no rates
9 of duties are associated to that. We go based on the
10 terminology that is contained within the harmonized
11 system and tariff classification, tariff items.

12 227. Q. When you do your tariff classification
13 analysis, generally speaking, you do so without thinking
14 about duty rates at all?

15 A. Correct.

16 MR. TRIVISONNO: Okay. So, I would like an
17 undertaking for an explanation in general terms that
18 doesn't ---

19 Actually, maybe we could do it this way. An
20 undertaking to confirm whether that is, in fact, what is
21 redacted here, rate of duty.

22 MR. MAHER: I am not sure if we would confirm
23 that. We would just waive the redaction, so I'm not
24 sure.

25 MR. TRIVISONNO: I'm pretty sure that the

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1 redaction there is because there is specific information
2 related to Sumitomo that is being redacted.

3 I just want to know if the general concept of
4 rate of duty is what is being referred to here as
5 something that is not something the CBSA can take into
6 account when it classifies goods.

7 MR. MAHER: We will provide you with an
8 explanation of that redaction.

U

9 MR. TRIVISONNO: That's not what I asked for.

10 MR. MAHER: But that's what I'm giving you.

11 Wait for the explanation, and maybe you will be
12 satisfied or not.

13 MR. TRIVISONNO: Mr. Maher, thank you for the
14 refusal.

15 MR. JOHNSTON: Could I get the page reference
16 for the redaction you are referring to?

17 MR. TRIVISONNO: Yes, it's AGCA0018-0003.

18 MR. JOHNSTON: Thank you.

19 MR. MAHER: Sorry, just to be clear, you are
20 labelling my answer as a refusal?

21 MR. TRIVISONNO: What I have from you is an
22 undertaking of your own invention.

23 No, sorry, that's not fair. I had already asked
24 you for that undertaking, you gave it to me, and then I
25 have a refusal to provide me with a generalized version

1 of whatever it is that is not something the CBSA can
2 take into account.

3 MR. MAHER: Sorry, just to be clear, because I
4 want to understand the undertaking. We will undertake
5 to provide you with an explanation of why this was
6 redacted. That is an undertaking.

U

7 Then, what is your second request?

8 MR. TRIVISONNO: I am not going to tread any
9 more ground here. We have been through this, I have
10 your position, let's continue.

11 228. Q. I want to move on to the Doug Band meeting
12 with Ronsco on June 26, 2018. Can you tell me who
13 attended that meeting?

14 A. I do not recall who attended the meeting
15 specifically.

16 229. Q. Do you know who attended on behalf of
17 Ronsco?

18 A. No, I do not.

19 230. Q. Do you know who attended on behalf of CBSA?

20 A. I know that Doug Band attended.

21 231. Q. Do you know if anyone else attended?

22 A. I do not know.

23 232. Q. Do you know if the minister's office
24 attended?

25 A. I was briefed that the minister's office

1 attended.

2 233. Q. Do you know who attended from the minister's
3 office?

4 A. I do not know who attended.

5 MR. TRIVISONNO: Our information is that from
6 Ronsco it was Kent Montgomery and Mimma Francescangeli.
7 From CBSA it was Doug Band and Charles Slowey. And from
8 the minister's office it was David Hurl and Laura
9 Labelle.

I would like you to tell me if the Defendant's position is that the attendees at the meeting were any different than that.

13 MR. MAHER: Okay. We will provide that.

* U *

BY MR. TRIVISONNO:

15 234. Q. When Mr. Band arrived at the meeting, did he
16 believe that he was meeting with Ronsco or Sumitomo?

17 | Do you know?

A. I cannot confirm. Based on my ---

19 MR. TRIVISONNO: Okay. Then I will ask for an
20 undertaking.

21 MR. MAHER: Just let her finish her answer.

22 THE WITNESS: Based on my briefing, he was
23 meeting with Sumitomo.

24 MR. MAHER: So, we have already taken your
25 undertaking request on that.

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1 MR. TRIVISONNO: It's a different question.

2 That was on June 25th. I want to know, when he arrived
3 at the meeting, did he believe he was meeting with
4 Ronsco or Sumitomo?

5 MR. MAHER: Okay. Well, the same answer to that
6 moment, but yeah.

U

7 MR. TRIVISONNO: I would also like you to ask
8 all of the other attendees from government -- Charles
9 Slowey, David Hurl and Laura Labelle -- whether they
10 believed they were meeting with Sumitomo or Ronsco.

11 MR. MAHER: Yes, we will make best efforts ---

12 MR. JOHNSTON: Under advisement.

13 MR. MAHER: Under advisement.

A

14 MR. TRIVISONNO: As well, I would like to know
15 the basis for their belief.

16 MR. MAHER: Yes, under advisement.

A

17 MR. TRIVISONNO: For each of those individuals,
18 including Mr. Band.

19 235. Q. How did Mr. Band keep track of his meetings
20 and schedule at the time?

21 A. Through his team. He has a team of staff,
22 an admin advisor and ---

23 I am not remembering their titles off the top of
24 my head right now, but there are a couple of people who
25 manage that for him.

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1 236. Q. Did he use Outlook invitations and meetings?

2 A. Yes.

3 237. Q. Did he have a written day-planner?

4 A. I can't comment on that part.

5 238. Q. Did he have a physical calendar?

6 A. I am unaware. My awareness is that I deal
7 with him through Outlook.

8 MR. TRIVISONNO: Okay, thank you. That's
9 helpful.

10 I would like an undertaking to search for any
11 documents that reflect Mr. Band's understanding of who
12 he was meeting with that day, including any Outlook
13 calendar entries or invitations, his written day-
14 planner, his physical calendar, and any communications.
15 And that search should include his administrative
16 assistants, as well.

17 MR. MAHER: Okay. So, we will make best
18 efforts; take that under advisement.

A

19 MR. TRIVISONNO: So, you are taking that under
20 advisement?

21 MR. MAHER: Yes.

22 MR. TRIVISONNO: Okay. I would like the same
23 undertaking for Charles Slowey, David Hurl and Laura
24 Labelle.

25 MR. MAHER: The same answer.

A

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1 And, sorry, can you repeat the three names?

2 MR. TRIVISONNO: Charles Slowey, David Hurl and
3 Laura Labelle.

4 I am going to ask for a number of undertakings
5 related to that meeting, because I am not sure if the
6 witness is going to be able to help me with all the
7 specifics of the meeting, and for each of those
8 undertakings I would like you to speak to Mr. Band, Mr.
9 Slowey, Mr. Hurl and Ms. Labelle about their evidence.
10 I want you to do that separately for each one of them,
11 and not to communicate their evidence as between them
12 before you obtain their evidence.

13 Do you understand that?

14 MR. MAHER: Yes.

15 So, is that your request?

16 MR. TRIVISONNO: That is the outline for the
17 number of requests that I am about to make. Rather than
18 restating that each time, I figured that I would put it
19 up front.

20 MR. MAHER: So, for the four individuals you
21 listed.

22 MR. TRIVISONNO: Yes.

23 I want to know, during the meeting, did the
24 Ronsco representatives introduce themselves as being
25 from Ronsco?

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1 MR. MAHER: Okay. I will take that under
2 advisement, but you can name your question.

A

3 MR. TRIVISONNO: Did Ronsco present a detailed
4 presentation about its business, making clear that it
5 was a Canadian business?

6 MR. MAHER: Okay.

7 MR. TRIVISONNO: I think it would be helpful if,
8 as I go through these, you give me your position one-by-
9 one.

A

10 MR. MAHER: Okay. Under advisement.

11 MR. TRIVISONNO: Did Ronsco make it clear that
12 the imposition of retroactive duties on its imports was
13 going to have a significant impact on its business?

A

14 MR. MAHER: Under advisement.

15 MR. TRIVISONNO: Did it make clear that this was
16 particularly so in a small industry?

A

17 MR. MAHER: Under advisement.

18 MR. TRIVISONNO: Did Mr. Band or anyone else in
19 the meeting express their gratitude to Ronsco for
20 providing such a detailed description of their business?

A

21 MR. MAHER: Under advisement.

22 MR. TRIVISONNO: Did anyone from the government
23 side emphasize the fact that because Ronsco was a
24 Canadian business, they were happy to get these details
25 from them?

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1 MR. MAHER: Under advisement.

A

2 MR. TRIVISONNO: Did Mr. Band refer to Sumitomo
3 at all during the meeting?

4 MR. MAHER: Under advisement.

A

5 MR. TRIVISONNO: Did anyone else at the meeting
6 ever refer to Sumitomo?

7 MR. MAHER: Under advisement.

A

8 MR. TRIVISONNO: Did Mr. Band refer to Ronsco in
9 the meeting?

10 MR. MAHER: Under advisement.

A

11 MR. TRIVISONNO: Did anyone else from the
12 government side refer to Ronsco during the meeting?

13 MR. MAHER: Under advisement.

A

14 It's going to be all the same answer, so I think
15 you can list your questions without ---

16 MR. TRIVISONNO: Mr. Maher, I would hope that
17 you would hear my questions, one-by-one.

18 MR. MAHER: Oh, I'm listening, yeah.

19 MR. TRIVISONNO: Did Mr. Band bring a copy of
20 the issue sheet that was drafted for him to the meeting?

21 MR. MAHER: Maybe she has some information on
22 your question, so ---

23 BY MR. TRIVISONNO:

24 239. Q. Ms. Bartlett, do you know if he brought a
25 copy of the issue sheet to the meeting?

1 A. I know that there was a package prepared.
2 The issue sheet was prepared for him to bring to the
3 meeting; I cannot confirm if he physically brought it
4 with him to the meeting.

5 MR. TRIVISONNO: I would like an undertaking to
6 produce all documents that Mr. Band brought with him to
7 the meeting.

8 MR. MAHER: Under advisement.

9 We will do best efforts.

U

10 MR. TRIVISONNO: And I would like that same
11 undertaking, to produce all documents that the other
12 government attendees brought to the meeting.

13 MR. MAHER: We will make best efforts on that.

U

14 MR. TRIVISONNO: Now I am going back to my
15 category of undertakings in which I want you to ask each
16 of these witnesses separately for their recollections.

17 Did Mr. Band refer at all to an advance ruling
18 for tariff classification during the meeting?

19 MR. MAHER: Do you want the witness to answer
20 first?

21 MR. TRIVISONNO: If Ms. Bartlett knows. She
22 wasn't at the meeting.

23 MR. MAHER: Yes, but she was briefed on it, and
24 she prepared some people for the meeting, so maybe she
25 knows.

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1 THE WITNESS: Unfortunately, I don't know, but
2 Mr. Band didn't brief me on that specifically after the
3 fact.

4 MR. TRIVISONNO: Understood, thank you.

5 At any point during the meeting did Mr. Band
6 realize that he was meeting with Ronsco and not
7 Sumitomo?

8 MR. MAHER: Yes, we will take that under
9 advisement.

A

10 MR. TRIVISONNO: And, similarly, for the other
11 government representatives at the meeting?

12 MR. MAHER: Yes.

A

13 MR. TRIVISONNO: And for each of them I would
14 like to know when they realized that they were meeting
15 with Ronsco, and what it was that tipped them off to the
16 fact that they were meeting with Ronsco and not
17 Sumitomo.

18 MR. MAHER: Under advisement.

A

19 MR. TRIVISONNO: During the meeting, did Mr.
20 Band refer to the \$484,518 in duties owing by Ronsco for
21 the five samples that were the subject of the
22 verification?

23 MR. MAHER: Under advisement.

A

24 MR. TRIVISONNO: Again, I would like that from
25 all of the attendees.

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1 MR. MAHER: Yes.

A

2 MR. TRIVISONNO: Thank you.

3 Did anyone from CBSA or the minister's office
4 take notes during the meeting?

5 MR. MAHER: Under advisement.

A

6 MR. TRIVISONNO: And I would like you to produce
7 those notes.

8 MR. MAHER: Yes.

9 BY MR. TRIVISONNO:

10 240. Q. Are there any internal policies or
11 directives or other documents that require CBSA
12 officials to take notes of meetings when they are
13 speaking to importers?

14 A. I am unaware of any processes or procedures
15 or requirements to that effect.

16 MR. TRIVISONNO: Mr. Maher, I would like to know
17 if there are any.

18 MR. MAHER: Yes, okay.

U

19 MR. TRIVISONNO: Thank you for the undertaking.

20 And I would like production of them, if there
21 are any.

22 MR. MAHER: We will take that under advisement.

23 MR. TRIVISONNO: I have a number of other
24 questions ---

25 MR. JOHNSTON: I'm sorry, could I get

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1 clarification on your last request? Is it for any
2 policies regarding notetaking in meetings with
3 importers? Your last request for an undertaking was for
4 any policies regarding notetaking in meetings with
5 importers?

6 MR. TRIVISONNO: Yes.

7 MR. JOHNSTON: I think we can make best efforts
8 to provide that.

U

9 MR. MAHER: Yes, okay.

10 MR. TRIVISONNO: I still have a number of
11 questions related to the meeting, but I realize that we
12 are at 12:35, and I think that, for everyone's sake, we
13 should take lunch now.

14 (LUNCHEON ADJOURNMENT)

15 MR. TRIVISONNO: Before the lunch break we were
16 talking about what did or did not happen at the meeting
17 on June 26th between Ronsco, Mr. Band and a few other
18 government officials. I had asked for a number of
19 undertakings, and one of them was about whether Mr. Band
20 referred to the \$484,518 in duties owing by Ronsco for
21 the five samples. If Mr. Band did mention that, I would
22 like to know why.

23 MR. MAHER: Okay. We will take that under
24 advisement.

A

25 BY MR. TRIVISONNO:

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1 241. Q. So, what you do understand about the meeting
2 is that Mr. Band told Ronsco that it wouldn't be
3 required to correct transactions going back the last
4 four years and pay retroactive duties. Correct?

5 A. Correct.

6 242. Q. It was told that it would only have to pay
7 duties going forward. Is that right?

8 A. Correct.

9 243. Q. And what did Mr. Band mean when he said
10 going forward?

11 A. I can't speak for Mr. Band, but I can speak
12 for what I wrote in the issue sheet, which would have
13 been, from the date of the decision, the advance ruling,
14 as explained in the issue sheet, being from the
15 effective date going forward in importations.

16 MR. TRIVISONNO: Thank you for that.

17 I would like Mr. Band's evidence as to what he
18 meant when he said going forward.

19 MR. MAHER: Yes, we will take that under
20 advisement.

A

21 MR. TRIVISONNO: And, obviously, if those
22 weren't his specific words, then -- you know what I
23 mean, the general sense of going forward?

24 MR. MAHER: Yes.

25 MR. TRIVISONNO: Can I ask, when we are talking

1 about Mr. Band's evidence at this pivotal meeting, why
2 are you taking these under advisement?

3 MR. MAHER: Because we want to make sure that
4 it's relevant and it is within the realm of what we can
5 produce.

6 MR. TRIVISONNO: Okay, thank you.

7 244. Q. Did Mr. Band represent that the decision to
8 not impose retroactive duties and only impose duties
9 going forward was within his authority?

10 A. Sorry; I'm not sure I understand what you
11 mean.

12 245. Q. We just talked about the representation he
13 made that duties were only going to be charged going
14 forward. Did he say anything about whether or not that
15 decision was within his authority?

16 A. I can't say if he said it in the meeting.
17 I'm not sure if he would have said that in the meeting.

18 MR. TRIVISONNO: So, Mr. Maher, I would just
19 like to know whether he mentioned that it was within his
20 authority.

21 MR. MAHER: To....?

22 MR. TRIVISONNO: To only charge duties going
23 forward and not retroactive duties.

24 MR. MAHER: Okay. So, if he specifically said
25 that within his authority?

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1 MR. TRIVISONNO: Well, if he spoke to his
2 authority in the context of that action.

3 MR. MAHER: Okay.

4 BY MR. TRIVISONNO:

5 246. Q. And can you tell me, was that within Mr.
6 Band's authority?

7 A. I was just thinking about the delegated
8 authorities and I can't, off the top of my head, without
9 seeing the -- I can't remember off the top of my head
10 where the delegated authorities are for the issuance of
11 a verification.

12 247. Q. What would you need to see?

13 A. It's called "The Delegation of Authorities".
14 I'm not sure if it's a public document or not.

15 MR. TRIVISONNO: Mr. Maher, do you have that
16 document here today?

17 MR. MAHER: No. It's the first time I hear
18 about it.

19 MR. TRIVISONNO: I would like a copy of the
20 document, and I would like to understand: Did Mr. Band
21 have the authority to decide what the reassessment
22 period would be for Ronsco and only charge duties going
23 forward.

24 MR. MAHER: Okay. We will take that under
25 advisement.

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1 BY MR. TRIVISONNO:

2 248. Q. Did Mr. Band discuss the wording of Tariff
3 .21 with Ronsco?

4 A. I am unaware if he discussed it at the
5 meeting with them.

6 MR. MAHER: Sorry; just for clarity -- that is
7 your answer, that's fine. Maybe it would be helpful --
8 and if it's not, let me know, but what you were briefed,
9 also, on the meeting. What you were told.

10 MR. TRIVISONNO: I will come to that later. I
11 will ask my specific questions, and then we can get the
12 undertakings if necessary, and then I will, absolutely,
13 ask you about the briefing you received.

14 I would like an undertaking -- and this goes
15 back to the category of undertakings where you are
16 asking all of the relevant witnesses who are within
17 government who attended that meeting for their separate
18 understandings.

19 Did Mr. Band discuss the wording of Tariff .21?

20 MR. MAHER: Okay. Under advisement.

A

21 MR. TRIVISONNO: Did he say anything to the
22 effect that the wording was confusing or outdated?

23 MR. MAHER: Yes, the same answer, under
24 advisement.

A

25 MR. TRIVISONNO: Did he refer to an Auditor

1 General of Canada's report from Spring 2017 concerning
2 the CBSA, which noted the need for Canada's tariff items
3 to be reviewed and updated?

4 MR. MAHER: Okay. Under advisement.

A

5 BY MR. TRIVISONNO:

6 249. Q. Are you aware of that Auditor General's
7 report?

8 A. Vaguely. It transpired while I was away on
9 maternity leave.

10 250. Q. Was it something that was talked about in
11 the Trade Policy Unit?

12 A. I can't remember the details, but I do
13 recall the Auditor General's report being -- like, we
14 had outcomes to do with that.

15 251. Q. Did any of those outcomes relate to the
16 tariffs that are at issue in this proceeding?

17 A. Not that I'm aware of. Not specifically.
18 More in the context of just tariffs.

19 Keeping in mind that Finance Canada is
20 responsible for the text; we help administer.

21 MR. TRIVISONNO: I would like an undertaking to
22 produce Doug Band as a witness for examination.

23 MR. MAHER: We will take that under advisement.

A

24 MR. TRIVISONNO: I would like an undertaking to
25 provide, of course, the full particulars of Mr. Band's

1 recollection of the meeting?

2 MR. MAHER: Yeah, under advisement.

A

3 MR. TRIVISONNO: And, of course, the other
4 witnesses from government who attended that meeting, I
5 would also like their full particulars in terms of their
6 recollection of the meeting.

7 MR. MAHER: Okay. Under advisement.

A

8 BY MR. TRIVISONNO:

9 252. Q. Let's look at Tab 12 of the Defendant's
10 Affidavit of Documents. This is an email dated Tuesday,
11 June 26th, at the top, from Lauren Nault. We have
12 looked at this chain before, but I now want to look at
13 some of the emails that come after the meeting.

14 Ms. Blanchard says in the 2:05 p.m. email:
15 "Further to the meeting, PO..."

16 Is that "President's Office"?

17 A. Usually, yes.

18 253. Q. "...requests an update note. Please provide
19 VPO..."

20 Which would be "Vice-President's Office"?

21 A. Correct.

22 254. Q. "...with a new note by 9:30 tomorrow."

23 In this email Ms. Blanchard is asking for a new
24 version of that issue sheet subsequent to the meeting.

25 Correct?

1 A. Apparently, yes.

2 255. Q. But you became aware of a request for a
3 revised issue sheet subsequent to the meeting?

4 A. Not that I recall, no, actually.

5 256. Q. Okay. I might be able to refresh your
6 recollection, but we can get there in a minute.

7 You will see in the next email ---

8 Actually, let's go to the top, the email from
9 Ms. Nault to Ms. Johnston at 7:42 p.m. It says: "He
10 says to just send what Yannick prepared this morning.
11 He doesn't want to create a note. I will send now." (As
12 read)

13 I understand the "He" there to be referring to
14 Doug Band, given the full context of the email.

15 A. I would say the same.

16 257. Q. Is Ms. Nault his administrative assistant?

17 A. One of, yes.

18 258. Q. "He doesn't want to create a new note. I
19 will send now." (As read)

20 I guess I would like to know why Mr. Band didn't
21 want to create a new note following the meeting.

22 MR. MAHER: Okay. You don't know?

23 THE WITNESS: I don't.

24 MR. MAHER: Yes, we will take that under
25 advisement.

1 BY MR. TRIVISONNO:

2 259. Q. At this point did Mr. Band believe that he
3 had met with Ronsco or Sumitomo?

4 A. I don't know. At the debrief I don't
5 remember a company name specifically being mentioned, to
6 be honest, just that...

7 260. Q. I am going to ask you about the details of
8 the debrief in just a minute. I have a couple of other
9 questions.

10 I would like to know why Mr. Band didn't want to
11 create a new note.

12 MR. MAHER: I just said under advisement on
13 that.

14 MR. TRIVISONNO: Oh, okay. If that was the
15 under advisement you gave, understood.

16 261. Q. Isn't the reason that Mr. Band did not ask
17 for a new note because he thought the Sumitomo issue
18 sheet equally applied to Ronsco?

19 I would like you to ask Mr. Band that.

20 MR. MAHER: Yeah, it's part of the first under
21 advisement. It's the same question.

22 MR. TRIVISONNO: Well, I am giving a specific
23 reason that I want you to put to him.

24 MR. MAHER: Okay. Under advisement.

25 MR. TRIVISONNO: I would put it to him myself if

A

1 I could.

2 262. Q. Okay. I will ask you about the debrief
3 after the meeting. When did that occur?

4 A. I met briefly with Doug and Yannick, and
5 then Yannick and Doug had a further conversation. There
6 were not a lot of specifics. The meeting met. He said,
7 you know, "I reflected the issue sheet." He said that
8 everything seemed to be fine. There was: Go and
9 finalize the verification report and close off the rest
10 of my advisor duties, which would be just making sure
11 that everything else went according to process, meaning
12 that verification and interim verification reports were
13 issued and the timelines were being respected.

14 There was no flagging at that point to myself,
15 when I was in there. However, what happened with
16 Yannick and Doug afterwards, I'm not really -- like, I
17 wasn't there, so I'm not sure what they ---

18 Yannick would have been the director at the
19 time, with Doug, and I can't remember her coming to me
20 and giving me any further information following that.

21 263. Q. Did he tell you about the meeting?

22 A. Well, Doug didn't get into specifics about
23 the meeting, just that everything went fine, and he
24 didn't seem to be concerned about any outcomes from the
25 meeting; like, any taskings as a result of the meeting,

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1 any work that I needed to complete as a result of the
2 meeting.

3 264. Q. How did you come to understand that he had
4 told Ronsco that CBSA wouldn't be charging retroactive
5 duties?

6 A. In the issue sheet that I wrote, I had
7 written in there, because of the advance ruling, that
8 there would be no retroactive duties.

9 265. Q. Right. But that was an issue sheet about
10 Sumitomo and he attended a meeting with Ronsco.

11 A. I understand that.

12 266. Q. So, no one ever told you -- you never
13 learned from someone who had attended the meeting that
14 those were, in fact, the representations Mr. Band made?

15 A. Sorry?

16 267. Q. You have never been told by someone: Mr.
17 Band said X at the meeting.

18 A. No.

19 268. Q. Okay. You are just kind of surmising
20 because that was the advice that was provided in the
21 issue sheet.

22 A. Right.

23 269. Q. When did the debrief occur?

24 A. Probably the following -- within the
25 following couple of days.

1 270. Q. Following the June 26th meeting.

2 A. Yes.

3 271. Q. And you had to ensure that the interim
4 report and the final report would be issued?

5 A. Standard protocol, just follow up with the
6 regional offices that everything is to go forward, there
7 are no issues anywhere, nothing to hold up any issuance
8 of anything.

9 272. Q. You weren't told at this point to make any
10 amendments to the final report, or to ask that those
11 amendments be made?

12 A. No.

13 273. Q. Let's turn to Tab 17. This is an email from
14 you on June 27th, and you have attached a document
15 entitled "Final Issue Sheet". So, I take it that you
16 were asked to go back and make some edits to the issue
17 sheet following the meeting?

18 A. Clearly. Sorry, it escaped my memory.

19 274. Q. No, that's understood. Do you remember what
20 those edits were?

21 A. No.

22 275. Q. Well, we have the attachment. Maybe if you
23 took a look through the attachment, which is at Tab 18,
24 you might be able to determine what edits you made from
25 the issue sheet that was prepared for the meeting.

1 A. Right off the bat, I am going to say that I
2 amended that the interim report was sent June 26th,
3 because in the email I confirm with the regional manager
4 that the interim report was sent on June 26th, and was
5 received today, June 27th.

6 276. Q. And just to clarify, that must be referring
7 to the Sumitomo verification report.

8 A. Correct.

9 277. Q. I think, again, under "Current Status", that
10 the interim report was issued on June 26th could have
11 been an amendment.

12 A little bit of an assumption, but the August
13 15, at the end, is likely just if you backtrack the
14 dates that are required. Thirty days for additional
15 information and ten days for the final report.

16 278. Q. So, to the best of your knowledge, the edits
17 were to reflect time moving forward. We are now after
18 June 26.

19 A. Yes. I see, on the other page, again,
20 another June 26 reference.

21 279. Q. Okay. I will take it, then, that there were
22 no substantive issues ---

23 A. I do not see any substantial changes.

24 280. Q. Okay. So, Mr. Band has been in this meeting
25 and he has received a whole presentation about Ronsco,

1 and no one has told you to amend this issue sheet to
2 refer to another company. Is that right?

3 A. Not that I recall, no.

4 281. Q. You tell me, but it sounds like both before
5 and after the meeting there was a breakdown in
6 communication to you as to who CBSA was meeting with at
7 that meeting.

8 A. Yes, correct.

9 282. Q. You were not, in fact, given the information
10 from your superiors necessary to determine that it was
11 actually Ronsco that was going to be at that meeting.

12 A. Correct. I mean, after the meeting nobody
13 came and said, "Kelly, you made a big blunder." It does
14 come up that I made a big blunder, but at this point...

15 283. Q. Well, Ms. Bartlett, I am actually not
16 accusing you of any big blunder here. It seems to me
17 that this is much wider in the organization.

18 But it seems to me, as well, that there was a
19 breakdown in communication before the meeting in
20 communicating to you who, in fact, CBSA was meeting
21 with.

22 MR. MAHER: But this is just assuming that they
23 also knew if it was Ronsco or Sumitomo they were meeting
24 with.

25 MR. TRIVISONNO: Well, they got an email from

1 someone representing Ronsco that clearly talked about
2 Ronsco. I want to know from Ms. Bartlett, representing
3 CBSA today, whether there was a breakdown in
4 communication before the meeting in communicating to her
5 who CBSA was meeting with.

6 THE WITNESS: I think there was a
7 misunderstanding of who CBSA was meeting with, yes.

8 BY MR. TRIVISONNO:

9 284. Q. And did it originate with your superiors?

10 A. Well, the tasking comes from my superiors.

11 The request to make an issue sheet comes from above.

12 285. Q. That's essentially where the mistake arises,
13 then, it's with your superiors, not with you.

14 A. It would appear so, yes.

15 286. Q. You are not sure, then, if that breakdown
16 was with Ms. Mondy. I guess that Mr. Tebbutt would have
17 been on vacation?

18 A. I believe that Mr. Tebbutt was there when it
19 first came down, and then, a couple of days later, he
20 was on holidays. And at the same time, Brad Loynachan,
21 who was the director, also was reassigned and Ms. Mondy
22 came in as the director. So, there were staff changes
23 at the senior level and at my level.

24 287. Q. Among your supervisors, though, you don't
25 know where that breakdown happens.

1 A. I do not.

2 288. Q. Understood. Between June 26, the meeting,
3 and July 24, which was the date of the final report, did
4 your division have any communications with Ronsco?

5 A. I am unaware of senior management. At my
6 level and Grant, the manager level, no.

7 MR. MAHER: Grant Tebbutt?

8 THE WITNESS: Grant Tebbutt level.

9 Well, I would have been acting for Grant at that
10 point, but not the advisor or manager level, no.

11 BY MR. TRIVISONNO:

12 289. Q. Fair enough. And, I guess, at the
13 manager/advisor level, there never were any
14 communications with Ronsco. Correct?

15 A. No.

16 MR. TRIVISONNO: I would like to know, Mr.
17 Maher, whether there were any communications between
18 Ronsco and CBSA between June 26 and July 24.

19 MR. MAHER: Yes, we will make best efforts to
20 see if we have that.

U

21 BY MR. TRIVISONNO:

22 290. Q. Between June 26 and July 24, what was Trade
23 Policy's position on the reassessment period to be
24 imposed on Ronsco?

25 A. I don't remember dates, I just remember

1 discussions around ---

2 291. Q. Sure, and just to set you in time again,
3 this is the time period between the meeting and the
4 issuance of the final report to Ronsco. I just want to
5 know: What was your division's position then on the
6 reassessment period to be imposed.

7 A. I believe that our advice at the time was
8 from the verification period going forward. That was
9 coming out of discussions that were happening, yes.

10 MR. MAHER: But, sorry, just to be clear, you
11 had Ronsco's information in front of you or Sumitomo's,
12 at that point?

13 MR. TRIVISONNO: No, I'm sorry ---

14 MR. MAHER: I think because it's very confusing
15 ---

16 MR. TRIVISONNO: No, Mr. Maher, that is not my
17 question, and I am not going to allow you to ask
18 questions of the witness while I am asking questions.
19 That is an improper way to conduct a discovery.

20 You can ask me to rephrase my questions, and if
21 I think it's appropriate, I certainly will do so. And
22 you can object to my questions, but I am not going to
23 have you re-examine the witness while I examine the
24 witness.

25 Let me continue with my discovery, please.

1 292. Q. Was there any realization between June 26th,
2 the date of the meeting, and July 24th, the final
3 report, that there had been some confusion between
4 Ronsco and Sumitomo?

5 A. I do not recall that there was specific
6 information between the Ronsco and Sumitomo error. I
7 recognized that that happened. When it came to the
8 reassessment policy on the Ronsco case, I recall having
9 discussions that it was the verification period going
10 forward.

11 293. Q. Okay. And we will get to that in a moment,
12 because I believe there is a memo that was authored and
13 there are some references to those discussions. I think
14 that might be, actually, after the final report was
15 issued, but do you think those discussions started
16 happening before the final report was issued?

17 A. My memory seems to think that it happened
18 before the final report was issued.

19 294. Q. Okay. I will take your evidence on that,
20 and if ---

21 Well, I will just leave it at that.

22 What was the catalyst to those discussions?

23 A. I don't remember. I'm sorry, I don't recall
24 specifically what the catalyst was. It was clearly a
25 question coming from someone.

1 295. Q. And who did you speak to? Like, who were
2 those discussions with, from your perspective?

3 A. Typically, I would speak with Verification.
4 So, at the time, Béatrice Dion, Eric Trudel, Yannick
5 probably was part of those discussions, and maybe Alex
6 Lawton. These are all people that I would have
7 communicated with that had a hand in administering the
8 reassessment policy.

9 296. Q. And what was the nature of your discussions?
10 What did you discuss?

11 A. Usually it's around how far back do we go to
12 assess; what kind of information did the importer have
13 as far as reason to believe on the tariff
14 classification. In this instance it would have been
15 tariff classification.

16 Was it -- well, in this case, it was *prima facie*
17 clear and evident -- or was it *prima facie* clear and
18 transparent -- the tariff classification of the good.

19 297. Q. And what was your determination?

20 A. I don't think I rendered a determination on
21 that situation. It wasn't my specific tariff
22 classification responsibility, so I would have been
23 involved in providing advice on: This is how you
24 administer it.

25 I think that Grant probably would have made more

1 of a distinction on whether or not it was clear and
2 evident.

3 298. Q. In those conversations, did Grant or anyone
4 else come to some conclusion as to Reason to Believe?

5 A. I believe that there was a conversation that
6 was questioning whether or not it was clear and evident,
7 and we had discussions about that.

8 299. Q. Right, and what was the determination ---

9 A. I am trying to remember, at the end of the
10 day, what -- I think Grant's advice was that it was
11 potentially not, before speaking with the officer.

12 300. Q. So, Grant's advice was that it is not clear
13 and evident.

14 A. Yes.

15 301. Q. And just to be clear, we are talking about
16 Tariff .21; he determined it's not clear and evident.

17 A. He provided advice. I am not going to say
18 that he determined; I am going to say that he provided
19 advice that he felt it was not clear and evident.

20 302. Q. What was that based on?

21 A. Experience in the tariff. I am not sure I
22 understand what you mean by: What was the based on?

23 303. Q. Well, it seems to me that when you look at a
24 tariff and you ask yourself "Is this clear and evident
25 or not", you are looking at particular language in the

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1 tariff, right?

2 A. Yes.

3 304. Q. What language was determined not to be clear
4 and evident?

5 A. I don't know that specific information.

6 Hammering out what part of it was not clear and evident,
7 I don't recall.

8 305. Q. Is Mr. Tebbutt still ---

9 A. No.

10 306. Q. He is not still employed by CBSA, or the
11 government more broadly?

12 A. No.

13 MR. TRIVISONNO: Mr. Maher, I would still like
14 you to ask Mr. Tebbutt as to his determination prior to
15 the final report -- or, sorry, his advice. That was the
16 witness' word. Why Mr. Tebbutt provided the advice that
17 the tariff was not clear and evident.

18 MR. MAHER: Under advisement. *A*

19 BY MR. TRIVISONNO:

20 307. Q. So, at this point we have Madam Gagné, who,
21 a few months earlier, said that the tariff was clear and
22 evident. Correct?

23 A. Based -- yes.

24 308. Q. In the interim report.

25 A. Yes.

1 309. Q. And then we have Mr. Tebbutt, right before
2 the final report, who is saying that it's not clear and
3 evident. Correct?

4 A. Correct.

5 310. Q. And then we have the final report, which
6 determines that it is clear and evident.

7 A. Correct.

8 Sorry; I just want to clarify. In my statement
9 earlier, I did say before Grant spoke with Lucie. I
10 said before there were any conversations with the
11 officer.

12 Like, there were discussions with the officer on
13 how they felt about it after Grant made that advice
14 internally.

15 311. Q. Okay. Just to understand then; so, Mr.
16 Tebbutt went and spoke to Ms. Gagné, considered her
17 opinion and still provided the advice that the tariff
18 was not clear and evident.

19 A. I don't believe -- I think it's the reverse.
20 He suggested that the tariff was not clear and evident
21 prior to speaking to Ms. Gagné.

22 312. Q. Did he change his opinion after speaking
23 with Ms. Gagné?

24 A. Yes. No. I'm not entirely sure, to be
25 honest. I don't remember us going back after that,

1 specifically between Grant and that.

2 313. Q. How could a tariff be clear and evident if
3 different members of CBSA have different opinions as to
4 whether the tariff is clear and evident?

5 A. I think it depends on the information before
6 the officer and whether or not the goods, as described,
7 do meet that tariff item, based on the evidence before
8 them. So, the description -- I'm not sure that Grant
9 had all of that information before he had those
10 discussions.

11 314. Q. So, then, in the case of Tariff .21,
12 depending on the information in front of a particular
13 CBSA officer, they came to different determinations as
14 to whether the tariff was clear and evident.

15 Let me try that again. The information before
16 those officers affected the way they interpreted the
17 tariff.

18 A. Yes, because if you have, for example, a
19 wheel that is ---

20 If you haven't seen the evidence, so you are
21 just going on verbal conversations, you could say that
22 perhaps this does not look clear and evident. However,
23 once you see the wheel -- for example, in this instance,
24 you have seen the wheel -- you have had more in-depth
25 conversation, you can see that that wheel does not match

1 or does match the description that is provided in the
2 tariff item.

3 315. Q. So, then, presumably, another officer,
4 looking at the tariff without any information in front
5 of them, might come to a different determination as to
6 whether the tariff is clear and evident.

7 A. Or, perhaps different information in front
8 of them.

9 316. Q. I want to talk about someone who has no
10 information in front of them. Someone is approaching
11 the tariff with no information in front of them -- and I
12 am talking about an expert in tariffs, because we are
13 talking about internal CBSA people. They might come to
14 a different determination as to their interpretation of
15 the tariff.

16 MR. MAHER: Sorry; that is speculative,
17 completely. *O*

18 MR. TRIVISONNO: Okay. I would like to get Mr.
19 Tebbutt's latest contact information.

20 MR. MAHER: We will make best efforts. *U*

21 MR. TRIVISONNO: You have his latest contact
22 information somewhere.

23 MR. MAHER: We will make best efforts.

24 MR. JOHNSTON: I think it has been represented
25 that he has retired from the Government of Canada. So,

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1 at that point, I'm not sure what we've got.

2 MR. TRIVISONNO: You will have contact
3 information from when he was employed. I would consider
4 that his latest contact information. I know that you
5 can't pin down, necessarily, where he is now, but I just
6 want your best and latest contact information for him.

7 MR. MAHER: We will make best efforts. *U*

8 BY MR. TRIVISONNO:

9 317. Q. I have one other question, just going back
10 to the Doug Band meeting. Do we know how long that
11 meeting was?

12 A. I know that it was scheduled for 30 minutes,
13 I don't know if they went over that.

14 MR. TRIVISONNO: I would like to know how long
15 the meeting was.

16 MR. MAHER: We will make best efforts. *U*

17 MR. TRIVISONNO: And if it went more than 30
18 minutes, I would like to understand why it went more
19 than 30 minutes.

20 MR. MAHER: Under advisement. *A*

21 MR. TRIVISONNO: I would like you to ask each of
22 the government attendees their view and recollection as
23 to why it went longer than 30 minutes.

24 MR. MAHER: The same response, under advisement. *A*

25 BY MR. TRIVISONNO:

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1 318. Q. Just to situate ourselves in time, the final
2 report was issued on July 24th, 2018, and it concludes
3 that Ronsco had reason to believe when it was importing
4 the duties. Is that right?

5 A. Correct.

6 319. Q. And it requires the payment of retroactive
7 duties. Is that correct?

8 A. Correct.

9 320. Q. And this ran directly contrary to the
10 representations that had been made by Mr. Band at his
11 meeting with Ronsco.

12 A. Correct.

13 321. Q. Internally at the time, what was the view of
14 Trade Policy as to whether Mr. Band's representation
15 should be honoured?

16 MR. MAHER: Sorry; at what time, to be precise?

17 BY MR. TRIVISONNO:

18 322. Q. I am talking about the period after the
19 final report. If there was a point at which your views
20 changed on this, I would like to understand that, as
21 well. But I would just like to understand, was Trade
22 Policy of the view that Mr. Band's representations
23 should be respected and honoured, or we should continue
24 on this course of charging Ronsco the retroactive
25 duties?

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1 A. Based on the legislation, we could not -- I
2 recall that we could not honour Doug Band's statements
3 because it was the wrong file, there was no advance
4 ruling, there was no information that could be used that
5 would, all of a sudden, ignore the legislative
6 provisions of the Act in order to reassess the
7 classification of goods.

8 323. Q. The decision not to amend the final report,
9 whose decision was that?

10 A. I have no idea whose decision it was not to
11 amend. I am not understanding -- not to amend the final
12 verification report?

13 324. Q. Well, there is the final verification report
14 ---

15 A. Yes.

16 325. Q. I guess either the final verification report
17 or the reassessment period. Who makes that final
18 determination: No, we can't change anything?

19 A. The interpretation of the legislation? It's
20 no one person. To the best of my recollection, it was a
21 discussion between the policy -- not Trade Policy,
22 Verification Policy, so the people who administer
23 section 42 of the Act, and the regional office team -- I
24 think the director, the officer and the manager -- make
25 that decision.

1 There are no legislative provisions to say,
2 "Ronsco, you have to honour Doug's comments, based on an
3 advance ruling," when Ronsco was not subject to that
4 advance ruling.

5 326. Q. What legislative provision says you can't
6 honour Mr. Band's representations?

7 MR. MAHER: That's not what she said. She said
8 there were no legislative provisions.

9 MR. TRIVISONNO: Thank you, Mr. Maher. I
10 appreciate that.

11 327. Q. Is there a legislative provision that says
12 that you could not honour Mr. Band's representations?

13 MR. MAHER: Sorry; repeat your question?

14 MR. TRIVISONNO: The witness has brought up the
15 legislative provisions which they were looking at when
16 they were deciding what they could do after the meeting
17 and after the final verification report was issued.

18 328. Q. I want to understand, was there any -- did
19 you look at any legislative provision that you felt
20 precluded Trade Policy from honouring Mr. Band's
21 representations?

22 A. The comments that Mr. Band made were based
23 on the fact that there was an advance ruling, and the
24 regulations provide that you are protected until that
25 ruling is revoked or replaced. Ronsco didn't have that

1 ruling. So, when Mr. Band spoke to that comment, it was
2 with regards to the fact that he, at the time, made the
3 comment about the advance -- like, in his mind and in
4 the materials I had provided -- that the company would
5 be protected by the advance ruling regulations, at which
6 time they don't have to self-correct because they had
7 information from the CBSA on how to collect their goods.

8 Based on the information for Ronsco, there was
9 no such provision. There was no such ability within the
10 legislation to say: Okay, you only start going on this
11 decision date.

12 The reassessment policy outlines the policy that
13 is from the verification period going forward or your
14 earliest reason to believe specific information.

15 So, those would be the reasons why we would have
16 opted to not amend the verification report.

17 329. Q. So, one possible way to adjust the
18 reassessment period would be to make a different
19 determination as to when Ronsco received reason to
20 believe, or had reason to believe. Correct?

21 A. That could have been a possibility. I would
22 have to look into that understanding.

23 330. Q. When did CBSA realize that Mr. Band had used
24 a Sumitomo issue sheet in a meeting with Ronsco?

25 A. I can't remember the date. It was in the

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1 summertime. I know there is information, and I just
2 can't remember the date right now, in front of me. I
3 would have to look at the ---

4 331. Q. I will bring you to a few documents, but
5 maybe you could just tell me how that came to pass.

6 A. I am very, very sorry, I really don't
7 remember. I just remember Yannick coming and speaking
8 to me about -- that it had been found out that there was
9 an error and to just work on fixing it.

10 MR. TRIVISONNO: I would like you to ask the
11 other members of Trade Policy who might have more
12 knowledge, including Ms. Mondy and Mr. Band, how it came
13 to pass that they became aware ---

14 I'm sorry, I muddled that all. Please ask Ms.
15 Mondy, Mr. Band and the other members of Trade Policy
16 who were involved how they became aware that a Sumitomo
17 issue sheet had been used for a meeting with Ronsco.

18 MR. MAHER: Yes, under advisement.

19 MR. TRIVISONNO: And ask them when.

20 MR. MAHER: Okay. How and when they came to
21 realize the confusion?

22 MR. TRIVISONNO: Yes.

23 MR. MAHER: And it's Ms. Mondy and Mr. Band?

24 MR. TRIVISONNO: No, I said Ms. Mondy, Mr. Band
25 and anyone else who was in Trade Policy at the time who

A

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1 had knowledge of that.

2 MR. MAHER: Okay. That's a bit -- anyone who --

3 -

4 MR. TRIVISONNO: Well, I don't know who was
5 involved. I don't know who it was that found out about
6 it. The witness has told me that Ms. Mondy and Mr. Band
7 were the ones who found out about it. But if Mr. Band
8 and Ms. Mondy tell you that it originated somewhere
9 else, for example, then I want you to go and speak to
10 that person.

11 MR. MAHER: Okay. Yes, the same under
12 advisement.

A

13 BY MR. TRIVISONNO:

14 332. Q. And, then, I think after Ms. Mondy came and
15 spoke to you, there was some investigation into how the
16 issue sheet came to be drafted as it was. Is that
17 right?

18 A. Correct.

19 333. Q. So, just to help us situate ourselves in
20 time, I will bring up the Defendant's Affidavit of
21 Documents at Tab 25. You will see that this is August
22 8th, 2018, and you will see that Ms. Mondy is emailing
23 you and Mr. Tebbutt: "We discussed the way forward with
24 Doug, Béatrice and Brad yesterday."

25 Do you know who Béatrice is?

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1 A. Béatrice Dion.

2 334. Q. What is her role?

3 A. She was like the verification manager, the
4 manager of the Verification Unit at Headquarters.

5 335. Q. And when you say Headquarters, what do you
6 mean?

7 A. I mean under Doug Band. Not in the region.
8 Not to be confused with Lucie Gagné in region. Not her
9 manager.

10 336. Q. I understand that. Okay.

11 Then, Brad was in your division. Correct?

12 A. Correct. That's Brad Loynachan.

13 337. Q. And what was his role? Was he a manager?

14 A. He was the outgoing director, Yannick being
15 the incoming director.

16 338. Q. Understood. What was discussed at the
17 meeting between Yannick Mondy, Doug Band, Béatrice Dion
18 and Mr. ---

19 I'm sorry, I don't have Brad's last name.

20 A. Loynachan. You spell it with a "ch".

21 339. Q. What was discussed at that meeting?

22 A. I am not aware of what was discussed at that
23 meeting.

24 340. Q. I would like to know from each of those
25 attendees what was discussed at the meeting.

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1 A. I think you should know that Brad Loynachan
2 is also retired from the government.

3 MR. MAHER: Yes, under advisement. *A*

4 MR. TRIVISONNO: You can certainly speak to Ms.
5 Mondy, Mr. Band and Ms. Dion. And, specifically, I
6 would like to know what way forward were they
7 discussing.

8 MR. MAHER: Okay. Under advisement. *A*

9 BY MR. TRIVISONNO:

10 341. Q. Then, Mr. Tebbutt forwards the email to you
11 and says: "Yannick made a point of stopping by to make
12 certain you knew this is not a blame game. Doug knows
13 that many people, including him I guess, missed the
14 discrepancy as the issue sheet for Ronsco worked its way
15 up with Sumitomo details."

16 You agree with the statement that many people,
17 including Doug, missed the discrepancy?

18 A. Yes.

19 342. Q. Were you involved in the investigation into
20 determining what caused this discrepancy, this mistake?

21 A. Yes.

22 343. Q. What was the determination made?

23 A. At the time we received the functional
24 guidance, we didn't know about Ronsco specifically, the
25 verification that was ongoing about Ronsco. Sumitomo

1 information about the advance ruling, that functional
2 guidance that you had received, was on our awareness,
3 and when the officer who I -- who Grant originally
4 tasked, who I oversaw subsequent to Grant's vacation --
5 drafted it, I believe that he felt it was about that
6 issue because that was the issue that we were aware of
7 at the time. And the confusion started at that point.
8 I did not ---

9 Subsequently, nobody really went back and
10 double-checked on everything; like, went back to the
11 bottom of that email and recognized that it was Ronsco
12 that was requesting the information, not Sumitomo.

13 344. Q. Ms. Mondy mentions a written account about
14 how this discrepancy came to happen. Did you prepare a
15 written account?

16 A. I think with Grant I would have prepared it.
17 Likely Grant probably drafted it, with my input. We
18 often worked in the office side by side.

19 345. Q. Turning to Tab 27, this is an email from Ms.
20 Mondy to Ms. Carruthers, dated August 8th, 2018. Is
21 this the explanation?

22 MR. MAHER: We will take a moment to read it.

23 MR. TRIVISONNO: Of course.

24 MR. MAHER: Take your time and read it.

25 THE WITNESS: That's fairly accurate of my

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1 findings.

2 BY MR. TRIVISONNO:

3 346. Q. Okay. So, you can't tell me, sitting here
4 now, whether you drafted this or not?

5 A. I think I had a conversation. We had a
6 conversation. I think we drafted this all together, at
7 once.

8 347. Q. But this is accurate, to your recollection?

9 A. Yes, it is.

10 348. Q. Is there any part of it that is not
11 accurate?

12 MR. MAHER: Take your time.

13 THE WITNESS: Yes, it appears that Yannick would
14 have sought input from the other two units, the
15 compliance group and then Doug, for their participation.

16 BY MR. TRIVISONNO:

17 349. Q. Do you know why Ronsco is misspelled
18 throughout?

19 A. No.

20 350. Q. Where it says "XX Kelly consulted with," who
21 should be replaced where it says "XX"?

22 A. Likely Béatrice. Usually most things went
23 to her, and then she would filter to her staff. It
24 would have been for Béatrice to fill in who would have
25 been receiving that information.

1 351. Q. No, sorry, what I wanted to understand is,
2 it says, "Kelly consulted with..." Who did you consult
3 with in the compliance division on the issue sheet?

4 A. So, the issue here is that it goes to the
5 manager, the manager sends it to the officer, the
6 officer comes back. So, there was an email -- lack of
7 record at the moment that this was being drafted of who,
8 ultimately, gave me the information. So, I don't
9 remember who it would have been is what I am trying to
10 say.

11 352. Q. Okay. You don't remember who you consulted
12 with in Compliance.

13 A. No.

14 353. Q. Let's turn up Tab 33 of the Defendant's
15 Affidavit of Documents. This is an email from Ms. Mondy
16 to Mr. Band. It's a few days later, the 10th of August,
17 2018: "Here is the revised briefing note. I have
18 revised the considerations reworked by Grant, with a
19 view to further simplify and indicate that the final
20 verification report can be amended in the
21 considerations. Also redacted the reference to the ARB
22 mentioned at the meeting. Please review and confirm if
23 there are any issues."

24 So, at this point, Trade Policy's position was
25 that the final verification report could be amended.

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1 A. Correct.

2 354. Q. You were aware of that at the time?

3 A. That a final verification report could be
4 amended? Correct.

5 355. Q. Well, specifically that the Ronsco final
6 verification report could be amended. Because this
7 clearly refers to Ronsco.

8 A. Yes, I was on that briefing note. Right now
9 I don't remember, but I'm sure I knew that the
10 possibility was there to amend.

11 356. Q. That's not exactly what I'm asking. I'm
12 asking, at the time, were you aware that Trade Policy's
13 position was that the Ronsco verification report could
14 be amended?

15 A. Yes.

16 357. Q. And were you involved in those discussions?

17 A. Yes.

18 358. Q. Let's turn to Tab 34, which is the
19 attachment. Do you know who drafted this memo?

20 A. I believe it was an ongoing effort between
21 Grant and Béatrice.

22 359. Q. I guess the cover email also indicates that
23 Ms. Mondy had made some revisions herself.

24 A. She would have been the director for Grant
25 and myself, so, yes, it goes through her.

1 360. Q. Understood. Were you involved at all in the
2 drafting of this memo?

3 A. Yes.

4 361. Q. Okay. I just want you to read through the
5 first paragraph, the "Issues" section.

6 A. Okay.

7 362. Q. Is that all accurate?

8 A. Correct.

9 363. Q. I would also like you to read through the
10 entirety of the "Background" section and confirm to me
11 whether it is all accurate.

12 A. The only thing I can't confirm is the sample
13 transactions on the first page. I mean, I know it's in
14 the verification and it's easy to confirm, it's just
15 that right now ---

16 MR. MAHER: You said the whole "Background"
17 section?

18 MR. TRIVISONNO: Yes.

19 364. Q. Let's start by -- you have just confirmed to
20 me that the first three paragraphs of the "Background"
21 section ---

22 A. To my knowledge are correct and accurate.

23 365. Q. Other than the one exception you pointed
24 out.

25 A. Yes. I'm sure there were 17 samples, it's

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1 easy to confirm that, but right now I am not going to
2 say -- I would want to look at the verification.

3 366. Q. You said that you sat next to Grant?

4 A. Sometimes, yes.

5 367. Q. You guys worked closely together?

6 A. Yes.

7 368. Q. Did you work closely together on this memo?

8 A. If recollection and memory serves, yes.

9 369. Q. So, you were involved in this memo, you
10 understood its contents?

11 A. Yes.

12 370. Q. In the third paragraph, which begins "In the
13 Ronsco verification", I want to ask you about the last
14 sentence: "It is estimated this could cost the company
15 upwards of \$4 million in duties and taxes owing."

16 Why was that included in the memo?

17 A. It's part of the standard information that
18 we provide to the senior management, president and
19 minister's office, on the impacts.

20 371. Q. Why do you provide information about the
21 impacts?

22 A. It's part of our process. It's just part of
23 the template of information that we provide.

24 372. Q. Is it a relevant consideration when making
25 decisions around the reassessment period?

1 A. No.

2 373. Q. Is it a relevant consideration when making
3 decisions whether or not to amend a final verification
4 report?

5 A. No.

6 374. Q. So, it's included even though it's not
7 relevant.

8 A. It's part of the background information for
9 the president to see the picture. But when making a
10 decision on how far back to go, the duties owing don't
11 typically factor into the tariff classification
12 reassessment period. But it is information that we are
13 to provide, to provide the full picture.

14 In this specific instance, Ronsco did raise it
15 as an issue. So, the president would have ---

16 The information we provide is part of that
17 explanation.

18 375. Q. Okay. I would like you to read through the
19 rest of the "Background" section and confirm to me
20 whether it is accurate or not.

21 A. With the exception of the fifth paragraph,
22 which likely would have been added, maybe, not while I
23 was sitting next to Grant, I do recognize the rest of
24 that information.

25 376. Q. So, the paragraph you have pointed to is the

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1 one describing the June 26 Doug Band meeting.

2 A. Correct. I just can't confirm. All I am
3 saying is that I can't confirm. I don't recall me
4 sitting with Grant and typing this part of it out. I do
5 have a recollection of the other information, yes.

6 MR. TRIVISONNO: I understand that. We have
7 gone through your recollection of that pivotal meeting.

8 Mr. Maher, I would like you to please present
9 Mr. Band with that paragraph, which is the fifth
10 paragraph, describing the June 26th meeting, and I would
11 like his evidence on whether that is accurate.

12 MR. MAHER: Under advisement. *A*

13 MR. TRIVISONNO: If this paragraph is, in fact,
14 accurate, I would like Mr. Band to explain how he could
15 think he was in a meeting with Sumitomo if he has a
16 company in front of him talking to him about how they
17 are going to be put at a significant disadvantage to
18 U.S. competitors and talking about a situation that is
19 clearly specific to Ronsco. How did he still think it
20 was Sumitomo?

21 MR. MAHER: Is it for the witness first?

22 Do you know that?

23 THE WITNESS: No.

24 MR. MAHER: Okay. Under advisement. *A*

25 BY MR. TRIVISONNO:

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1 377. Q. Okay. Let's look at the "Considerations"
2 section.

3 "Upon further review, it has been determined
4 that the proper tariff classification of the goods at
5 issue requires analysis too complex to be considered
6 clear and evident, thereby changing the assumption that
7 Ronsco had reason to believe as to the proper
8 classification of the goods. Given this, Ronsco should
9 not be required to self-correct their classification of
10 the subject goods for up to four years, but rather apply
11 the proper classification only on a go-forward basis."

12 I would like to know what about the tariff was
13 too complex to be considered clear and evident.

14 A. I don't know the specific answer to that.
15 The conversations were, you know: How much more
16 manufacturing does this require? Does this require
17 enough that it would be considered a wheel blank? What
18 about this boring, would that be enough to be for
19 further manufacturing or for use in?

20 Those types of questions were being discussed at
21 the table.

22 378. Q. But you agree with the conclusion that the
23 analysis was too complex to be considered clear and
24 evident?

25 A. At the time this was being drafted, to the

1 best of my knowledge, we had not yet spoken with the
2 regional officer that issued the final verification
3 report. I know that further discussions ensued on what
4 evidence that officer found in this specific case that
5 changed it, that it was determined to keep it as a
6 reason to believe situation.

7 I realize that it's complex to understand.

8 379. Q. Okay. So, you are telling me, then, that
9 there was some specific information available to Ronsco,
10 other than the tariff, which made it such that there was
11 a conclusion that Ronsco had reason to believe?

12 A. Like I say, other than the tariff ---

13 The information that Ronsco had that the wheels
14 that were being imported -- you know, that they aren't
15 for passenger use is very clear and evident.

16 So, at the time that we were talking about this
17 consideration, that information was not in our hands.

18 380. Q. Why were the words "of the tariff", which
19 would have been beside "analysis" -- why were they
20 removed?

21 MR. MAHER: Sorry; where are you?

22 THE WITNESS: Well, it's here, but I don't know
23 where it was removed.

24 BY MR. TRIVISONNO:

25 381. Q. "...analysis of the tariff too complex", and

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1 then the other deletion, "for the provisions", would
2 have gone there.

3 Well, maybe you can tell me. I mean, this is
4 the difficulty. If we had the native version of this
5 file, we would actually understand where the tracked
6 changes were removed from, but without the native
7 version of the file, it's impossible to read this
8 document. It's illegible.

9 MR. MAHER: The native version of the file or of
10 the document?

11 MR. TRIVISONNO: Well, I would like the native
12 version of the document in Word format.

13 MR. MAHER: Under advisement. *A*

14 BY MR. TRIVISONNO:

15 382. Q. I think it would have read: "It has been
16 determined that the proper tariff classification of the
17 goods at issue requires analysis of the tariff too
18 complex for the provisions to be considered clear and
19 evident."

20 MR. MAHER: Are you asking her if she knows if
21 that was the case?

22 THE WITNESS: It's more likely than not, yes.
23 And I will be flat-out honest with you; Grant is a
24 wordsmith, and likely there is nothing other than there
25 are too many words in the sentence, and he felt that it

1 was redundant to make mention of the tariff, because we
2 had already talked about tariff classification, and the
3 provisions are the provisions of the tariff
4 classification.

5 BY MR. TRIVISONNO:

6 383. Q. Okay, got it. So, essentially, those words
7 were removed because it is so clear that what you are
8 talking about is just that the analysis of the tariff
9 itself is too complex.

10 A. Yes ---

11 MR. MAHER: No, that's not what she said.

12 MR. TRIVISONNO: Mr. Maher, that is
13 inappropriate. That is absolutely inappropriate. The
14 witness was providing me with an answer; you cut her off
15 and you signaled to the witness what you wanted her
16 answer to be.

17 MR. MAHER: No, not at all.

18 MR. TRIVISONNO: That is absolutely
19 inappropriate. I am now going to allow the witness to
20 answer my question, and I object to you answering the
21 question, which I am entitled to do under the rules.
22 So, you will not answer this question; the witness is
23 going to answer this question.

O

24 Let me put this question to the witness again.

25 MR. MAHER: I'm sorry, but you rephrased what

1 she said, and before she went on with continuing her
2 answer, I said, "You misworded what she said."

3 So, you were paraphrasing what she said, which I
4 found to be not reflective of what she said. So, that's
5 the only reason why I raised the point.

6 MR. TRIVISONNO: The witness felt differently
7 and she agreed with me. Let's move on.

8 MR. MAHER: I'm sorry, but I feel like you were
9 ---

10 MR. TRIVISONNO: Let's move on. Thank you, Mr.
11 Maher.

12 MR. MAHER: You were not reflecting what she was
13 saying.

14 MR. TRIVISONNO: Thank you, Mr. Maher.

15 MR. MAHER: So, you can rephrase your question
16 and we will see.

17 I'm just responding to your point.

18 BY MR. TRIVISONNO:

19 Q. My understanding is that those words were
20 removed because it was clear that what you were saying
21 here was that it was the analysis of the tariff that was
22 too complex, and it was clear that you were saying that
23 it was the provisions that could not be considered clear
24 and evident.

25 Is that right? Is that what you are telling me?

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1 A. Like I said, Grant is a wordsmith. I am not
2 going to say specifically why, but I can infer that the
3 proper tariff classification of the goods at issue
4 requires analysis too complex to include "of the
5 tariff", as already reflected in the words "tariff
6 classification".

7 Okay? Does that answer it?

8 385. Q. That answers my question. Thank you very
9 much.

10 Then it says: "Given this, Ronsco should not be
11 required to self-correct their classification of the
12 subject goods for up to four years, but rather apply the
13 proper classification only on a go-forward basis."

14 So, the view at this point was that Ronsco
15 should not be required to self-correct going back four
16 years?

17 A. That's what this says, but that's not what -
18 - I don't think that's what the final outcome was, but
19 that's what this says.

20 386. Q. But at the time this memo was drafted, that
21 was yours and Mr. Tebbutt's and Ms. Mondy's view.

22 A. Correct.

23 387. Q. When you say "on a go-forward basis", you
24 mean going forward from the meeting with Mr. Band?

25 A. No, going forward from the verification

1 period.

2 388. Q. The next paragraph talks about what Ronsco
3 can do going forward, or to challenge the tariff
4 classification. The last sentence says: "CBSA Recourse
5 advises that it would review the verification decision
6 based solely on the merits of the tariff classification
7 of which the CBSA is confident."

8 Is it typical for Trade Policy to consult with
9 CBSA Recourse to get, like, an advance determination by
10 them?

11 A. I wouldn't call this a determination. They
12 only asked what ---

13 "... Recourse advises that it would review the
14 verification decision based solely on the merits of the
15 tariff classification of which the CBSA is confident"
16 would have been Trade Policy's position, not Recourse's
17 position. Recourse never makes a judgment before they
18 have an appeal before them.

19 389. Q. Sitting here today, is it still your view
20 that the tariff is too complex to be considered clear
21 and evident?

22 A. Hindsight is always 20/20. No, I don't
23 think that it's too complex. When you break down the
24 tariff into its provisions, it's straightforward.

25 390. Q. But at the time you did?

1 A. At the time of drafting this we did.

2 391. Q. Where it says, "Comment: No options are any
3 longer under consideration," what was that referring to?

4 It's Comment GT1 on the right.

5 A. Yes, and that is Grant Tebbutt, just for
6 your information.

7 392. Q. Yes.

8 A. I have no idea what he is speaking to about
9 "No options are any longer under consideration."

10 After a verification, the only option under
11 consideration is an appeal. There is no verification
12 provision -- I realize we talk about an amendment above,
13 but, generally speaking, Grant would have said that no
14 options are generally considered other than appeals.

15 393. Q. Did you receive legal advice in the drafting
16 of this memo?

17 A. Not that I recall.

18 MR. MAHER: Counsel, portions of this document
19 have been redacted for solicitor-client privilege. The
20 witness has just told me that a lawyer did not advise in
21 the drafting of this memo. I would like to understand
22 on what basis you are asserting solicitor-client
23 privilege.

24 MR. MAHER: Yes, under advisement.

25 MR. TRIVISONNO: And I would like a description

A

1 of the contents of what is redacted which is sufficient
2 for my client to assess whether it is, in fact, a proper
3 claim of privilege.

4 MR. MAHER: Under advisement. *A*

5 BY MR. TRIVISONNO:

6 394. Q. Was Trade Policy -- were you talking about
7 the prospects of litigation at this point?

8 A. The appeals process is always under
9 consideration. It is always stated that if you don't
10 like a tariff classification/origin/valuation decision,
11 your next avenue is section 60, which is Appeals. It's
12 in all of our templates.

13 395. Q. So, I take it that CBSA's view was that that
14 was the litigation that was contemplated at this point?

15 MR. MAHER: Sorry; we are getting into the
16 substance of the ---

17 MR. TRIVISONNO: No, I am not getting into the
18 substance of the advice. I am trying to understand the
19 basis on which you are asserting a litigation privilege
20 claim over ---

21 MR. MAHER: We already said that we are going to
22 take under advisement your request to provide you with
23 our position.

24 MR. TRIVISONNO: Mr. Maher, I am not sure if you
25 were fully listening to me. That was with respect to

1 the redactions for solicitor-client privilege. Now I am
2 asking about the redactions for litigation privilege,
3 and I am having trouble understanding why there would be
4 redactions for litigation privilege at this point in
5 time when the plan is not to impose retroactive duties
6 going back four years.

7 I don't understand what litigation could be
8 contemplated. Ms. Bartlett has helped me understand
9 that a little bit, and I want to understand if CBSA's
10 position is that this is being redacted on the basis of
11 the contemplated appeals process.

12 Can you tell me that?

13 MR. MAHER: So, yeah, we will take that under
14 advise. *

A

15 MR. TRIVISONNO: You are taking it under
16 advise whether to provide me the basis for your
17 objection. Okay, that's interesting.

18 What I would like to understand, as well ---

19 MR. JOHNSTON: Perhaps I could help.

20 MR. TRIVISONNO: Yes, I will take your
21 assistance, Mr. Johnston.

22 MR. JOHNSTON: I think the issue that Mr. Maher
23 is referring to is the -- there is a block for
24 litigation privilege. We need to look into what that
25 information is to understand that it has been properly

1 coded, and that will enable us to respond to the
2 advisement we gave for your request on that point.

3 MR. TRIVISONNO: I appreciate that. Thank you.

4 THE WITNESS: I just want to help with
5 something.

6 BY MR. TRIVISONNO:

7 396. Q. Of course, Ms. Bartlett. Please.

8 A. Even if there were no duties assessed,
9 Ronsco still would have had appeal rights. Because even
10 if they didn't agree with the tariff classification and
11 wanted to ensure that they didn't have to pay going
12 forward, they could still have appeal rights.

13 So, whether or not we were contemplating it, we
14 would still have included that information.

15 MR. TRIVISONNO: That is helpful. Thank you.

16 I would like a description of the contents
17 underneath litigation privilege, as well, sufficient in
18 detail to allow my client to assess whether it's a
19 proper claim or not.

20 MR. MAHER: Okay. Under advisement.

21 MR. TRIVISONNO: I would also like production of
22 the native -- the full document, without the redactions.

23 MR. MAHER: Yes, we already talked about that.

24 MR. TRIVISONNO: Back to the native document, if
25 your basis for not providing it is that you don't want

A

1 to provide the redacted information, please just find a
2 way to redact within the native. I would be happy -- if
3 we are in a situation where you are maintaining the
4 redactions, give me a native version, where you are
5 doing the redactions within the native version.

6 Do you understand what I am asking for?

7 MR. MAHER: Yes. If it contains the same
8 protected information, and if we agree to share it -- if
9 it exists and if we agree to share it, we will do the
10 same as we did here, yeah.

U

11 MR. TRIVISONNO: Well, the native must exist if
12 you have the document.

13 MR. MAHER: Maybe, maybe not.

14 Could we take a little break, maybe?

15 MR. TRIVISONNO: Yes, of course.

16 (SHORT RECESS)

17 MR. TRIVISONNO: Before we move on, I just
18 wanted to ask for Brad Loynachan's last-known contact
19 information.

20 MR. MAHER: Under advisement.

A

21 MR. TRIVISONNO: Thank you very much.

22 397. Q. I want to look at a different version of the
23 memo. As I understood your evidence, it was after you
24 received input from the Quebec office that Trade Policy
25 made a different determination on reason to believe.

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1 A. It wasn't solely Trade Policy's decision, it
2 was a directorate decision.

3 398. Q. What does that mean?

4 A. Doug Band, Béatrice -- all of the parties
5 involved would have made that decision together after
6 receiving the information from Quebec.

7 399. Q. When did they make that decision?

8 A. I don't know. It was shortly around -- I
9 believe it was shortly around the time of the
10 conversation with Ronsco, the verbal telephone call. I
11 feel like it was around those discussions.

12 400. Q. The August 16th phone call.

13 Okay. Why don't we turn to Tab 206, which I
14 believe to be another version of the memo ---

15 MR. MAHER: Tab 206?

16 MR. TRIVISONNO: Yes, Tab 206 of the Defendant's
17 Affidavit of Documents.

18 401. Q. It is a memo titled "Verification Audit of
19 Ronsco Inc." This appears to be another version of the
20 same memo we were just looking at. Is that right?

21 A. Yes.

22 402. Q. If you turn to the last page, under
23 "Considerations" it says: "Upon further review and
24 consultation with the Quebec Regional Office, it has
25 been determined that the proper tariff classification of

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1 the goods at issue requires analysis too complex to be
2 considered clear and evident, thereby changing the
3 assumption that Ronsco had reason to believe as to the
4 proper classification of the goods."

5 So, even after consulting with the Quebec
6 Regional Office, Trade Policy's view was still that the
7 tariff was too complex to be considered clear and
8 evident?

9 A. Yes.

10 403. Q. So, this memo must be after the one we just
11 looked at, right? Because the one we just looked at
12 didn't mention the consultation with the Quebec office.

13 A. Correct. Yes, this would likely have been
14 after.

15 MR. TRIVISONNO: I believe that this is undated
16 in your Affidavit of Documents, so I would like an
17 undertaking to determine the date of this version of the
18 memo.

19 MR. MAHER: Yes, we will make best efforts to
20 determine that.

U

21 MR. TRIVISONNO: I would also like to understand
22 whether it is the final version of the memo.

A

23 MR. MAHER: Under advisement.

24 MR. TRIVISONNO: If there are any subsequent
25 versions, I would like them produced.

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1 MR. MAHER: Under advisement.

A

2 MR. TRIVISONNO: I would like the native version
3 of this document, for the same reason I asked for the
4 native before.

5 MR. MAHER: Under advisement.

A

6 MR. TRIVISONNO: And I would like particulars
7 for the bases of all the litigation and solicitor-client
8 privilege redactions.

9 MR. MAHER: Under advisement.

A

10 MR. TRIVISONNO: As well as a description of its
11 contents sufficient for my client to evaluate whether,
12 in fact, it is a valid claim of privilege.

13 MR. MAHER: Under advisement.

A

14 BY MR. TRIVISONNO:

15 404. Q. After that first version of the memo we
16 looked at, subsequently did you receive any legal advice
17 on this memo?

18 A. Me, personally? No. I believe when this
19 went to Recourse for review, they may have, because they
20 tend to have lawyers more closely associated. But I
21 didn't send this to Legal.

22 405. Q. To the best of your recollection, did anyone
23 else in Trade Policy send this to Legal?

24 A. No.

25 406. Q. It says at the end of the first paragraph,

1 under "Considerations": "Given this, and based on
2 normal practice, Ronsco should not be required to self-
3 correct their classification of the subject goods for up
4 to four years, but rather apply the proper
5 classification for the verification period and onwards."

6 And we saw that in the last memo, and you
7 explained that to me?

8 A. Correct.

9 407. Q. But there is another option listed. It
10 says: "Another option would be to honour the commitment
11 made at the June 26, 2018 meeting and only require
12 Ronsco to apply the correct tariff classification from
13 the date of the final verification report, once
14 modified."

15 Do you see that?

16 A. Yes.

17 408. Q. Why was that option now being considered?

18 A. I really don't know who added it. I
19 remember significant discussions that this was not an
20 option, that we legally could not -- like, based on the
21 legislation for 42 and the likes, that this was not an
22 option. So, I can't say who added it or who wanted to
23 raise it as a potential option.

24 Like, I mean, briefing notes go around to a lot
25 of people, so in the conversations I was involved in at

1 the time, this was not an option.

2 409. Q. Right. And part of those conversations,
3 say, between the director and the director general, you
4 wouldn't be involved in.

5 A. As well as, like, Recourse or other areas
6 like that that I would not have been directly involved
7 in.

8 410. Q. Including conversations, as well, with Ms.
9 Dion's division. Correct?

10 A. Correct, yes.

11 411. Q. I would like to understand; you mentioned
12 discussions about -- or aspects of the legislation that
13 prevented this option. What legislative provisions
14 prevented this option?

15 MR. MAHER: Sorry; you are asking a legal
16 question, a legal conclusion.

O

17 MR. TRIVISONNO: Mr. Maher, I am asking the
18 witness about her recollection of certain conversations,
19 okay?

20 412. Q. In those conversations, what legislative ---

21 MR. MAHER: No, you are asking about legal
22 conclusions.

23 MR. TRIVISONNO: Mr. Maher, I have asked you a
24 number of times not to interrupt me. I wish you would
25 heed my request.

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1 I am going to ask Ms. Bartlett:

2 413. Q. In your conversations, what legislative
3 provisions do you remember being brought up as a bar to
4 this option?

5 A. Section 42 is the legislative authority to
6 issue; 59 is the decision. There are no amendments, per
7 se, in there. Now, the details -- other officers, but
8 those are the two areas where I was reading.

9 414. Q. Let's turn to Tab 48 of the Defendant's
10 Affidavit of Documents, please.

11 This is an August 10th, 2018 email chain
12 involving Ms. Mondy, Mr. Band, Mr. Tebbutt, Mr. Trudel
13 and Mr. Martin Lalonde.

14 I actually want to go to an earlier email in the
15 chain, which begins at the bottom of the first page. I
16 want to look at the email from Mr. Clifford to Mr. Band
17 at 11:27 a.m., and the email continues on the second
18 page.

19 You will see that what he is forwarding is a
20 note from the Quebec office. Is that right?

21 A. Correct.

22 415. Q. So, Mr. Smida was in the Quebec office.

23 A. Correct.

24 416. Q. In this email, I understand Mr. Smida to be
25 providing the Quebec office's analysis as to why they

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1 made a conclusion on reason to believe. Is that right?

2 MR. MAHER: Sorry; can we just take a moment to
3 let her read it?

4 MR. TRIVISONNO: Absolutely. Of course.

5 THE WITNESS: Okay.

6 BY MR. TRIVISONNO:

7 417. Q. Let me ask my question again, because I am
8 going to put it a little bit differently.

9 At this point in time, the reason that Trade
10 Policy was in contact with the Quebec office was to get
11 the Quebec office's view on reason to believe and how
12 they came to that determination. Correct?

13 A. Correct.

14 418. Q. Mr. Smida's email doesn't really answer that
15 question, does it?

16 A. Well, it says that the information ---

17 So, roughly translating the French into English
18 here -- so, she is saying that there wasn't ---

19 419. Q. We don't need to translate, we can just read
20 the French version. That's fine for me.

21 A. Okay. Perfect.

22 So, she is clearly indicating why she felt that
23 they should have had reason to believe, because they
24 weren't able to provide the information to state that
25 these goods met the terms of the tariff item.

1 420. Q. I am not sure that that has anything to do
2 with reason to believe when you are talking about
3 whether or not the tariff is clear and evident. It
4 seems to me that this is a separate question from reason
5 to believe.

6 A. So, part of the tariff item is a "for use
7 in" provision. She is stating that the importer didn't
8 provide evidence that they were used in that manner;
9 therefore, they should have known that it didn't meet
10 the terms of the "for use in".

11 421. Q. Let's turn to the next page. I want to go
12 to Mr. Tebbutt's email to Ms. Mondy at 11:35 a.m.

13 A. That's the one at the bottom?

14 422. Q. Yes. His view was that Néjib's comments
15 didn't really address why it was decided there was
16 reason to believe.

17 I mean, don't you agree with Mr. Tebbutt that
18 that email doesn't address reason to believe, it
19 addresses whether or not the importer provided
20 sufficient information?

21 A. It could be read that way, I agree.

22 423. Q. Then Mr. Tebbutt says: "As I said in the
23 meeting, ultimately we are responsible for Reason to
24 Believe policy and the final decision would be ours."

25 Do you agree with the statement that Trade

1 Policy is ultimately responsible for Reason to Believe
2 and that the final decision rests with Trade Policy?

3 A. That's a challenging question, based on what
4 Grant used to provide as advice and -- Trade Policy used
5 to provide advice on Reason to Believe, or provides
6 advice on Reason to Believe. I mean, Grant felt that he
7 was responsible for RTB at the time.

8 424. Q. The folks in the Quebec Regional Office
9 don't focus on Reason to Believe policy, do they?

10 A. Not the policy; they are responsible for the
11 administration. They are responsible for administering
12 and verification and advance rulings, and the
13 operational component.

14 425. Q. They aren't experts in Reason to Believe
15 policy the way the Trade Policy Division is.

16 A. I wouldn't agree with that statement
17 specifically. They do administer, every day, in every
18 decision they make. The intricacies of policy
19 administration are held at Headquarters.

20 426. Q. But as we saw earlier, when those questions
21 get more complex, they turn around and ask Trade Policy
22 for an answer, don't they?

23 A. Correct.

24 427. Q. Ms. Mondy then says: "Great. Can you write
25 back to Kurtis and Néjib to say that while the

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1 classification is correct, i.e., person did their job
2 well, the Reason to Believe is not established with your
3 rationale."

4 Why did Ms. Mondy want to go back to Quebec just
5 to let them know Trade Policy's finding on Reason to
6 Believe?

7 A. It's part of the process. If they came to
8 us, we should be responding. They provided a rationale
9 and Grant is disagreeing with it, and we need to explain
10 to them why we disagree with their outcome.

11 428. Q. The outcome of that is that memo we were
12 looking at, at Tab 206, just a minute ago, that
13 references having consulted with the Quebec office.
14 Correct?

15 A. Correct.

16 429. Q. In Grant's 11:35 a.m. email, just going back
17 to that, he refers to a meeting. What meeting is he
18 referring to?

19 A. Unfortunately, I don't remember the meeting.
20 Likely a meeting with Yannick and himself, discussing.
21 Yannick was very new to the CBSA, and they were likely
22 talking about, sort of, brand or RTB, the background
23 issues and how this would come to be.

24 MR. TRIVISONNO: Okay, thank you.

25 Mr. Maher, I would like Ms. Mondy's recollection

of when this meeting occurred, and particulars as to what was discussed at the meeting.

3 MR. MAHER: Under advisement.

4 BY MR. TRIVISONNO:

5 430. Q. Let's look back to Tab 45 of the Defendant's
6 Affidavit of Documents. I want to look at one email
7 here. It's the second email down. This is later that
8 afternoon, about an hour later.

12 So, is that right, the Quebec office was fine
13 with changing the final report to reflect that there was
14 no Reason to Believe?

15 A. I'm not the one that spoke with Néjib, Grant
16 did. I mean, if Grant wrote it down, it's likely, at
17 the time, that Néjib, maybe, agreed to that. However,
18 it's not the officer, it is Néjib that agreed with it.

19 431. Q. Okay. But the Quebec office at that point
20 was fine with changing the final report?

A. Apparently, yes.

22 432. Q. Let's go to Tab 75. I want to look at the
23 earliest email, the last one in page ordering. It's an
24 August 13th, 2018 email from Ms. Calixte Burnett to
25 Richard Mahoney.

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1 Just for your understanding, Mr. Mahoney was a
2 lawyer representing Ronsco at the time.

3 Ms. Burnett says: "Regrettably, we will have to
4 move our discussion scheduled for this afternoon to
5 later this week. Would you be available Thursday, at
6 11:45 to 12:00, or Friday from 11:45 to 12:00 for the
7 call?"

8 So, based on this, I understand that there was a
9 meeting scheduled between -- or a call scheduled between
10 Ronsco and CBSA for August 13th?

11 A. At least with Mr. Mahoney.

12 I just want to make a record correction. It's
13 Mr. Calixte Burnett. I know that it's really hard to
14 tell.

15 433. Q. My apologies for that, and I thank you for
16 the assistance. I do appreciate that.

17 A. Yeah, I mean, I don't know if Doug would
18 have recognized that it was Ronsco, or the lawyer, but
19 he clearly understands that he is meeting with Mr.
20 Mahoney.

21 434. Q. What I want to understand -- and I don't
22 think this is a question for the witness, I think this
23 is probably a question for Mr. Band. Why was that call
24 on August 13th cancelled?

25 MR. MAHER: Under advisement.

A

1 MR. TRIVISONNO: Because at this point, based on
2 the witness' evidence and all the documents we have been
3 looking at, CBSA was going to amend the final
4 verification report. And what I want to understand from
5 Mr. Band, in particular, was the reason that this
6 meeting was postponed. Was it because there was a last-
7 minute about-face, a change in direction that CBSA was
8 dealing with?

9 MR. MAHER: Under advisement.

A

10 And maybe you could ask the witness.

11 BY MR. TRIVISONNO:

12 435. Q. Do you know?

13 A. I do not know.

14 436. Q. Thank you.

15 A. I know that DG's schedules change like *that*.

16 I am aware of that though.

17 437. Q. I take it that Mr. Band approved the
18 findings in that memo that concluded Ronsco did not have
19 reason to believe?

20 A. I am not sure if the memo was ever actually
21 finalized. I don't recall off the top of my head, so I
22 can't say if he actually approved that part of the memo
23 at that time.

24 438. Q. Did he need approval from the vice-president
25 in order to amend the final verification report?

1 A. I believe it was requested that this go up
2 to at least the VP, for awareness, consideration and
3 approval.

4 439. Q. And did it go to the VP?

5 A. I can't confirm that. I think it did.

6 440. Q. Thank you. Did it need to go to the
7 president?

8 A. Ultimately, I don't think it did need to go

9 ---

10 I don't think it went to the president
11 ultimately. I know that it was written, it says, for
12 the president, but once things get higher up, sometimes
13 the direction changes.

14 MR. TRIVISONNO: Mr. Maher, I would like to
15 understand if Mr. Band approved of the memo at Tab 206
16 of the Defendant's Affidavit of Documents.

17 MR. MAHER: Okay. Under advisement. *A*

18 MR. TRIVISONNO: I would like to understand
19 whether the memo was provided to the vice-president.

20 MR. MAHER: Yes, under advisement. *A*

21 MR. TRIVISONNO: I would like to understand
22 whether the vice-president approved the memo.

23 MR. MAHER: Yes, under advisement. *A*

24 MR. TRIVISONNO: And I would like to understand
25 if the memo went to the president.

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1 MR. MAHER: Okay. Under advisement.

A

2 MR. TRIVISONNO: And I would like to know if the
3 president approved the memo.

4 MR. MAHER: Yes, under advisement.

A

5 MR. TRIVISONNO: And I would like copies of the
6 signed and approved version of the document.

7 MR. MAHER: Under advisement.

A

8 BY MR. TRIVISONNO:

9 441. Q. So, we have this memo of August 8th or
10 August 10th, 2018. Then there is ---

11 MR. MAHER: I'm sorry, I think the memo is
12 undated?

13 MR. TRIVISONNO: Yes, it seems to be around
14 August 8th or August 10th, because we have been looking
15 at communications related to approval from the Quebec
16 office dated August 10th, and then the earlier version
17 of the memo was dated August 8th. So, we know that that
18 version of the memo would be in or around those dates.

19 MR. MAHER: Okay. But it's undated, just for
20 clarity of the record.

21 MR. TRIVISONNO: Okay, great. Thank you very
22 much for that, Mr. Maher.

23 442. Q. Between that time and August 16th, when Mr.
24 Band speaks to Ronsco's representatives again, something
25 changes in CBSA, right? There is a complete about-face

1 on this position, where CBSA decides not to amend the
2 final verification report. How did that come to pass?

3 A. To be completely honest, I'm not sure how
4 that came to pass. I realize that it's frustrating, but
5 I'm...

6 MR. TRIVISONNO: My frustration is certainly not
7 with the witness.

8 Mr. Maher, on every single one of the pivotal
9 issues that I have asked about today, the witness has
10 tried her best to be of assistance, and I certainly
11 appreciate her time and effort, but she just isn't the
12 right person to be put forward. She is not the
13 appropriate representative and I am reinforcing my
14 objection.

O

15 We will leave it at that and we will have an
16 argument another day.

17 MR. MAHER: Okay. So, are you adjourning this
18 to bring a motion, or you are just continuing on ---

19 MR. TRIVISONNO: No, I am going to continue
20 asking questions of the witness. I am going to use my
21 time, and we will go from there.

22 MR. JOHNSTON: I think the issue is that we have
23 put forward a Crown representative, as we are entitled
24 to do under the rules. You are entitled to examine one
25 Crown representative.

1 So, you have now had a chance to ask questions
2 to become familiar with our representative's knowledge
3 and involvement. If at this point your position remains
4 that she is not the appropriate Crown representative,
5 the appropriate step would be to adjourn the examination
6 and bring a motion on that issue.

7 I think what we want to avoid is the situation
8 where you examine our Crown representative, we impose on
9 her time to be here to be examined, and then you bring a
10 motion to examine another Crown representative, which
11 you are not entitled to do under the rules.

12 So, I would like to know which route you are
13 going to take at this point.

14 MR. TRIVISONNO: Mr. Johnston, the situation I
15 want to avoid is that the remainder of my questions end
16 up being questions about issues that your other
17 representative can't answer. So, let me finish my
18 questions -- and that is what I am going to do -- of the
19 witness today, and then we will determine whether a
20 motion is necessary.

21 I am just reinforcing my objection so that
22 everyone is clear on it and no one thinks that I am
23 accepting that this witness has appropriate and
24 sufficient knowledge.

25 Okay. I am going to ask for an undertaking. I

1 would like to understand how the decision was made not
2 to amend the final verification report after the Trade
3 Policy Division had clearly set out its position that
4 Ronsco did not have reason to believe.

5 MR. MAHER: Okay. Under advisement. *A*

6 MR. BAXTER: Madam Reporter, off the record
7 please.

8 (SHORT RECESS)

9 MR. TRIVISONNO: We were just taking a minute to
10 consider the remainder of our questions today. We want
11 to make sure that we are using our time efficiently,
12 considering that we have set aside a day and a half for
13 each party's examinations.

14 I am going to ask a few more questions, and I am
15 going to ask some questions about general areas, to
16 assess whether this witness has knowledge, and we will
17 go from there.

18 443. Q. Tab 75 of the Defendant's Affidavit of
19 Documents. These are emails between Mr. Mahoney and Mr.
20 Band coming out of the call between Mr. Band and Mr.
21 Mahoney on August 16th. Do you have any knowledge of
22 what was discussed on that phone call?

23 A. No.

24 MR. TRIVISONNO: I would like an undertaking for
25 Mr. Band's full particulars of that conversation.

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1 MR. MAHER: Yes, we will provide best efforts to
2 give that.

U

3 And, you know, I have given a lot of under
4 advisements, but I am pretty sure that a lot of those we
5 will be able to answer -- make best efforts to answer
6 them.

7 MR. TRIVISONNO: Well, they are refusals today,
8 Mr. Maher.

9 MR. MAHER: But I am just précising that for
10 you. Maybe it's useful, but...

11 MR. TRIVISONNO: No, that's not helpful,
12 actually.

13 444. Q. In Mr. Band's 12:58 email he says: "I have
14 concluded the review of my material and am satisfied
15 that the tariff classification reflected in the final
16 audit report is the appropriate one."

17 Do you know what Mr. Band reviewed?

18 A. To the best of my knowledge, a package was
19 sent, and Doug -- and the verification people reviewed
20 it.

21 I didn't review the documentation. I recall a
22 discussion around Béatrice's shop reviewing the
23 information.

24 445. Q. So, you weren't involved in that review. Do
25 you know on what basis there was a determination that

1 the tariff classification in the final report was the
2 appropriate one?

3 A. No.

4 446. Q. Do you know what steps Mr. Band took to
5 review the material?

6 A. I know that he conferred with the
7 Verification Unit, and that's the extent of what I know
8 about the inference on that.

9 MR. TRIVISONNO: I would like an undertaking to
10 ask Mr. Band what material is being referred to in his
11 email, on what basis he was satisfied that the tariff
12 classification reflected in the final report was the
13 appropriate one, and what steps he took in that
14 analysis.

15 MR. MAHER: Yes, we will make best efforts to
16 provide that to you.

U

17 MR. TRIVISONNO: I think this is subsumed under
18 an under advisement that you gave us previously, but I
19 would like, specifically from Mr. Band, his
20 understanding of how the decision was made leading up to
21 August 16th that Ronsco did, in fact, have reason to
22 believe at the time of import -- what the basis for the
23 decision was; what analysis went into the decision.

24 MR. MAHER: Okay. I think we have already
25 covered that, but...

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1 MR. TRIVISONNO: I asked for it generally
2 speaking, but I want it specifically from Mr. Band.

3 MR. MAHER: Okay. We will provide best efforts
4 with that.

U

5 BY MR. TRIVISONNO:

6 447. Q. Turning to Tab 49 of the Defendant's
7 Affidavit of Documents, this is a chain between Ms.
8 Mondy, Mr. Tebbutt and you, Ms. Bartlett, at the top,
9 but I want to go a little bit further down in the email
10 chain.

11 I would like as an undertaking the bases for all
12 of the solicitor-client privilege redactions.

13 MR. MAHER: Okay. For the three there?

U

14 MR. TRIVISONNO: Yes.

15 MR. MAHER: Okay.

16 MR. TRIVISONNO: And I would like a description
17 of the underlying contents that is sufficient for my
18 client to assess whether, in fact, it is privileged.

19 MR. MAHER: Yes, under advisement.

A

20 BY MR. TRIVISONNO:

21 448. Q. Stephen Fryer, is he a lawyer?

22 A. No, Director of Recourse. At that time he
23 was the Director of Recourse.

24 449. Q. Is Stephen Fryer a trained lawyer?

25 A. I don't know.

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1 MR. TRIVISONNO: Mr. Maher, is Stephen Fryer a
2 trained lawyer?

3 MR. MAHER: I don't know.

4 MR. TRIVISONNO: Well, why is this email
5 redacted?

6 MR. MAHER: Because there are other lawyers in
7 the email.

8 MR. TRIVISONNO: Those other lawyers don't
9 provide any legal advice in this chain. My
10 understanding from reading this email chain is that the
11 reason there were portions redacted was because Stephen
12 Fryer was the lawyer. That's the only interpretation I
13 can see here. No other lawyer provides legal advice in
14 this chain.

15 The only redactions are of emails from Stephen
16 Fryer and Yannick Mondy, neither of whom are lawyers.

17 MR. MAHER: Okay. So, do you have a request
18 regarding that?

19 MR. TRIVISONNO: I would like the entire email
20 unredacted.

21 MR. MAHER: Okay. We will review our redactions
22 and take that under advisement.

A

23 BY MR. TRIVISONNO:

24 450. Q. In the email dated August 13th -- this is
25 only three days before the August 16th meeting -- Mr.

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1 Trudel ---

2 Mr. Trudel is in which office?

3 A. Verification. So, with Béatrice Dion.

4 451. Q. In Quebec?

5 A. No, he's at Headquarters.

6 452. Q. At Headquarters.

7 A. Yes.

8 453. Q. Okay. But that Quebec office is also
9 Verification?

10 A. Yes, operational.

11 454. Q. And Headquarters oversees them?

12 A. Yes.

13 455. Q. Understood.

14 Mr. Trudel says: "On Friday, as we were
15 assessing the impact of our conclusion that Ronsco..."

16 A. Hang on. Where did you go? Mr. Trudel, "On
17 Friday..."

18 456. Q. Yes, it's on the second page of the same
19 email.

20 A. I see "Hi, Stephen..."

21 457. Q. Halfway through the first paragraph.

22 A. Okay.

23 458. Q. My apologies.

24 "On Friday, as we were assessing the impact of
25 our conclusion that Ronsco did not have reason to

believe for the tariff classification errors noted as part of the verification, and we noted that the reassessment period was still quite lengthy, covering three and a half years...The reason for this is that the verification period was set as January to December 2015, even though the verification initiation letter was sent out in July 2017. As per the Trade Verification Manual, our guidelines to our officers when establishing the audit period for a tariff classification are as follows:

The verification period in most instances will be the client's last completed business fiscal year.

Essentially, Ronsco's reassessment period...is quite long because the officer did not select the appropriate verification period."

Do you agree with that statement; that the reassessment period was long because the officer did not select the appropriate verification period?

MR. MAHER: The document doesn't say that. You are reading that in.

MR. TRIVISONNO: No, I am actually reading from the email.

MR. MAHER: Yeah, and the email doesn't say that.

MR. TRIVISONNO: "Ronsco's reassessment period, without RTB, is quite long because the officer did not

1 select the appropriate verification period."

2 MR. BAXTER: It's in blue, below the quote.

3 MR. TRIVISONNO: The paragraph starting with
4 "Essentially".

5 MR. MAHER: Yeah, I see it. Okay. Sorry, I was
6 just before that.

7 THE WITNESS: Yes, sorry, I didn't read that
8 far.

9 So, what I read -- the ICECAP was in 2016. When
10 the ICECAP sent everything over was in 2016, and
11 normally when we do a verification, if stuff has already
12 been reviewed, we would do the previous year, because
13 it's a clean -- has not been reviewed. It would be new
14 transactions.

15 So, the ICECAP officer in the forms we saw
16 earlier today -- it was all 2016 information. So, the
17 full period would have been -- because everything was
18 started in 2016, the full verification period would have
19 been 2015, from my previous interactions with
20 Verification.

21 BY MR. TRIVISONNO:

22 459. Q. So, what you are talking about is that HS
23 exceptions document we were talking about earlier, where
24 there was a discrepancy in the duty code between the one
25 declared at import and the one declared at accounting?

1 A. It's actually the trade referral submission
2 form.

3 460. Q. The trade referral submission form. This is
4 from the verification file, at Tab 204 of the
5 Defendant's Affidavit of Documents, page 153.

6 A. I can't find my reference. It's just
7 because we have different books.

8 461. Q. It's Tab 31 of Exhibit 1.

9 A. Okay.

10 462. Q. And you are saying that because this ICECAP
11 work was done in 2016, the verification period would be
12 the year before that work was done.

13 A. Yes. When this went up through Risk
14 Management, likely the 2015 period, because this is in
15 2016.

16 463. Q. So, because of that another year gets tacked
17 onto Ronsco's reassessment period.

18 A. It would appear that this is what happened.

19 464. Q. Even though the general policy is that you
20 review the year before you start the verification.

21 And the importation in question from the HS
22 exceptions document, at page 167 of Tab 204, or page 712
23 of the Plaintiff's compendium, that import was actually
24 in 2015.

25 A. Yes.

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1 465. Q. And it takes until 2017 for CBSA to commence
2 a verification.

3 A. I can't explain the delay.

4 466. Q. Does that reflect a delay to you? Is that
5 not typical?

6 A. I would have to look at the verification,
7 but it seems ---

8 It flows insofar as 2016. It does flow, it just
9 seems that they are all in the middle of the year, and
10 that's where this issue -- like, this is in August, and
11 by the time the workup goes into RMU it's late 2016.
12 They have selected 2015 because they are in the 2016
13 period. Why the officer doesn't send the letter until
14 2017 I can't explain.

15 467. Q. But you told me that the HS exceptions
16 document is essentially system generated.

17 A. Yes. You request it, but it sits in the
18 system, yes.

19 468. Q. Someone has to go in and request it?

20 A. Someone has to go and pull the information
21 out, but it's always in the system.

22 469. Q. And that request was made over a year after
23 the import.

24 A. According to the documentation.

25 470. Q. As a result of CBSA's delay until 2017 in

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1 commencing a verification, the reassessment period is
2 lengthened for Ronsco. Correct?

3 A. Correct. It's not unheard of that this
4 transpires.

5 471. Q. I just want to confirm, in the August 13th,
6 2018 email from Mr. Fryer ---

7 A. The one that starts with "Hi, Eric"?

8 472. Q. Yes.

9 He says: "Section 60 only allows the president
10 to redetermine the tariff class value, origin or marking
11 of the goods. There are no provisions in legislation to
12 review the reassessment period established by your
13 policy. As a result, our trade appeals officer should
14 not be entertaining arguments at all related to the
15 length of the assessment period."

16 So, in this email Mr. Fryer is providing his
17 interpretation of section 60?

18 A. Correct.

19 473. Q. And he is saying that it doesn't allow CBSA
20 to review the assessment period established by the
21 policy. Is that right?

22 A. Correct.

23 474. Q. Is that based on legal advice that he is
24 providing that?

25 A. That has been the policy at section 60; that

1 they will look at the tariff classification ---

2 In the text of section 60, "tariff
3 classification value, origin, redetermination."

4 475. Q. Then, in Mr. Fryer's next email he says: "I
5 just read section 59(1)(b) as a legislative authority to
6 make the changes. I think the issue again is that it
7 refers to redetermining the tariff class, value, origin
8 or marking of the goods, and that is not in dispute
9 here. It looks like this is a question of policy and
10 whether you want to make the changes to bring the audit
11 into compliance with the policy."

12 Is he telling Mr. Trudel: It's really just a
13 question of policy whether he wants to change the
14 reassessment period, on the basis that the audit was
15 conducted on samples from 2015 rather than 2016?

16 A. That's Mr. Fryer's interpretation that he is
17 providing to Mr. Trudel, yes.

18 476. Q. So, CBSA could have, at this point, said:
19 We shouldn't be elongating the reassessment period back
20 to 2015; we are only going to go back to 2016.

21 That was open to CBSA at this point?

22 A. I'm not sure if that is what he is talking
23 about. He is talking about them revisiting the fact
24 that we need to review the policy.

25 Stephen is questioning whether or not we can do

1 that. Like, he is suggesting that we should be doing
2 that.

3 477. Q. He is suggesting that "We should be changing
4 the reassessment period."

5 A. No, he is just saying that it's a question
6 of policy, whether you want to make the changes to bring
7 the audit into compliance with the policy. That is his
8 interpretation of the policy.

9 478. Q. Does he mean that it's a question of trade
10 policy, for your division to answer?

11 A. I'm not quite sure, because Eric Trudel is
12 from Verification, who also would have had a hand in
13 this, right?

14 479. Q. Right, but it then gets forwarded to you and
15 to Mr. Tebbutt, from Ms. Mondy, suggesting that Trade
16 Policy has some role to play here.

17 A. It just says "Keeping you looped in." I
18 think she just wanted us to be aware of discussions that
19 were happening. Like, that's what my tasking was.

20 480. Q. Did you have any discussions about adjusting
21 the reassessment period so as not to include 2015
22 because of what year was selected for the audit?

23 A. I don't recall having discussions
24 specifically about that. I know we had discussions
25 about the reassessment policy and the timeframes, yes.

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1 481. Q. Let's go to Tab 54 of the Defendant's
2 Affidavit of Documents. These are emails dated August
3 10th, which are almost entirely redacted.

4 I would like the basis for each of these
5 redactions.

6 MR. MAHER: Well, you can see that they are
7 clearly between a lawyer and CBSA employees, but...

8 MR. TRIVISONNO: Who are the lawyers on this
9 email chain?

10 MR. MAHER: So, without, like, prejudice to
11 clarifying the answer at a later date, but just to
12 assist you for now, the first email -- yeah, Sébastien
13 Arès and Julie Watkinson are lawyers.

14 And then it was responded to by Marie-France
15 Séguin, who is a lawyer for the CBSA. It says that in
16 her title, her signature.

17 Sébastien Arès also is a lawyer.

18 I think those are the lawyers on the chain of
19 emails. And if you go at the beginning, there is one
20 from Sébastien, so yeah.

21 MR. TRIVISONNO: I would like a description of
22 the contents of each of these redactions sufficient for
23 my client to assess whether these are, in fact, proper
24 assertions of privilege.

25 MR. MAHER: You think that communications with

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1 lawyers are not privileged?

2 MR. TRIVISONNO: Mr. Maher, I would like your
3 position on my request.

4 MR. MAHER: Okay. Under advisement. *A*

5 MR. TRIVISONNO: I would like to know what
6 litigation was contemplated at this point.

7 MR. MAHER: Under advisement. *A*

8 MR. TRIVISONNO: I would like production of the
9 full unredacted email.

10 MR. MAHER: Under advisement. *A*

11 MR. TRIVISONNO: I would like to understand if
12 this email chain reflects or is related to the decision
13 not to amend the final verification report.

14 MR. MAHER: Okay. Under advisement. *A*

15 MR. TRIVISONNO: Specifically, I would like to
16 know if it's the legal advice provided in this chain
17 which was the basis for Mr. Band, or whoever made the
18 decision, to not amend the final report, as was
19 recommended in the memo we looked at earlier.

20 MR. MAHER: Okay. Under advisement. *A*

21 MR. TRIVISONNO: You understand that CBSA has
22 not produced a single document explaining why it
23 abandoned the position set out in that August 8th or
24 August 10th memo. I would like an undertaking to look
25 again and see if you have any communications, any

1 analysis, any notes, any other documents related to that
2 decision.

3 MR. MAHER: Yes, we will provide best efforts
4 for that.

U

5 BY MR. TRIVISONNO:

6 482. Q. Let's go to Tab 98. These are October 9th
7 emails involving Tebbutt and Mondy. In the August 10th
8 email Mr. Tebbutt says: "The tariff classification of
9 the goods at issue was correct. Further, it is only in
10 retrospect, with full consideration of all the
11 circumstances, including our having confused the
12 Sumitomo AR with the Ronsco verification, that we came
13 to realize that the clear and evident criterion for
14 reason to believe, paragraph 1(a) and (d), 11-6-6, was
15 not applicable."

16 How did the confusion between Sumitomo and
17 Ronsco play into your analysis of whether Ronsco had
18 reason to believe?

19 A. It's about the advance ruling. It comes
20 back to that confusion around telling Ronsco that they
21 were going to be fined, going back and realizing that
22 was not the situation, and then re-evaluating the clear
23 and evident, because clear and evident was not a part of
24 the conversation when the assumption was that there was
25 an AR involved.

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1 483. Q. Well, that's not actually what he is saying
2 here though. He is referring to the finding: "...we
3 came to realize that the clear and evident criterion for
4 reason to believe...was not applicable."

5 He is talking about the finding that Ronsco did
6 not have reason to believe. Correct?

7 A. Yeah, you just asked me about the confusion
8 before. I was answering your question around the
9 confusion.

10 484. Q. What I was asking you though -- I mean, he
11 is talking here, right, about that initial finding that
12 was made in the memo, that Ronsco did not have reason to
13 believe. Correct?

14 A. I don't know if he is referring to the memo
15 specifically.

16 He is saying that Ronsco -- realized that clear
17 and evident criterion for reason to believe was not
18 applicable, yes.

19 485. Q. Okay. But he is saying that the confusion
20 around Sumitomo and Ronsco is somehow relevant to the
21 decision as to whether Ronsco had reason to believe or
22 not, right? He says: "...it is only in retrospect,
23 with full consideration of all the circumstances,
24 including our having confused the Sumitomo AR with the
25 Ronsco verification, that we came to" make this

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1 realization.

2 Why was the confusion around Sumitomo relevant
3 to a determination of Ronsco's reason to believe?

4 A. I think initially our thinking was around
5 Ronsco, inadvertently being the Sumitomo AR, had reason
6 to believe that they were correct in classifying their
7 goods, because the advance ruling gives them reason to
8 believe that they are correctly classifying their goods.

9 486. Q. But how is that relevant to Ronsco?

10 A. I am trying to explain how the confusion
11 played in. You are asking me about how -- that's how
12 the confusion played in. It was about ---

13 I realize that you want to know about Ronsco,
14 but it's about the fact that we confused and kept
15 associating that AR at the beginning to Ronsco and
16 Sumitomo's confusion around the companies being
17 intermixed, and that's why there was an initial
18 reaction, thinking we were talking about Ronsco, even
19 though it was about Sumitomo, that there was an advance
20 ruling involved.

21 487. Q. But, as I understand it, if Mr. Tebbutt is
22 talking about the clear and evident criterion, he is
23 talking about the language of the tariff item, right?

24 A. But he is confusing it with -- he is trying
25 to acknowledge the confusion around the AR, which

1 provided the clear and evident criterion, as well.

2 So, an advance ruling is also considered like
3 clear and evident information. So, he is trying to
4 recognize that the initial responses, the initial
5 information, the initial confusion was that the advance
6 ruling gave clear and evident information on how to
7 classify the goods.

8 That's all that the confusion is about. So, he
9 is trying to acknowledge that we confused the issue and
10 that we came to realize that the clear and evident
11 criterion for reason to believe was not applicable.

12 488. Q. In the next email, above, from Mr. Tebbutt,
13 at the last paragraph, he says: "While I do not believe
14 that we sent this to Compliance, they were in the room
15 with Doug, me, et al., for one of the meetings at which
16 it was decided that there was no reason to believe."

17 He is talking about a meeting where it was
18 determined that Ronsco did not have reason to believe.
19 Correct?

20 A. Correct.

21 489. Q. When did that meeting take place?

22 I will ask these questions to Mr. Maher.

23 When did that meeting take place?

24 MR. MAHER: Yeah, we will make best efforts to
25 locate that information.

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1 MR. TRIVISONNO: Who attended?

2 MR. MAHER: Yes, same answer, best efforts.

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3 MR. TRIVISONNO: I would like full particulars
4 of each of their recollections as to what was discussed
5 at that meeting.

6 MR. MAHER: We will take that under advisement.

A

7 MR. TRIVISONNO: And, in particular, why it was
8 determined at that meeting that Ronsco had no reason to
9 believe.

10 MR. MAHER: Yes, we will make best efforts.

U

11 BY MR. TRIVISONNO:

12 490. Q. Can we look at Tab 88, please?

13 Can you tell me what this document is?

14 A. Anticipatory media lines.

15 491. Q. What is that?

16 A. It's a document where, if we are concerned
17 that there may be questions from the media regarding the
18 results of this verification, how we would respond.

19 492. Q. Why were there concerns that there might be
20 questions from the media about the determinations in the
21 context of Ronsco?

22 A. We make anticipatory media lines often, for
23 anything that either meets with the minister or any
24 situation like that.

25 493. Q. Were the concerns related to multiple views

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1 as to whether Ronsco had reason to believe? Was it
2 related to the about-face on the representations made by
3 Doug Band?

4 I mean, I see a lot of reasons why you might
5 prepare a media lines document here, and you might have
6 some sensitivities around the Ronsco file. Could you
7 provide me a little more insight as to what those
8 sensitivities were?

9 A. Can I read it? Then I will see if I can ---
10 494. Q. Of course.

11 A. In that time, when Yannick took over as
12 director, we were often asked for anything that was high
13 profile ---

14 So, in a situation where a company has met with
15 one of our senior managers -- not managers, but our
16 senior management -- president, VPs or DGS -- she asked
17 us to create media lines.

18 It's very generic -- like, I mean, it's specific
19 to Ronsco, but it's about typical information -- like,
20 typical questions that we would get from the media if
21 this was ever to ---

22 If, for example, Ronsco were to make mention of
23 something and the media got wind of it, these would be
24 questions that would come to us. They are very typical
25 questions.

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1 So, at that time lots of media lines were being
2 prepared, for various reasons.

3 495. Q. Was there a particular sensitivity here,
4 though, based on Doug Band having made representations
5 to Ronsco that were later abandoned?

6 A. I think it has more to do with the value of
7 the duties owing.

8 496. Q. Okay, thank you. I have a few more
9 questions for you, and then we will be done for the day,
10 so that you can get out of here by 4:30, of course.

11 You don't have any knowledge of the original
12 basis for the Sumitomo advance ruling?

13 A. It's upon request. An advance ruling is
14 always upon request.

15 497. Q. But you don't have any knowledge about the
16 analysis that went into determining the tariff
17 classification for that advance ruling?

18 A. No, I do not.

19 498. Q. And you don't have any knowledge about the
20 negotiations between Sumitomo and CBSA?

21 MR. MAHER: Regarding what?

22 BY MR. TRIVISONNO:

23 499. Q. Regarding the verification done on Sumitomo
24 related to the importation of goods under Tariff .21.

25 MR. MAHER: In any event, we would object, so... *O*

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1 BY MR. TRIVISONNO:

2 500. Q. But you don't have any knowledge about that?

3 MR. MAHER: Don't answer that.

O

4 BY MR. TRIVISONNO:

5 501. Q. You don't have any knowledge about the
6 timing of the revocation of the advance ruling to
7 Sumitomo, and the reason it only became effective in
8 January of -- I believe it was 2019?

9 A. It's 90 days after the date of the final
10 verification report.

11 502. Q. I believe it's longer in this case.

12 You weren't involved in Ms. Ogilvie's
13 representations to Ronsco?

14 A. No.

15 503. Q. And you don't have any knowledge about that?

16 A. Other than the policy surrounding it, no.

17 504. Q. Okay. And you don't have any knowledge
18 about the determinations that went into issuing a Notice
19 of Penalty Assessment to Ronsco?

20 MR. MAHER: Sorry; just a clarification. When
21 you say knowledge, you mean was she personally involved
22 or is she aware of those documents?

23 MR. TRIVISONNO: No, I am asking whether she has
24 knowledge.

25 MR. MAHER: Personal knowledge?

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1 MR. TRIVISONNO: Yeah, personal knowledge. Does
2 she have any personal knowledge.

3 505. Q. Do you have any knowledge of the
4 determinations that went into issuing a Notice of
5 Penalty Assessment to Ronsco?

6 A. Not the specific details.

7 506. Q. Do you have any knowledge, other than having
8 seen the documents, of the representations made by Ms.
9 Alimohamed to Ronsco?

10 A. I understand the policies that were referred
11 to and the advice that was provided, but...

12 507. Q. And you didn't consult with Ms. Alimohamed
13 on those representations?

14 A. No.

15 508. Q. You don't have any knowledge of the
16 interactions between the Department of Finance and
17 Ronsco?

18 A. Just that there were some.

19 MR. TRIVISONNO: Okay. We are going to adjourn
20 this discovery, and we won't be returning tomorrow with
21 this witness. We will be seeking another representative
22 from CBSA.

23 Thank you very much.

24

25

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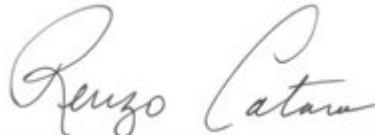
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4 --- WHEREUPON THE EXAMINATION ADJOURNED AT THE HOUR OF
5 4:24 IN THE AFTERNOON

6

7 THIS IS TO CERTIFY THAT the foregoing is a
8 true and accurate transcription from the
9 Record made by sound recording apparatus
10 to the best of my skill and ability.



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Ronsco Inc. v. HMTK, et al.
Undertakings Chart of Kelly Bartlett
Examinations Held May 3, 2023

No	Pg	QQ	Undertaking	Response
1.	8	39	To identify who was the VP of the Commercial and Trade Branch from the time of the verification report until September of 2018.	
2.	26	103	To advise whose handwriting is found on the Exception Report found at p. 712 of the Defendants' Compendium.	
3.	29	112	In the context of the series of events that leads to the verification report, to advise who reviewed the Exception Report (p. 712) and what steps did they took as a result.	
4.	30	116	To advise the content of the heading (category name) above Sean Whitehouse's name on the Trade Referral Submission Form at p. 711 of the Defendant's Compendium.	
5.	32	120	To confirm if it was Sean Whitehouse and Ali Mohammed who reviewed the HS exceptions report, identified the discrepancy, and then took further actions. To advise who wrote the handwritten note which says 'Reviewed -- (illegible) -- August 30, 2016'.	
6.	32	121	To advise who spoke with Adrien Anger and what was discussed on August 30, 2016, as documented at the bottom of the Trade Referral Submission Form at p. 711.	

No	Pg	QQ	Undertaking	Response
7.	33	122	To produce the ICECAP workup in the verification file which was a result of the discussion with Mr. Anger on August 30, 2016 and, if already provided in the full verification file, to isolate this ICECAP workup and produce it.	
8.	34	124	To advise if Ronsco was ever informed that the ICECAP workup was the discrepancy that set off the chain of events leading up to the verification audit that was conducted against it.	
9.	35	125	To advise if Ronsco was ever given the opportunity to explain the discrepancy noted in the ICECAP workup to the CBSA.	
10.	36	126	To provide any emails, communications or other documents not yet produced and related to the sequence of events between when the HS exceptions report was generated and the date that Ronsco was informed that it is subject to a verification audit.	
11.	43	139	To advise whether or not Madame Gagné reviewed the Request for Functional Guidance -Tariff Classification (Defendants AOD, Tab 204, p. 412) in her determinations related to Ronsco.	
12.	44	139	To advise whether or not Ms. Ogilvie reviewed the Request for Functional Guidance -Tariff Classification (Defendants AOD, Tab 204, p. 412) in reassessment for Ronsco.	
13.	46	151	To advise if Ms. Gagné was aware of the Sumitomo advance ruling when she was conducting the verification audit of Ronsco.	

No	Pg	QQ	Undertaking	Response
14.	47	151	To advise if Ms. Ogilvie was aware of the Sumitomo advance ruling when she was conducting the reassessment for Ronsco.	
15.	51	163	To advise who received the email from Graeme McLaughlin that was copied into the text of an e-mail from Rocio Medalla to Nathalie Blanchard located at tab 3 of the Defendants' Affidavit of Documents.	
16.	53	175	To advise what Rocio Medalla's role was at the time that Ronsco initially reached out to the government (approx. June 2018).	
17.	56	190	To provide the emails to Kelly Bartlett requesting she undertake the preparation of the Issue Sheet found at Tab 11 of Defendants' AOD and whether the request was to prepare something for Ronsco or not.	
18.	66	221	To advise if Mr. Band knew he was meeting with Ronsco at the time of his email of June 25, 2018 at 4:38pm or if he believed he was meeting with Sumitomo? (Tab 12 of D.AOD)	
19.	67	223	To advise of the full basis of the redaction to the Issue Sheet found at Tabs 17 and 18 of the D.AOD p. AGCA0018-0003	
20.	71	233	Ronsco's information is that the attendees of the June 26, 2018 meeting with Kent Montgomery, Mimma Francescangeli, Doug Band, Charles Slowey, David Hurl and Laura Labelle. To advise if the Defendants' position is that the attendees to this meeting were any different than described above.	

No	Pg	QQ	Undertaking	Response
21.	72	234	To advise who Doug Band thought he was meeting with immediately before he went into the meeting on June 26 th , Ronsco or Sumitomo.	
22.	77	239	To produce all documents that Mr. Band brought with him to the June 26, 2018 meeting.	
23.	77	239	To produce all documents that the other government attendees brought to the meeting.	
24.	79-80	240	To advise if there are any internal policies or directives or other documents that require CBSA officials to take notes of meetings when they are speaking to importers and to produce copies of them.	
25.	83	245	To advise if Mr. Band specifically said that it was within his authority to determine whether duties were only going to be charged going forward.	
26.	95	289	To advise if there were any communications between Ronsco and CBSA between June 26 and July 24.	
27.	103-104	316-317	To provide Mr. Tebbutt's best and latest contact information.	
28	104	316	To advise how long the June 26 th meeting between CBSA and Ronsco lasted.	
29.	134	403	To provide the date of the version of the memo found at the last page of Tab 206 of the Defendants' Affidavit of Documents, under 'Consideration'.	
30.	151	443	To provide Mr. Band's full particulars of his conversation with Mr. Mahoney on August 16 th referenced at Tab 75 of the Defendants' Affidavit of Documents.	

No	Pg	QQ	Undertaking	Response
31.	152	446	To ask Mr. Band what material is being referred to in his 12:58 email at Tab 75 of Defendants' Affidavit of Documents, on what basis he was satisfied that the tariff classification reflected in the final report was the appropriate one, and what steps he took in that analysis.	
32.	153	446	To ask Mr. Band to provide his understanding of how the decision was made leading up to August 16 th that Ronsco did have reason to believe at the time of import, what the basis for the decision was; and what analysis went into the decision.	
33.	153	447	To provide the basis for all of the solicitor-client privilege redactions found in the chain between Ms. Mondy, Mr. Tebbutt and Ms. Bartlett at Tab 49 of Defendants' Affidavit of Documents.	
34.	165	481	For the CBSA to look again and see if they have any communications, any analysis, any notes, or any other documents related to the abandoned position set out in the August memo found at Tab 54 of the Defendants' Affidavit of Documents.	
35.	168 - 169	488	In the emails found at Tab 98 of the Defendants' Affidavit of Documents, Mr. Tebbutt writes: "While I do not believe that we sent this to Compliance, they were in the room with Doug, me, et al., for one of the meetings at which it was decided that there was no reason to believe." To advise as to when that meeting took place, and to advise who attended that meeting.	
36.	169	488	To advise why it was determined that Ronsco 'had no reason to believe' at the meeting described above at undertaking #35.	

No	Pg	QQ	Advisement	Response
1.	24	94	To advise whether the CBSA has ever conducted another trade verification related to the importation of rough bore wheels.	
2.	40	134	To provide anonymized information indicating the number of importers who between 2005 and 2017 were importing the goods in question, or substantially similar goods under Tariff 21; the number of importers who were importing the rough bore wheels, or substantially similar goods, under Tariff 29; and the volume of those imports.	
3.	40	134	To provide the number of other importers who were subject to verification audits prior to 2018 based on the importation of rough bore wheels.	
4.	40	134	To provide the number of importers who have ever been assessed retroactive duties, or a retroactive reassessment period based on the goods at issue.	
5.	49	156	To provide all drafts of the interim report and all communications related to the drafting of the interim report.	
6.	59	207	To provide a list of everyone who reviewed the June 18, 2018 Issue Sheet found at Tab 11 of D.AOD) before the June 26 th meeting with Ronso. This list should include everyone within CBSA and anyone else in government outside of CBSA.	
7.	64	219	To advise what Mr. Band meant by 'this is good news' in his email dated June 25, 2018 at page 2 of Tab 12 of the Defendants' Affidavit of Documents.	

No	Pg	QQ	Advisement	Response
8.	64	219	To advise whether Mr. Band thought this was particularly good news because he wouldn't be imposing retroactive duties on a Canadian company.	
9.	72	234	To ask and advise who Charles Slowey, David Hurl and Laura Labelle believed they were meeting with immediately before the meeting of June 26, 2018.	
10.	72	234	To advise of the basis for this belief for each individual: Doug Band, Charles Slowey, David Hurl and Laura Labelle.	
11.	73	238	To search for any documents that reflect Mr. Band's understanding of who he was meeting with on June 26 th , including any Outlook calendar entries or invitations, his written day-planner, his physical calendar, and any communications. That search should also include his administrative assistants, as well.	
12.	73	238	Same undertaking as above for Charles Slowey, David Hurl and Laura Labelle.	
The series of questions (<i>italicized</i>) are to be posed to Doug Band, Charles Slowey, David Hurl and Laura Labelle separately and these individuals are not to communicate their evidence as between them before you obtain their evidence:				
13.	75	238	<i>Did the Ronsco representatives introduce themselves as being from Ronsco?</i>	
14.	75	238	<i>Did Ronsco present a detailed presentation about its business, making clear that it was a Canadian business?</i>	
15.	75	238	<i>Did Ronsco make it clear that the imposition of retroactive duties on its imports was going to have a significant impact on its business?</i>	

No	Pg	QQ	Advisement	Response
16.	75	238	<i>Did Ronsco make clear that this was particularly so in a small industry?</i>	
17.	75	238	<i>Did Mr. Band or anyone else in the meeting express their gratitude to Ronsco for providing such a detailed description of their business?</i>	
18.	76	238	<i>Did anyone from the government side emphasize the fact that because Ronsco was a Canadian business, they were happy to get these details from them?</i>	
19.	76	238	<i>Did Mr. Band refer to Sumitomo at all during the meeting?</i>	
20.	76	238	<i>Did anyone else at the meeting ever refer to Sumitomo?</i>	
21.	76	238	<i>Did Mr. Band refer to Ronsco in the meeting?</i>	
22.	76	238	<i>Did anyone else from the government side refer to Ronsco during the meeting?</i>	
23.	76	238	<i>Did Mr. Band bring a copy of the issue sheet that was drafted for him to the meeting?</i>	
24.	77	239	<i>Did Mr. Band refer at all to an advance ruling for tariff classification during the meeting?</i>	
25.	78	239	<i>At any point during the meeting did Mr. Band or the other government representatives realize that they were meeting with Ronsco and not Sumitomo?</i>	
26.	78	239	<i>For each government representative when did they realize that they were meeting with Ronsco, and what was it that tipped them off to the fact that they were meeting with Ronsco and not Sumitomo.</i>	

No	Pg	QQ	Advisement	Response
27.	78	239	<i>During the meeting, did Mr. Band refer to the \$484,518 in duties owing by Ronsco for the five samples that were the subject of the verification?</i>	
28.	79	239	<i>Did anyone from CBSA or the minister's office take notes during the meeting? To produce those notes.</i>	
29.	80	240	<i>Whether Mr. Band referred to the \$484,518 in duties owing by Ronsco for the five samples at the June 26, 2018 meeting. If Mr. Band did mention that, I would like to know why.</i>	
30.	81	243	To provide Mr. Band's evidence as to what he meant by 'going forward' when he told Ronsco that it would only have to pay duties going forward.	
31.	83	247	To produce the document called "The Delegation of Authorities"	
32.	8 3	247	To advise if Mr. Band had the authority to decide what the reassessment period would be for Ronsco and to only charge duties going forward.	
33.	84	248	<i>Did Mr. Band discuss the wording of Tariff 21 during the June 26th meeting.</i>	
34.	84	248	<i>Did Mr. Band say anything to the effect that the wording was confusing or outdated?</i>	
35.	85	248	<i>Did Mr. Band refer to an Auditor General of Canada's report from Spring 2017 concerning the CBSA, which noted the need for Canada's tariff items to be reviewed and updated?</i>	
36.	85	251	I would like an undertaking to produce Doug Band as a witness for examination.	

No	Pg	QQ	Advisement	Response
37.	86	251	<i>To provide full particulars of Mr. Band's and the other government attendee's recollection of the meeting</i>	
38.	87	258	To advise why Doug Band did not want to create a new note following the meeting on June 26 th .	
39.	88	261	To ask Mr. Band if the reason he did not ask for a new note was because he thought the Sumitomo issue sheet equally applied to Ronsco.	
40.	100	306	To ask Mr. Tebbutt why he provided the advice that the tariff 21 was not clear and evident.	
41.	104	317	<i>To advise if the June 26th meeting lasted longer than 30 minutes and, if so, why it went more than 30 minutes.</i>	
42.	109-110	331	To ask Ms. Mondy, Mr. Band and the other members of Trade Policy who were involved how and when they became aware that a Sumitomo issue sheet had been used for a meeting with Ronsco.	
43.	111-112	340	To ask Ms. Mondy, Mr. Band, Ms. Dion, and Mr. Loynachan what discussed at the meeting on August 7 th (see Ms. Mondy email at Tab 25 of Defendants' Affidavit of Documents) and what "way forward" they discussed.	
44.	120	376	To present the memo at Tab 34 of the Defendants' Affidavit of Documents to Mr. Band, specifically the fifth paragraph describing the June 26 th meeting, and to provide his evidence on whether that paragraph is accurate	

No	Pg	QQ	Advisement	Response
45.	120	376	If the fifth paragraph is in fact accurate, to ask Mr. Band to explain how he could think he was in a meeting with Sumitomo if he has a company in front of him talking to him about how they are going to be put at a significant disadvantage to U.S. competitors and talking about a situation that is clearly specific to Ronsco, and to ask him on what basis he still thought it was Sumitomo	
46.	123	381	To provide a native version, in Word format, of the memo located at Tab 34 of the Defendants' Affidavit of Documents.	
47.	128	393	To advise on what basis the CBSA is asserting that the redacted portions of the memo at Tab 34 of the Defendants' Affidavit of Documents are subject to solicitor-client privilege, given that Ms. Bartlett advised that a lawyer did not assist in its drafting.	
48.	128	393	To provide a description of the contents of the redaction that is sufficient for Ronsco to assess whether it is, in fact, a proper claim of privilege.	
49.	130	395	To advise if it is the CBA's position that the memo (Tab 34 of Defendants' Affidavit of Documents) is being redacted on the basis of litigation privilege as a result of the contemplated appeal process.	
50.	131	396	To provide a description of the contents underneath the claimed litigation privilege sufficient in detail to allow the plaintiff to assess whether there is a proper claim for privilege.	
51.	131	396	To provide the unredacted native of the memo at Tab 34 of Defendants' Affidavit of Documents.	

No	Pg	QQ	Advisement	Response
52.	132	396	If the basis for the defendant refusing to provide the native document at Tab 34 is that it does not want to provide the redacted information, provide a native document of the memo (Tab 34 of Defendants' Affidavit of Documents) which maintains the same redactions previously provided.	
53.	132	396	To provide Brad Loynachan's last-known contact information.	
54.	134-135	403	To advise whether the memo found at Tab 206 of the Defendants' Affidavit of Documents is the final version of the memo and to produce the native version of this memo. If there are any subsequent versions of this memo, to produce them.	
55.	134-135	403	To provide the particulars for the basis of all the litigation and solicitor-client privilege redactions and a description of its contents sufficient for Ronsco to evaluate whether it is a valid claim of privilege.	
56.	143	429	To provide Ms. Mondy's recollection of when the meeting occurred, and particulars as to what was discussed at the meeting. (Meeting referenced in Grant Tebbutt's 11:35am email at Tab 48 of Defendants' Affidavit of Documents.)	
57.	144	434	Tab 75 of Defendants' Affidavit of Documents. In Mr. Calixte Burnett email to Richard Mahoney on August 13, 2018, Mr. Burnett says "Regrettably, we will have to move our discussion scheduled for this afternoon to later this week. Would you be available Thursday, at 11:45 to 12:00, or Friday from 11:45 to 12:00 for the call?" To advise why this call on August 13 th was cancelled.	

No	Pg	QQ	Advisement	Response
58.	145	434	To advise if the August 13 th meeting was cancelled as a result of Mr. Band's last-minute decision to impose retroactive duties and/or a change in direction that the CBSA was dealing with.	
59.	146-147	440	To advise if Mr. Band approved of the memo at Tab 206 of the Defendants' Affidavit of Documents.	
60.	146	440	To advise if the Vice President was provided the memo at Tab 206 of the Defendants' Affidavit of Documents.	
61.	146	440	To advise if the Vice President approved the memo at Tab 206 of Defendants' Affidavit of Documents.	
62.	146	440	To advise if the President was provided the memo at Tab 206 of Defendants' Affidavit of Documents.	
63.	146	440	To advise if the President approved the memo at Tab 206 of Defendants' Affidavit of Documents.	
64.	146	440	To provide a copy of the signed and approved version of the memo at Tab 206 of Defendants' Affidavit of Documents.	
65.	150	442	To advise how the decision was made not to amend the final verification report after the Trade Policy Division had clearly set out its position that Ronsco did not have reason to believe.	
66.	153	447	To provide a description of the underlying redacted contents found in the chain between Ms. Mondy, Mr. Tebbutt and Ms. Bartlett at Tab 49 of Defendants' Affidavit of Documents that is sufficient for Ronsco to assess whether it is privileged.	

No	Pg	QQ	Advisement	Response
67.	154	449	To provide an unredacted version of the entire email chain between Stephen Fry and Yannick Mondy found at Tab 49 of the Defendants' Affidavit of Documents.	
68.	164	481	To provide a description of the contents of the redactions to the email chain of August 10 th found at Tab 54 of the Defendants' Affidavit of Documents which is sufficient for Ronsco to assess whether these are proper assertions to privilege.	
69	164	481	To advise what litigation was contemplated at the time of the email chain of August 10 th found at Tab 54 of the Defendants' Affidavit of Documents.	
70	164	481	To provide an unredacted copy of the email chain of August 10 th found at Tab 54 of the Defendants' Affidavit of Documents.	
71.	164	481	To provide an explanation of whether the email chain at Tab 54 of the Defendants' Affidavit of Documents reflects or is related to the decision not to amend the final verification report.	
72.	164	481	To advise if the legal advice provided in the chain at tab 54 of the Defendants' Affidavit of Document was the basis for Mr. Band, or whoever made the decision, to not amend the final report.	
73.	169	489	To provide the full particulars from each attendee of the meeting referenced at Tab 98 of the Defendants' Affidavit of Documents of each of their individual recollections as to what was discussed at that meeting.	

No	Pg	QQ	Refusals	Response
1.	19	87	Between 2005 and 2017, how many other importers were importing rough bore wheels — (opposing counsel interrupts with objection)?	
2.	20	88.	Between 2005 and 2017, how many other importers were importing rough bore wheels or substantially similar goods?	
3.	21	88	To look back at CBSA records to see if the following companies imported substantially similar goods between 2005 and 2017: Canadian National Railway Company, Canadian Pacific Railway, IEC Holden Inc., The Greenbrier Companies, Progress Rail, ORX Rail, Sumitomo, United Metallurgical Company, EVRAZ Holding, and KLW Wheelco.	
4.	21	88	To advise whether the importers who were importing rough bore wheels between 2005 and 2017 were doing so tariff-free, under Tariff Item 8607.19.21. (Tariff 21)	
5.	22	91	To advise whether CBSA is aware of any importers who were importing rough bore wheels under Tariff Item 8607.19.29 between 2005 and 2017. (Tariff 29)	
6.	22	91	To provide a full list of the importers who were importing rough bore wheels under Tariff Item 29 between 2005 and 2017.	
7.	22	91	To advise the volume of imports of rough bore wheels under Tariff Item 29 between 2005 and 2017.	
8.	23	91	To advise the volume of the imports of rough bore wheels for any company that was importing under Tariff Item 21 between 2005 and 2017.	

No	Pg	QQ	Refusals	Response
9.	23	92	To advise whether CBSA is aware of any importers who were paying any tariffs on rough bore wheels before 2018.	
10.	23	93	To advise whether any other companies were ever compelled to self-correct for similar goods imported under Tariff Item 21.	
11.	24	94	Prior to the Ronsco trade verification, had CBSA ever conducted a trade verification related to the importation of rough bore wheels? If there have been no such verifications, why not?	
12.	69	227	To advise whether the concept of rate of duty is what is being referred to in the redaction of the Issue Sheet found at Tabs 17 and 18.	
13.	137	411	To advise what legislative provisions prevented CBSA from honouring Doug Band's representations made at the June 26, 2018 meeting.	

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Examination No. 23-0515.1A

Court File No. T-1295-20

1

FEDERAL COURT

B E T W E E N:

RONSCO INC.

PLAINTIFF

- and -

HIS MAJESTY THE KING, THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS, CANADA BORDER SERVICES AGENCY

DEFENDANTS

EXAMINATION FOR DISCOVERY OF KENT MONTGOMERY
pursuant to an appointment made on consent of the
parties to be reported by Catana Reporting Services,
on May 2, 2023 commencing at the hour of 9:37
in the forenoon.

APPEARANCES:

Colin Baxter
Chris Trivisonno for the Plaintiff

Charles Maher
Adrian Johnston for the Defendants

ALSO PRESENT:

Don Regan
Karen Alford
Kelly Bartlett

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EXHIBITS

EXHIBIT NO. 1: Defendants' Compendium of Documents..... 4

DATE TRANSCRIPT ORDERED: May 3, 2023

DATE TRANSCRIPT COMPLETED: May 24, 2023

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1 **KENT MONTGOMERY, SWORN:**

2 **EXAMINATION BY MR. MAHER:**

3 1. Q. Good morning, Mr. Montgomery. My name is
4 Charles Maher, I'm the representative of the Attorney
5 General of Canada representing the Canadian Border
6 Services Agency, the CBSA. So, today I will be asking
7 you questions about Federal Court Case Number T-1295-20.
8 Please let me know if I'm unclear or if you have -- you
9 didn't hear my question I will repeat it. So, can you
10 please state your full name for the Record, please?

11 A. It's Kent David Montgomery.

12 2. Q. And you've been affirmed or sworn before
13 this?

14 A. Yes, I have.

15 3. Q. Affirmed?

16 A. Sworn.

17 4. Q. Sworn, okay.

18 A. I guess.

19 5. Q. Okay and the answers you'll be giving today
20 will bind Ronsco Inc., the company you work for in this
21 legal proceeding?

22 A. Yes.

23 6. Q. Okay. So, in preparation for today have you
24 gone through Ronsco's Affidavit of Documents?

25 A. Yes, I have.

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1 7. Q. Okay. Have you gone through the documents
2 of the -- produced by the CBSA?

3 A. Yes, I have.

4 8. Q. Okay. Have you consulted any other
5 documents?

6 A. Not particularly, no.

7 9. Q. Okay. Have you had any discussions about
8 this file with -- except your lawyers, with anyone at
9 Ronsco to refresh your memory, to discuss a few things?

10 A. We've discussed this file over the years,
11 absolutely, ---

12 10. Q. Okay. ---

13 A. --- yes.

14 11. Q. --- we'll talk about some people at Ronsco
15 later on, but just for now I'll just enter this as
16 Exhibit 1. This is a Compendium of Documents that we
17 prepared. All those documents are already in -- most of
18 them are in Ronsco's productions of documents. So, it's
19 just to make it easier for everyone, but -- yeah, so
20 this is Exhibit 1. We'll use this mostly today to go
21 into the documents.

22 THE WITNESS: Okay.

23 **EXHIBIT NO. 1:** Defendants' Compendium of
24 Documents.

25 BY MR. MAHER:

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1 12. Q. Okay, so let's start by talking a little bit
2 about you. What's your position at Ronsco; what do you
3 do?

4 A. I'm currently the Executive Vice-President
5 and Chief Operating Officer. My responsibilities
6 involve all our production, operations, sales and
7 marketing, business development; so anything with our
8 expansion, you know, business operations that falls
9 under my responsibility.

10 13. Q. Okay and since when have you been doing
11 that?

12 14. A. That's been probably for the last five
13 years. I've been with Ronsco since 1994.

14 15. Q. Okay and so at the time of the verification
15 when it started in 2017 to 2018 were you in that
16 position?

17 16. A. Yes.

18 17. Q. Okay and the -- during the verification
19 period, I'm sure you're aware, but the CBSA verified for
20 the year 2015, were you in that position?

21 18. A. I don't know if that was my exact title, ---

22 19. Q. Okay.

23 20. A. --- but generally my roles were the same --
24 would have been the same in 2015, yeah.

25 21. Q. Okay, VP and Chief Operating ---

1 A. My responsibilities ---

2 18. Q. --- Officer ---

3 A. --- right, anything with production, sales
4 and marketing operations, yes.

5 19. Q. Okay. So, that makes you an employee of
6 Ronsco?

7 A. Yes, I'm an employee of Ronsco, yes.

8 20. Q. Okay and what's your background; what's your
9 education?

10 A. My background is mechanical engineering. I
11 graduated from McGill in 1994 and I joined Ronsco after
12 graduation and subsequently I did my MBA at McGill at
13 night over four or five years and continued to stay with
14 Ronsco and that was it ---

15 21. Q. Okay.

16 A. --- that was enough of my education.

17 MR. TRIVISONNO: Mr. Maher, I'd just ask you
18 please don't speak over the Witness. Let the Witness
19 finish just for the sake of the clarity of the Record.

20 MR. MAHER: Yeah.

21 22. Q. So, you've been with Ronsco for a number of
22 years?

23 A. Yes, since 1994, yes.

24 23. Q. Okay and when you started at Ronsco what
25 were you doing?

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1 A. I was hired in the beginning just to do
2 technical -- you know to support their sales in a
3 technical capacity and that was my entry job, you know,
4 with them after I graduated.

5 24. Q. Okay and then how did you climb the ladder?

6 A. It evolved from more of a technical role,
7 sales technical role into a pure sales management role.
8 We evolved quite a bit to allow us to change our
9 business model to add more technical development of
10 products into our business alliance. Previously Ronsco
11 had been primarily a manufacturer's agent of products
12 and a distributor so my role was to evolve our products
13 into a more Ronsco focused business -- product line.

14 25. Q. Okay so you started in sale and then -- so
15 you were always in the sale operating field ---

16 A. Correct.

17 26. Q. --- of Ronsco? Okay.

18 A. Yes.

19 27. Q. Okay and are you also a registered
20 administrator of the company?

21 A. I'm an owner of the company, yes.

22 28. Q. Okay. Okay, so does that mean like a
23 shareholder?

24 A. Correct.

25 29. Q. Okay. So, I take it as a shareholder of

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1 Ronsco I guess -- well, I don't know, I'm just presuming
2 and tell me if I'm wrong, but you get a salary for your
3 employment and I guess dividends from your shares?

4 A. That's typically how ---

5 30. Q. Yeah.

6 A. --- a shareholder operation would work, yes.

7 31. Q. Okay. Since when has Ronsco been operating?

8 A. Ronsco started I believe in 1968.

9 32. Q. Okay and what is Ronsco's line of business
10 currently?

11 A. Ronsco has always worked within the railway
12 sector, ---

13 33. Q. Yeah.

14 A. --- our primary business by far is railway
15 related. Today our business involves three main
16 categories: its wheel set operations, its railcar repair
17 and maintenance and its parts and distribution. So, our
18 operations are headquartered in Montreal, in Quebec, in
19 Coteau-de-Lac where we do our railcar/tank car repair
20 facility. We have our facility in Hamilton, Ontario
21 where we do wheelsets and axles supporting Canadian
22 business, CN, CP, VIA Rail, GO Transit, any customer
23 that would use rolling stock and require a wheelset or
24 axle is our business out of Hamilton and then we have a
25 parts business, I'll call it the Walmart of railcar

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1 parts that operates out of our warehouse facilities that
2 we'd have in Montreal, Edmonton and Ohio ---

3 34. Q. Okay.

4 A. --- and we also have a joint venture
5 operation in Saltillo, Mexico to make a railway
6 component to support railcars out of Mexico.

7 35. Q. Okay, so you produce wheelsets, you sell
8 them, is that --

9 A. That is correct.

10 36. Q. Okay and you also sell wheels -- individual
11 wheels when a client is looking for that only?

12 A. That is correct.

13 37. Q. Okay. Do you sell axles individually?

14 A. That's correct.

15 38. Q. Okay and you talked about car repair. So, I
16 take it that you repair railway cars?

17 A. Yes. Our specialty is tank cars ---

18 39. Q. Okay.

19 A. --- out of Coteau. That business line also
20 involved repair, modification and custom building of
21 standard railcar equipment for all leasing companies and
22 Class 1 railways out of our facility and we also have
23 mobile trucks that go around repairing railcars out of
24 Halifax, Montreal and Edmonton.

25 40. Q. Okay and you said tank cars, what is a tank

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1 car?

2 A. A tank car hauls liquids, petroleum, oil,
3 asphalt. It's a very unique, specialized railcar. We
4 have special qualifications to prepare that -- to
5 perform that work. It's highly regulated. So, we work
6 a lot with Transport Canada and with these regulations
7 to perform this work.

8 41. Q. And you said Class 1 is it -- what is it?

9 A. We define Class 1 as a certain size of a
10 railroad and there's in Canada CN and CP are defined as
11 Class 1 railways based on, you know, tonnage and size
12 and there's four other Class 1 railways in the United
13 States.

14 42. Q. Sorry, it's a type of railroad or --

15 A. It's the size of a railroad ---

16 43. Q. Okay.

17 A. --- it's the general how big the railways
18 are. It just really defines -- they're the Class A
19 customers who have the most track and tonnage in North
20 America ---

21 44. Q. Okay.

22 A. --- as opposed to a short line operator who
23 will have a smaller branches that feed into the main
24 Class 1 system. We define it as the biggest
25 opportunities, the biggest customers are the Class 1

1 customers because they operate the most tonnage, they
2 operate and have the most opportunity for us to sell our
3 products into and also to repair their equipment.

4 45. Q. So, they're your biggest client?

5 A. They would be the biggest clients, yes.

6 46. Q. Okay, but you also have other Class clients?

7 A. From a railway perspective they would be the
8 biggest clients ---

9 47. Q. Yeah.

10 A. --- as opposed to car builders, OEM car
11 builder equipment who we define as another large
12 customer in our segment. They're two different types of
13 operations.

14 48. Q. Okay and you -- so you do railway car
15 repairs. Do you do the manufacturing of a railway car?

16 A. We do not. We're not certified. We will --
17 we would create custom cars for our clients, but as an
18 integrator where we'll integrate different pieces to
19 modify a car, a current car and ---

20 49. Q. Okay.

21 A. --- sell that into the market, but we are
22 not certified for new cars.

23 50. Q. Okay and how many employees does Ronsco have
24 at present?

25 A. At the moment we roughly have about 100

1 employees.

2 51. Q. Okay and where are Ronsco's headquarters?

3 A. In Coteau-du-Lac, Quebec.

4 52. Q. Okay and you talked about the -- there's the
5 Hamilton wheel shop?

6 A. Correct.

7 53. Q. There's the -- just so that I'm clear, I
8 understand where you have shops and warehouses; so
9 Hamilton wheel shop, then the Quebec Coteau-du-Lac
10 headquarters. You talked about a west location?

11 A. We have warehousing facilities in Edmonton,
12 Alberta ---

13 54. Q. Yeah.

14 A. --- and we have warehousing in Ohio.

15 55. Q. Okay and so my understanding is that for the
16 year 2015 you weren't do wheel shop work or it started
17 in late 2015?

18 A. So, in 2015 is when we started ---

19 56. Q. Yeah.

20 A. --- the wheel shop operation ---

21 57. Q. Yeah.

22 A. --- previous to 2015 we were into the axle -
23 - we had an axle shop that was in Oakville, Ontario
24 where we would process axles for the maintenance market
25 to sell to wheel shops who, you know, in Canada or the

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1 United States and also to new car builders, OEM railcar
2 builders. So, in 2015 we made the decision to expand to
3 vertically integrate our services to leverage what we
4 knew with axles to begin and to leverage what we
5 understood about wheels and to leverage what we
6 understood about bearings to become a full service
7 provider to create a wheelset.

8 Previously we had been selling individual
9 components. We believed the value added of being a full
10 service manufacturer in Canada created a lot of value
11 for Canada. Previously there had been no independent
12 wheel shop in Canada servicing the Canadian market, all
13 that business had been generated out of the United
14 States and imported into Canada. So, we took a great
15 initiative to create this in Hamilton and it started in
16 2015 where we moved into our facility and started to
17 build out the equipment that we needed to get into this,
18 you know, full manufacturing part.

19 58. Q. I thought there was a wheel shop in the
20 west, in Edmonton?

21 A. So, when I say independent wheel shop we're
22 not railway related. So ---

23 59. Q. Okay.

24 A. --- in Canada the railways had always owned
25 their own wheel shops. CN and CP were both in Winnipeg

1 where they had their wheel shops servicing their own
2 fleets and the one OEM manufacturer of rough wheels was
3 in Winnipeg for that reason as well. The railway always
4 -- the railways' capacity to create their own wheelsets
5 was never enough to support the Canadian market so they
6 would always have to import wheel sets from the United
7 States to supplement the demand and that was kind of the
8 core of why we wanted to create this wheel set operation
9 in Hamilton.

10 We were in a geographically different location.
11 We were -- created value for the railways in terms of
12 not having to move wheel sets from across the country
13 into the middle of the country and it was a nice little
14 area for us to focus on and that's how we started that.

15 60. Q. And by ---

16 MR. BAXTER: If I may I'll just remind the
17 Witness to wait for the question and answer the question
18 ---

19 THE WITNESS: Okay.

20 MR. BAXTER: --- sometimes I know there's more
21 to tell, but Mr. Maher will ask you if he wants to.

22 THE WITNESS: Okay, yeah.

23 BY MR. MAHER:

24 61. Q. So, you said about we were strategically
25 well placed I guess geographically, you mean like

1 Eastern Canada, you were the only wheel shop in Canada -
2 - in Eastern Canada, is that what you meant?

3 A. Correct, yes.

4 62. Q. Okay and do you know when the wheel shop
5 really started to work? I think it was in December
6 2015, is that correct?

7 A. I'm not sure the exact date to be quite
8 honest with you, but it was in the year 2015 when we
9 started to build out some of our capacity, getting
10 approved for the freight piece of what we do.

11 63. Q. Okay. So, my understanding of the railway
12 industry and I'm very external to it, but it's that
13 there's two main types of cars; there's freight cars and
14 passenger cars, is that a fair statement?

15 A. There's three types of -- there's passenger
16 cars, freight cars and locomotives. So, there's three
17 types of wheel sets that we would look to produce.

18 64. Q. Okay and so just like to provide like
19 concrete example, my understanding is that for example
20 CP and CN mostly do freight rolling stock, so they would
21 deal with freight cars whereas VIA Rail for example will
22 deal with passenger cars?

23 A. Today that is correct. Historically that
24 was a little different, but today CN and CP focus on the
25 freight piece. VIA Rail, Toronto Transit Commission, GO

1 Transit they're focusing on people moving products or
2 people moving railcars or transit cars.

3 65. Q. Okay and so does Ronsco provide wheels and
4 wheelsets mainly for freight cars or not?

5 A. We're certified and we produce wheelsets for
6 all three ---

7 66. Q. Yeah.

8 A. --- types. From a volume perspective the
9 freight in Canada far exceeds any volume that would be
10 on the transit side. So, the Canadian transit and
11 passenger car markets is really, really, really, really
12 small and so we do all three, but the volume is
13 certainly freight car.

14 67. Q. Okay. So, let's talk a bit about the goods
15 at issue in the verification report in this whole
16 Proceeding. I think it's H36 wheels. So, I'll invite
17 you to go to -- well, no, not yet, sorry. I just want
18 to make sure we have the same understanding, but -- so
19 you're aware of this file in general I take it? You
20 know that in 2017 CBSA launched a trade compliance
21 verification into Ronsco's importation of two goods,
22 rough cut bore wheels and roller bearings, correct?

23 A. Correct.

24 68. Q. Okay. Are you generally aware of the final
25 verification report contents?

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1 A. Generally, yes.

2 69. Q. Yeah, okay. So, regarding the wheels
3 specifically the report was based on a sample of five
4 transactions that happened in 2015, correct?

5 A. I believe so.

6 70. Q. Okay and so in the verification report the
7 CBSA concluded that the goods should have been declared
8 as wheels other and not as wheel blanks for railway and
9 tramway passenger coaches, correct?

10 A. I believe that is the -- correct.

11 71. Q. Okay and CBSA in the final report also
12 concluded that Ronsco contravened the *Customs Act* by not
13 self-correcting its declaration of the five sample
14 transactions of the wheels when having reason to believe
15 that they were incorrectly classified, is that your
16 understanding?

17 A. I believe that's the conclusion.

18 72. Q. Okay, so the goods at issue in the five
19 sample transactions are the ones that led to the
20 contravention being issued, is that correct?

21 A. I believe so.

22 73. Q. Okay. So, just for ease of reference I will
23 refer during my questions to different tariff items.
24 We'll use Tariff Item .29 when referring to wheels
25 other. We'll refer to Tariff Item .21 when referring to

1 wheel blanks for railway and tramway passenger coaches
2 and to Tariff Item .30 for parts of wheels just to make
3 it easy. They have a longer number, but is that okay
4 with you?

5 A. That is correct. That's fine.

6 74. Q. Okay. So, if we go to the CITT Decision
7 which is at Tab 9 of our Compendium of Documents and
8 I'll refer to it as the Compendium, but it's Exhibit 1
9 for the Record. So, let's start with that, the CITT
10 described the goods as, "The goods in issue are H36
11 wheels Class C for use" -- I'm sorry?

12 MR. TRIVISONNO: Mr. Maher could you just show
13 us where you're reading from?

14 MR. MAHER: Oh yeah, sorry, Paragraph 4, my bad
15 at Page 1 of the Decision.

16 THE WITNESS: Page?

17 MR. TRIVISONNO: It's right here.

18 THE WITNESS: Okay.

19 BY MR. MAHER:

20 75. Q. Yeah. So, that's how the CITT described the
21 goods in issue are,

22 "H36 wheels Class C for use on freight rolling
23 stock. They are made of a single piece of
24 forged steel and at the time of importation have
25 a rough cut bore. Due to the rough bore the

1 goods cannot be attached to axle."

2 So, do you agree with that description of the goods?

3 A. I agree.

4 76. Q. Okay. So, let's take some of those elements
5 one by one to understand really the nature of the goods.
6 What is the meaning of H36?

7 A. The H36 defines -- the 36 defines the wheel
8 diameter. The H will define the tread of the wheel
9 which is the running surface on the rail, how thick that
10 tread is.

11 77. Q. Okay and what does forged steel mean?

12 A. There's two types of wheel -- two methods to
13 produce wheels; one is through forging where you're
14 shaping an existing piece of steel into a circular shape
15 and the second is a cast wheel where you're pouring
16 steel into a pre-defined mold so the forged steel
17 represents the manufacturing process that that wheel was
18 produced under.

19 78. Q. Okay and then what Class C mean?

20 A. Wheels have different chemistries,
21 metallurgical chemistries ---

22 79. Q. Okay.

23 A. --- so the class defines the metallurgical
24 properties that that wheel was produced with.

25 80. Q. And can you tell me more about that

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1 composition or -- of the ---

2 A. Class C tends to be a standard class. I
3 can't go into the details of the chemistry particularly,
4 but it's the more common class of steel that's used for
5 wheels. There's also Class D and Class B and really the
6 operating conditions of the railways will define what
7 they look for in terms of which steel grades are asked
8 for, but the class of steel for wheels in North America
9 is defined under the AAR Standards and Practices. So,
10 there's only so many classifications you are approved to
11 use in North America and how that develops is all
12 defined there.

13 81. Q. Okay and what does rough cut bore mean?

14 A. Rough cut bore, the circle, the hole in the
15 middle of the wheel is unfinished, it has to be cut in a
16 tolerance manner to fit with an axle, it also has to be
17 cut and tolerance. Wheelsets have a press fit that's
18 used to attach the wheel to the axle. There's an
19 interference tolerance between these two dimensions that
20 has to be very exact to get the proper tonnage that you
21 need to know that that wheel is securely attached to
22 that axle.

23 82. Q. And this is what you do in the wheel shop?

24 A. Correct, the wheel shop's role is to create
25 the proper tolerances so that match is correct.

1 83. Q. Okay and so the goods are imported with a
2 rough cut bore and they are -- when they're about to be
3 fitted with an axle you have to finish the bore?

4 A. Right, there's a few steps finishing the
5 bore, create chamfers to allow that wheel to be mounted
6 onto an axle. There's a few steps in the manufacturing
7 around the centre of the wheel to make that happen.

8 84. Q. Okay. So, I understand that except for the
9 bore work there's nothing -- when the goods are imported
10 there's nothing more to be done on the wheel?

11 A. No, we do not touch generally the tread part
12 of the wheel, that part is done to our standards unless
13 for example, you know, we have clients up in Port-
14 Cartier, Quebec that ask us to cut a new tread on to the
15 wheel for their particular reasons, but generally that's
16 an exception rather than a rule.

17 85. Q. Okay. So, the diameter is not part of this
18 description, but I've read it in other documents ---

19 A. Well that -- sorry, the diameter is -- the
20 36 ---

21 86. Q. Oh, yeah, okay.

22 A. --- represents the diameter.

23 87. Q. Yeah, I mean the diameter for the bore I
24 think for those goods was eight inches and three
25 eighths.

1 A. Correct. So, typically we would ask -- you
2 can have a bore diameter as small as for example on an
3 H36 wheel eight and three eighths up to maybe eight and
4 a half inches and it's a function of how you want to
5 match that wheel up against the axle because the axle
6 has a diameter range as well. So, how you bore your
7 wheel, how much you're able to take off to create that
8 proper interference fit determines the ranges of
9 diameters that we would ask for in the rough bore.

10 88. Q. So, that bore diameter would only go with
11 certain types of axles or?

12 A. Correct.

13 89. Q. What type, do you know?

14 A. It depends the dimension. We typically will
15 ask for an H36 wheel. We would ask for three or four
16 different rough bore diameters to categorize against
17 different axle diameters that we would have in our shop,
18 but eight and three eighths and eight and a half inch
19 for an H36 wheel would typically be again the prominent
20 bore diameter sizes -- rough bore diameter sizes that we
21 would look for.

22 90. Q. So, that would be a common bore to use for
23 the Canadian market?

24 A. It would be a -- the two common ones would
25 be those two dimensions for an H36 wheel ---

1 91. Q. Yeah, okay.

2 A. --- only.

3 92. Q. And then the definition or the description
4 talks about for use on freight rolling stock. Can you
5 tell me what that means to you?

6 A. Wheels for an H36 wheel typically we would
7 buy that for freight cars. So, freight rolling stock I
8 would define that meaning a railcar particularly.

9 93. Q. Okay.

10 A. H36 wheels are predominantly used for
11 freight although they have been used previously in
12 certain situations on non-freight car applications, but
13 it's predominantly a freight designation. When somebody
14 looks at an H36 wheel they would think of that as a
15 freight car wheel.

16 94. Q. Okay and just to be clear with the
17 terminology is like freight rolling stock and railcars
18 to you they refer to each other, they mean the same
19 thing or?

20 A. Well connecting the H36 wheel to freight
21 rolling stock ---

22 95. Q. Yeah.

23 A. --- I would define freight rolling stock as
24 a locomotive or a railcar ---

25 96. Q. Yeah, okay.

1 A. --- for -- to haul freight which would be
2 non-passengers.

3 97. Q. Okay. The goods in the five sample
4 transactions I think were all imported from the same
5 manufacturer in China, correct?

6 A. I believe so.

7 98. Q. Have you imported that type of H36 wheel
8 before 2015 from that manufacturer?

9 A. I would believe we have.

10 99. Q. Okay and were -- okay and did you import
11 other types of wheels from that manufacturer or was it
12 mainly or only H36 wheels?

13 A. I'm not 100 percent certain the manufacturer
14 particularly, but we -- being in the rail business
15 whether that wheel would be a common wheel that we would
16 import whether from that manufacturer or any other
17 manufacturer as well as other wheel sizes.

18 100. Q. Okay and do you know why you chose that
19 because I understand that there's many other
20 manufacturers in the world; in Russia, maybe in Ukraine,
21 in Japan, in China. Is there a reason particularly that
22 you chose this one for H36 wheels?

23 A. At that time we choose -- we buy wheels --
24 rough wheels from everywhere around the world. At that
25 time maybe we had been buying multiple wheels from

1 multiple manufacturers and that wheel particularly was
2 going towards a project that we had ---

3 101. Q. Where was that project? Sorry, finish your
4 answer.

5 A. Well it's going towards a project ---

6 102. Q. Yeah.

7 A. --- particularly our customers call out for
8 forged wheels, you know, in particular so that
9 manufacturer happened to have a very high quality forged
10 wheel and, you know, we had had experience with that
11 manufacturer before, positive experience and I could
12 speculate, you know, that's why we'd chosen them for
13 whatever projects we had in that timeframe.

14 103. Q. Okay and you said it was for a project, what
15 was the project?

16 A. So, our customers would be for example,
17 National Steel Car, our OEM manufacturer of railcars in
18 Hamilton. They build railcars for Canadian companies.
19 We would supply those forged wheels for those projects
20 that they were building on railcars.

21 104. Q. Okay. So, you talked about the composition
22 of the wheels and all of that. My understanding also is
23 that wheels in maybe cars -- freight cars or freight
24 cars' wheels versus passenger cars and passenger cars'
25 wheels maybe designed or manufactured differently

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1 because of the different purposes that they serve?

2 MR. TRIVISONNO: Sorry, Mr. Maher I don't
3 understand the question.

4 BY MR. MAHER:

5 105. Q. Okay, so let me rephrase. So, are H36
6 wheels designed specifically to -- for freight rolling
7 stock?

8 A. They're designed for freight rolling stock,
9 correct.

10 106. Q. Okay and my understanding is that freight
11 rolling stock can be very demanding on the railway road
12 and on the wheels so the wheels are designed to be
13 particularly resistant, is that fair?

14 A. That's not a fair ---

15 107. Q. Okay.

16 A. --- comment. I think the wheel design
17 process a lot of it has to do with the function of the
18 load that it's carrying. So, the design process for a
19 transit passenger wheel or a freight wheel is identical.
20 You're looking for stresses, you're looking for loading
21 to understand how those stresses are generated and
22 through that you create a certain profile in a wheel to
23 support that.

24 So, the process is exactly the same for a
25 transit or a freight. The design in the end may look

1 different, but the process is the same and the general
2 functionality of the wheels is the same, it's a round
3 diameter, it's rough it's just the shape that you'd have
4 in what we call the plate of the wheel looks a little
5 different, the diameter of the wheel could be a little
6 different, heavier loads could require a larger diameter
7 wheel to support the stresses. So, freight car wheels
8 typically could be larger. Transit wheels could be a
9 little smaller depending on the application and the
10 design.

11 108. Q. Okay and you said the process is the same,
12 but the shape is not the same?

13 A. The shape and the diameter could be
14 different.

15 109. Q. Okay and was that -- the shape of those
16 wheels was for freight cars to your understanding or?

17 MR. TRIVISONNO: Sorry, Mr. Maher you're
18 pointing at the document and saying "those wheels" ---

19 MR. MAHER: Well, I just ---

20 MR. TRIVISONNO: --- could you please make sure
21 ---

22 MR. MAHER: --- mean the H36 wheel.

23 MR. TRIVISONNO: Right. Let me finish. Could
24 you please just make the question clear for the Record?

25 BY MR. MAHER:

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1 110. Q. Yeah. So, is the shape of the H36 wheels,
2 the goods at issue in this case, is it a shape that is
3 designed for freight rolling stock?

4 A. For this wheel for freight it would have to
5 be approved for freight rolling stock through the AAR --

6 -

7 111. Q. Okay.

8 A. --- yes. Every wheel for transit or for
9 freight has to be approved and have the supporting
10 document to back that up.

11 112. Q. Okay. So, let's go into -- a bit into that
12 document if you may, the AAR Manual which is at Tab 29
13 of our Compendium. So, just for the Record so this is
14 the -- sorry, Chris?

15 MR. TRIVISONNO: I'm just pointing to the
16 document.

17 BY MR. MAHER:

18 113. Q. Yeah, I'm just naming the document for the
19 Record, AAR Manual of Standards and Recommended
20 Practices Wheels and Axles. AAR stands for I think
21 American Association of Railroads?

22 A. That is correct.

23 114. Q. Okay. So, this is the manual containing all
24 of the standards and practice -- it provides the
25 requirements that railway wheels and axles must meet in

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1 order to be sold and used for interchange service in
2 North America, is that your understanding?

3 A. Correct. That is correct.

4 115. Q. Okay and what does interchange service mean?

5 A. Interchange means that the equipment is
6 going to go on different rail lines that are owned by
7 different railways; so not exclusively to the tracks
8 that would be owned by the railways.

9 116. Q. Okay, so it's -- it facilitates transport of
10 goods I guess in North America?

11 A. It allowed for a more fluid network for good
12 transportation or passenger transportation.

13 117. Q. Okay and my understanding is that the goods
14 at issue when they were imported to Canada they already
15 met the requirements of the AAR manual?

16 A. Yes, we cannot put non-AAR approved product
17 in service, so those wheels would have had to have been
18 AAR approved.

19 118. Q. Okay. So, here under 1.0 Scope it says,
20 "These specifications cover one-wear, two-wear
21 and multiple wear wrought and cast carbon steel
22 wheels for locomotives and cars - Classes L, A,
23 B, C (heat-treated) wheels used in interchange
24 service. All freight car wheels manufactured
25 for AAR interchange service must be heat-treated

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1 and of a low-stress design."

2 So, my understanding is that this manual is related to
3 freight car wheels, is that correct?

4 A. It also defines passenger car wheels in
5 Section 1.3. So, it defines it as cars and then has a
6 subcategory as freight cars ---

7 119. Q. Yeah.

8 A. --- but, you know, primarily the AAR you
9 know focuses the majority of the cars in North America
10 would be considered freight cars ---

11 120. Q. Yeah.

12 A. --- there's 1.5 or 1.6 million so their
13 focus it would be on freight cars.

14 121. Q. So, I see Number 2.0 Design, 2.1,
15 "Standard wheel types and tread and flange
16 contours for freight car and locomotive steel
17 wheels shall be as shown in this specification."

18 So, I take it the specification and design this is
19 mainly for freight cars?

20 A. Correct.

21 122. Q. Okay. If you go to -- if you turn to Page
22 694 of the Compendium, we're still at Tab 31, this is a
23 chart I think it's part of Appendix B of the manual
24 titled Standard AAR wheel types -- wide flange contour -
25 - for freight car service -- carbon steel. So, is that

1 -- in the first row we have several I guess types of
2 wheels including the one at issue, H36. So, is that
3 like the typical type of wheels that would be used on
4 the freight car?

5 A. Yes, these are -- many of these wheels are
6 what we would use on freight cars.

7 123. Q. Okay we can put this aside for now. So, I
8 just want to talk about how the goods were declared in
9 2015. So, when you imported the goods in 2015 a custom
10 broker was handling the declarations for you, is that
11 correct?

12 A. I believe that's what would happen, yes.

13 124. Q. Okay and in this case it was FedEx?

14 A. Correct.

15 125. Q. Okay. Since when FedEx had been doing that
16 work for Ronsco?

17 A. I am uncertain exactly for how long, but I
18 believe we had a long relationship with FedEx.

19 126. Q. Okay and how does it work exactly? I
20 understand that FedEx files the declarations, you know,
21 with the CBSA for Ronsco. What do they do as a custom
22 broker for you?

23 A. FedEx as a custom broker they would give us
24 first of all recommendations on how to bring it in,
25 under which tariff clause, that's their responsibility.

1 We would then have the transactions, we would contract,
2 you know, with the custom broker and FedEx for example
3 to clear the shipments, you know, for us, process that
4 paperwork when the goods came from whether it's overseas
5 or domestically across the U.S./Canadian, you know,
6 border either way and they would handle all the
7 clearance of whether it's a container shipment coming
8 in, whether it's a truck moving across the border, their
9 responsibility is handling those transactions for us.

10 127. Q. Okay and do they take care of paying the
11 duties owing?

12 A. I would believe that would be if there was
13 duties owing I believe that would be part of that
14 process, yes.

15 128. Q. Okay and then they would, I guess they would
16 charge you back the duties that they paid on your behalf
17 or do you know how that works?

18 A. I'm not familiar with the exact, you know,
19 process between us on that side of things, but, you
20 know, somehow if there were duties to be paid somehow
21 that would be handled in a transactional basis.

22 129. Q. Okay and so do they select the tariff item
23 that you have to declare for you?

24 A. We always used our brokers to identify the
25 correct tariff item that, you know, we would bring

1 products in under. We have a long history of bringing
2 materials in from around the world and using our brokers
3 to correctly identify the tariff item to bring it in and
4 we've been doing that very -- you know for a long time
5 very successfully and very correctly.

6 130. Q. Okay so I just really don't know much about
7 how this works, but so they would have to know a bit the
8 goods that you're importing in order to advise you and
9 to declare them with the correct tariff classification?

10 A. They would. I think, you know, part of it
11 is industry knowledge. Montreal is the home of the
12 railway network, it's a very closed industry. The goods
13 are very unique to railway applications and I think
14 there's an acquired -- there's a group of brokers that
15 understand that, you know, this business in a way. So,
16 we would identify the goods we're bringing in, the
17 reason we're bringing them in and they would identify
18 the correct tariffs based on their industry knowledge of
19 what we were doing as well.

20 131. Q. Do you know if that happened with the goods
21 at issue with FedEx, that process?

22 A. We had -- in which context?

23 132. Q. Just when you started importing those goods
24 ---

25 A. Which goods?

1 133. Q. The H36 wheels.

2 A. Yes, we had approached FedEx, we would have
3 approached our brokers for those determinations.

4 134. Q. And you have like personal knowledge of that
5 or you're assuming Ronsco would have done that?

6 A. I know there was correspondence between our
7 logistics team and FedEx particularly for those wheels.

8 135. Q. Okay and so the logistics team at Ronsco
9 they're the team that deals with customs issues, is that
10 --

11 A. We have a freight and logistics coordinator
12 responsible for interacting with the customs brokers as
13 well as managing our flow of goods into Canada.

14 136. Q. And who is that?

15 A. Currently it's Tim Tapp.

16 137. Q. Okay and does he have like a team or some
17 employees below him?

18 A. Typically no, it's more of a coordination
19 role and we will use our customs brokers as a resource
20 or our logistics coordinator, our logistics companies
21 that we transport with as another resource.

22 138. Q. Okay. So, you talked about it a bit
23 earlier, FedEx they deal with I think when the goods
24 enter Canada and they need to be released, is FedEx
25 involved in that step of the importation?

1 A. I'm not sure what their exact role to be
2 quite honest with you back, you know, when the goods
3 were there. They would need to have the paperwork I
4 believe to release the goods into Canada, that's one of
5 their main roles or else those goods could not move, you
6 know, to us unless that process was done.

7 139. Q. And so from your understanding it's FedEx
8 that takes care of that or you're not sure?

9 A. Currently we don't use FedEx at this moment
10 today, ---

11 140. Q. Okay.

12 A. --- but, you know, back then it's possible.

13 MR. MAHER: Okay. Can we get an undertaking
14 just to clarify who takes care of the -- who in 2015 who
15 took care of the paperwork for releasing the goods?

16 MR. TRIVISONNO: Can you help me with the
17 relevance, Counsel? I'm not sure I see the relevance so
18 I'm going to give you an under advisement on that.

19 MR. BAXTER: Who at Ronsco takes care of it or
20 who --

21 MR. MAHER: Just to know who takes -- who in
22 2015 who took care of the paperwork when the goods are
23 imported at a port of entry, either like a port or
24 through the U.S.; who takes care of that paperwork so
25 the goods are released, is it a custom broker or is it

A

1 Ronsco employees? It's relevant because the goods are
2 declared at this stage and they're also declared for
3 duty purposes in a more final manner, but I'll get to
4 more questions on that. So, if we take the Compendium,
5 Tab 5, so Page 44 of the Compendium.

6 MR. TRIVISONNO: Mr. Maher could you just
7 identify the document and the Affidavit ---

8 MR. MAHER: Oh, yes, yes.

9 MR. TRIVISONNO: --- of Documents reference for
10 the Record?

11 BY MR. MAHER:

12 141. Q. Yes, so this is Ronsco's Responding
13 Submissions to the -- to CBSA's interim report. So,
14 those submissions are dated May 25, 2018 and this is
15 part of Ronsco's productions at Tab 2. So, if you go to
16 the second paragraph from the bottom, the second
17 sentence starting with,

18 "Again Ronsco relied on classification advice
19 from its customs broker FedEx in selecting the
20 tariff item in question. Consistently since
21 2005 when Ronsco began importing these goods
22 Ronsco's customs broker, FedEx has advised that
23 the appropriate tariff item was Tariff Item 21.
24 Attached at Annex C is a memo to file by one of
25 Ronsco's employees based on advice about tariff

classification received from FedEx in 2005."

2 So, I'll get to the memo just in a moment, but just to
3 stay in this, do you know what's the exact nature of the
4 advice that FedEx gave Ronsco?

5 MR. TRIVISONNO: Well, Mr. Maher, do you want to
6 bring up the memo that's being referenced here? I think
7 that might be of assistance.

8 MR. MAHER: I'm just -- I just want to know if
9 you have any recollection of the advice.

10 MR. TRIVISONNO: I know and you just referenced
11 a document that seems to be relevant to this, so why
12 don't we just bring that up?

13 MR. MAHER: Sure, hold on.

14 Q. Yeah, so it's Page 67. So, this was
15 attached to the responding submissions, it's a memo from
16 Mary Mennano, I take it that she was or she is still a
17 Ronsco employee?

18 A. No, she no longer works at Ronsco.

19 143. Q. Okay and what was her employment at the
20 time?

21 A. Mary was our logistics and freight
22 coordinator.

23 144. Q. Okay and so the advice that is referred to
24 in the responding submission is that the advice that you
25 received, is that your understanding?

1 A. Reading this, this is the advice that we're
2 receiving, correct.

3 145. Q. Okay and I'm sorry if I missed it, but what
4 was her responsibility at the time?

5 A. Freight and logistics coordinator.

6 146. Q. Okay, so she was doing what Tim is doing?

7 A. Correct.

8 147. Q. Okay and she's not employed with Ronsco
9 anymore?

10 A. Correct.

11 148. Q. Okay. So, it says, "Wheel blanks from
12 China." Do you have any way to know if those goods were
13 the same as the H36 wheels imported in 2015?

14 A. Based on this I do not know which wheel it
15 was applying to, but again H36 wheels are the largest
16 volume of wheels ---

17 149. Q. Okay.

18 A. --- and we had been bringing H36 wheels in
19 from Russia and China as well.

20 150. Q. Yeah and I see there's a reference to
21 Russia, same tariff code as those from Russia. Do you
22 know why would the same goods from Russia or China
23 wouldn't be declared the same or?

24 MR. TRIVISONNO: I'm sorry, Mr. Maher, please
25 rephrase the question.

1 MR. MAHER: I'm just curious about the reference
2 to Russia if they're the same good whether they're from
3 China or from Russia. Is there something I'm missing
4 or?

5 MR. TRIVISONNO: No, I'm sorry, Mr. Maher I
6 still don't understand the question.

7 BY MR. MAHER:

8 151. Q. So, were the goods from Russia similar to
9 the ones from China?

10 A. A wheel from Russia would be similar for a
11 wheel in China for -- it would be the same AAR process
12 for sure.

13 152. Q. Okay and do you know who is Serge Bernard
14 from FedEx?

15 A. I'm not familiar personally with Serge
16 Bernard, no.

17 153. Q. Okay. You've never heard of him?

18 A. I've never dealt with Serge ever.

19 154. Q. Okay. Do you know if he provided written
20 advice to Ms. Mennano or someone else at Ronsco?

21 A. I am unaware of anything else that Mary
22 would have had from him.

23 155. Q. Okay and so if we go back to Page 44, you
24 know I read it, I won't read it again, but it says, I
25 think it's the third sentence, "Consistently since 2005

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1 Ronsco's custom broker, FedEx has advised that the
2 appropriate tariff item was Tariff Item .21." I just
3 wanted to know apart from the memo -- because Ronsco
4 used the word "consistently" do you know any other
5 instances where FedEx advised Ronsco of that tariff item
6 classification?

7 A. I'm unaware of any other instance or the
8 need to have; the goods never changed on any other --
9 anything we've done since 2005.

10 156. Q. Okay, I just wanted to clarify because to me
11 the use of the word "consistently" maybe suggested that
12 you had multiple conversations or advice over the years
13 regarding this tariff classification.

14 A. I'm unaware of that.

15 MR. MAHER: Okay. Could we get an undertaking
16 to look for if there were any other instances where
17 advice was taken on that tariff item?

18 MR. TRIVISONNO: Absolutely.

19 MR. MAHER: Either orally or in writing.

20 MR. BAXTER: Just a second -- it was advice from
21 FedEx on the tariff items, thank you.

22 BY MR. MAHER:

23 157. Q. Okay, now I want to dive into really more --
24 how the goods in the five sample transactions were
25 declared in the different documents. So, I'll invite

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1 you to go to Tab 31 of the Compendium which is a few
2 pages of the verification file.

3 A. Is there a page?

4 158. Q. Yeah, I'll bring you to it, just give me a
5 moment. So, this is part of the Defendants' Productions
6 at Tab 204. Yeah, so if you can go to Page 715. So,
7 those are the declarations that were submitted. I
8 understand from the documents they were submitted by
9 FedEx on behalf of Ronsco and at that page -- so those
10 are the -- we'll go into the five declarations, but
11 they're actually the five declarations for the five
12 sample transactions that were in the verification
13 process. So, if you look at, I think it is -- yeah it's
14 in Square Number 22, this one ---

15 MR. TRIVISONNO: Just ---

16 THE WITNESS: Here is Square 22? ---

17 MR. TRIVISONNO: --- a second.

18 THE WITNESS: --- it's not clear

19 MR. MAHER: Sorry. Just here.

20 MR. TRIVISONNO: Is it -- it's the square that
21 says, "AAR Approved H36 wheels"?

22 MR. MAHER: Yeah, exactly. We don't see the 22
23 well, but ---

24 THE WITNESS: Okay.

25 BY MR. MAHER:

1 159. Q. Yeah, so they were declared as AAR "Approved
2 H36 wheels/blanks/not fitted with axle/not finished."
3 If you turn to Page 721 -- or 720, sorry that's another
4 transaction. Again in the 22 square they were declared
5 as, "Blank wheel only, not finished and not fitted with
6 axle." If you go to 721 Square 22 they were declared as
7 "H36 wheels" and 722 they were declared as, "Blank wheel
8 only, not finished and not fitted with axle" and bear
9 with me the last and the fifth declaration at Page 723
10 they were declared only as "Wheels". They -- you can
11 check for yourself, but -- so they were described
12 differently in the different declarations, but the
13 Tariff Item .21 was always the one that was selected.
14 Do you know why the goods were declared so differently
15 between the five sample transactions?

16 MR. TRIVISONNO: I'm sorry, Mr. Maher I don't
17 think that that's a fair characterization of the
18 documents.

19 BY MR. MAHER:

20 160. Q. Okay. Do you know why they were declared --
21 described differently?

22 A. I do not know.

23 161. Q. Okay and this was done by FedEx, is that a
24 correct understanding or --

25 A. I will assume this is a FedEx document,

1 correct.

2 162. Q. Okay, still in that Tab 31 if you go to Page
3 710 have you read that page, that document before or you
4 not ---

5 A. I don't believe I've ever seen this document
6 before.

7 163. Q. Okay. So, it's called Risk -- it's part of
8 the verification file, part of the productions of the
9 Defendants at Tab 204 and it's called Risk Management
10 Unit Documents and then under Issue, "Ice cap referral"
11 it says, "Declaration in ACROSS was Tariff Item .29."
12 There's another Tariff Item .19, but I think that refers
13 to axles, so I'll -- I just want to --

14 MR. TRIVISONNO: And Mr. Maher, could you just
15 clarify, this document is prepared by CBSA?

16 MR. MAHER: Yeah. It's internal to the CBSA.
17 So, it says, "Declaration in ACROSS Tariff .29 9.5
18 percent duty" and then accounting and CCS Tariff Item
19 .21 free duty." So, it talks about what we touched a
20 bit upon, you know, you declare the goods when they're
21 at a port of entry for release and then you also make a
22 more final declaration or accounting of the goods for
23 duties purposes. I just want to make sure you
24 understand.

25 So, if you turn the page to 711 -- or maybe just

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1 712 it's a bit more clear anyway. So, this is still
2 part of the verification file of the CBSA. So, as you
3 can see the first row it's called, "Release data ACROSS"
4 and then you have the harmonized system code which is
5 Tariff Item .29 with a 9.5 percent rate of duty and then
6 in the B3 data or the CCS system the harmonized system
7 code is actually changed to .21 with a 0 percent rate
8 duty.

9 MR. TRIVISONNO: And, Mr. Maher this is another
10 internal CBSA document?

11 MR. MAHER: Yes.

12 164. Q. So, do you know anything about the two
13 system, like the ACROSS declaration system and the CCS
14 system?

15 A. No, these -- this information is foreign to
16 me.

17 165. Q. Okay just ACROSS stands for Accelerated
18 Commercial Release Operations Support System. So, it's
19 really at the port of entry to release the goods so that
20 they can go to their destination. Were you aware that
21 the goods were declared differently in ACROSS system
22 versus CCS system?

23 MR. TRIVISONNO: Sorry, Mr. Maher you haven't
24 purported to give an explanation of what the CCS system
25 is.

1 MR. MAHER: It's the final accounting system.
2 So, the ACROSS system is some sort of interim
3 declaration system to really make the goods flow more
4 quickly. So, when they -- because when they reach the
5 port of -- they reach a port of entry if they're not
6 declared they'll have to be reclaimed at the port of
7 entry. So, that system actually gives an opportunity
8 for an importer to declare them even before they arrive
9 at a port of entry so that they can be released very
10 quickly and then a more final reporting is done through
11 the CCS system and that's where the final duties are
12 calculated.

13 MR. TRIVISONNO: Okay thank you and the Witness
14 has told you he's not familiar with either of these
15 systems.

16 MR. MAHER: No, it's okay.

17 166. Q. Are you familiar with the first declaration
18 that an importer does at the port of entry?

19 A. I'm familiar with the concept, yes.

20 167. Q. Okay. So -- okay and I want to -- I asked
21 you earlier I think I wanted to know who's responsible
22 for declaring the goods in ACROSS; is it FedEx? Is it
23 Ronsco? But we already have an undertaking for that.

24 MR. TRIVISONNO: You have an under advisement.

25 MR. MAHER: Yeah.

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1 168. Q. So, do you know how the goods in issue, the
2 railway wheels, do you know how they got to Canada?

3 A. The five samples?

4 169. Q. Yeah.

5 A. Coming from that manufacturer they would
6 have entered a port on the west coast, most probably in
7 a container.

8 170. Q. So -- okay they got shipped transportation?

9 A. Yes.

10 171. Q. And then -- so like in Vancouver, is that --

11 A. It's possible. Canadian West Coast most
12 likely if there were -- is the primary area that we use,
13 Vancouver or Prince Rupert. It's also possible it could
14 be U.S. West Coast in certain instances, but --

15 172. Q. Okay and then they're shipped by train -- by
16 railway?

17 A. Correct. We have the logistics generally is
18 a through logistics to our facility as a final
19 destination. So, the shipping company that's
20 responsible for contracting with the railways to put
21 that on a train and ultimately get that to its final
22 destination.

23 173. Q. Okay which -- okay and some of them I guess
24 will -- would go to Ronsco's wheel shop in Hamilton or
25 Coteau-du-Lac?

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1 A. Depends on the timeframe, sometimes they go
2 directly to customers, sometimes they go directly to us
3 for use in different ways we use them.

4 174. Q. Okay. Do you know if those -- the goods in
5 the five sample transactions were shipped as is to the
6 customer or they were, you know, the bore was further
7 processed and placed on the wheel set by Ronsco?

8 A. I am uncertain whether we actually processed
9 the bore on those wheels in particular.

10 175. Q. Okay. At the time of the verification, so
11 when the verification started -- was in 2017 to 2018 was
12 Ronsco still using the services of FedEx for custom
13 needs?

14 A. I'm uncertain about that.

15 176. Q. Okay because I saw in some of the documents
16 that PricewaterhouseCoopers was involved. I don't have
17 the specific reference, but does that ring a bell to
18 you?

19 A. I can only assume based on what you've
20 presented that FedEx was somewhat involved, absolutely.

21 177. Q. Yeah, so those were in 2015 ---

22 A. Mm'hmm.

23 178. Q. --- so I take it that it's -- FedEx is on
24 the declaration B3 so I take it that they were your
25 custom broker at the time. I was just wondering if

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1 later on during the verification process FedEx was still

2 ---

3 A. That I don't -- I do not know.

4 179. Q. Okay. Maybe it would be a good time for a
5 break just to help me.

6 A. Sure, yeah.

7 (SHORT RECESS)

8 BY MR. MAHER:

9 180. Q. Welcome back, Mr. Montgomery. Just before
10 we move on I just have a few, you know, final questions
11 on Tab 31 of the Defendants' Compendium which we went
12 over -- if you go to Page 712 we discussed the ACROSS
13 system where the goods were declared under Tariff Item
14 .29 and then the final accounting system CCS where the
15 goods were declared under Tariff Item .21. I take it
16 that you're not familiar with this document, so do you
17 know who would have declared the goods in ACROSS and
18 then who would have declared the goods in CCS?

19 A. I have no idea.

20 MR. MAHER: Okay. Could we get an undertaking
21 to elicit that question?

22 MR. TRIVISONNO: So, we can look to see what we
23 can find ---

24 MR. MAHER: Okay.

25 MR. TRIVISONNO: --- and if we find anything we

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1 can produce that information to you.

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2 MR. BAXTER: Undertaking or advisement?

3 MR. TRIVISONNO: No, this is an undertaking.

4 MR. BAXTER: Okay, to look re: Tab 21, okay.

5 MR. MAHER: Okay and you know it would be useful
6 to know like what organization and even if you can get a
7 name of who declared the goods in the two different
8 instances.

9 MR. TRIVISONNO: We'll see what we can find.

10 MR. MAHER: Yeah.

11 181. Q. Do you have any idea why the difference in
12 the declaration?

13 A. No, I do not.

14 182. Q. Okay. We talked a lot about FedEx and their
15 work as your custom brokers. Would you agree with me
16 that ultimately it is the importer's responsibility to
17 make sure their goods are declared correctly?

18 MR. TRIVISONNO: Just a second, Mr. Maher, that
19 sounds like a legal question to me.

20 MR. MAHER: It's not legal.

21 MR. TRIVISONNO: Yes, you are ----

22 MR. MAHER: Would you agree with that?

23 MR. TRIVISONNO: --- asking Mr. Montgomery for a
24 legal conclusion. That's not an appropriate question
25 for this Witness.

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1 BY MR. MAHER:

2 183. Q. Does Ronsco feel like they are responsible
3 for their own declaration even though they use the
4 services of a custom broker?

5 A. I feel the custom brokers are the experts;
6 that's their job, that's their responsibility.

7 184. Q. Okay and are they your agent when they act
8 as a custom broker?

9 MR. TRIVISONNO: That's -- again, that's a legal
10 question.

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11 BY MR. MAHER:

12 185. Q. Okay so moving on. So, the verifications
13 started in 2017 and went over to 2018 when the final
14 verification report was issued. Were you at all
15 involved personally in that verification process?

16 A. Not consistently, but I was aware it was
17 happening.

18 186. Q. Okay, so what was your involvement, just
19 getting briefed on the --

20 A. Just generally being briefed. It was done
21 through finance and through our logistics group.

22 187. Q. So, would that include the logistics
23 coordinator?

24 A. Correct.

25 188. Q. And was -- I forgot his last name, but Tim -

1 - was Tim in that position at the time of the
2 verification?

3 A. I believe Mary was still in the position at
4 the time of verification.

5 189. Q. And sorry what's his last name just so that
6 I know?

7 A. Mary Mennano.

8 190. Q. Yeah.

9 A. I believe she was still in her position at
10 the time.

11 191. Q. Okay and she was replaced by Mr.?

12 A. Tim.

13 192. Q. Okay. So, during the verification process
14 Ronsco was asked to provide evidence of the company's or
15 -- was asked to provide evidence of where the goods were
16 -- or to who the goods were sold to and for what usage
17 the goods were sold for and Ronsco provided an
18 attestation from CN, Canadian National and if you want
19 to bring up again Tab 31 of the Defendants' Compendium
20 at Page 790. So, this is titled Canadian National
21 Railway, address is in Winnipeg and it says,

22 "This refers to the sale and usage of over
23 10,000 H36 wheel blanks sold and delivered to
24 CN's wheel facility in Winnipeg between the year
25 of 2015. This is confirmation that CN has

1 applied all the above wheel blanks as follows:
2 wheel blanks were used in the manufacture of
3 wheelsets, that is wheel, axle and bearing
4 combination for railcars and were purchased from
5 Ronsco on CN purchase order number [something]
6 and all above wheel blanks were processed
7 through our Transcona wheel shop facility."

8 So, I understand that some of the goods that were the
9 subject of verification were directly sold to CN, is
10 that correct?

11 A. This document indicates that, yes.

12 193. Q. Okay and so this document does not provide
13 any indication that the wheels were used for passenger
14 coaches, is that correct?

15 A. That is correct.

16 194. Q. Okay and it talks about railcars. Are
17 railcars freight cars? Passenger cars? What is it, do
18 you know?

19 A. Broadly speaking railcars from a CN
20 perspective would be freight cars.

21 195. Q. Okay and do you know if CN manufactures
22 their own railcars or --

23 A. CN repairs railcars. They don't -- I don't
24 believe they manufacture their own railcars.

25 196. Q. Okay and then Ronsco provided another

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1 certificate at -- again in the Defendants' Compendium at
2 Tab 31 at Page 718. So, this is a certificate this time
3 from National Steel Car Canadian manufacturer of
4 railroad rolling stock. It says that,

5 "Wheel blanks for use in the manufacture of
6 wheelsets for a railcar are purchased from
7 Ronsco. Wheel blanks are processed through our
8 wheel shop facility in Hamilton, Ontario. The
9 goods for the sample period have all been used
10 and none has been diverted to a purpose other
11 than the manufacture of wheel sets."

12 What is -- do you know what's National Steel Cars' line
13 of business; what do they do?

14 A. They are an OEM manufacturer of new
15 railcars.

16 197. Q. What's an OEM?

17 A. Original Equipment Manufacturer.

18 198. Q. Okay, so they actually manufacture, you
19 know, from scratch the ---

20 A. Correct, ---

21 199. Q. --- railcar?

22 A. --- brand new railcar for clients.

23 200. Q. Okay and do they do freight cars or
24 passenger cars or both?

25 A. Currently they're doing just freight cars.

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1 201. Q. Okay and in 2015 do you know?

2 A. I believe they were just doing freight cars.

3 202. Q. Okay. Do you know who drafted the
certificates before the signature of the two companies?

5 A. I do not know. I will assume they signed it
6 so they drafted it.

7 203. Q. Okay. Also -- well if we take the CN
8 certificate at 719, yeah, it talks about a purchase
9 order with a specific number. So, do you know how the
10 goods were referred to or described in the contracts and
11 invoices with CN?

12 A. I do not know personally.

13 MR. MAHER: Okay. Can we get an undertaking to
14 have those documents; the invoices and the contracts
15 related to those transactions?

16 MR. TRIVISONNO: I'll take it under advisement. *A*

17 MR. MAHER: Okay and same for the -- same
18 request for the national steel car one.

19 MR. TRIVISONNO: I'll take that under advisement
20 as well. *A*

21 MR. MAHER: Okay. We just want to know how the
22 goods are actually described in the contractual
23 documents.

24 204. Q. So, during the verification would you agree
25 that Ronsco did not provide any evidence that the H36

1 wheels at issue were for the use in railway passenger
2 coaches?

3 A. I would agree we did not do for railway
4 passenger coaches, right.

5 205. Q. Okay and is this because simply the goods
6 were not destined for that use, they were for freight
7 cars?

8 A. Absolutely.

9 206. Q. Okay. Okay if we do to Ronsco's Responding
10 Submissions to the interim report which was produced by
11 the Plaintiff at Tab 2 of their productions. So, this
12 is Tab 5 actually of the Defendants' Compendium. So,
13 just to give you more context the verification process
14 included a first interim report to which Ronsco had an
15 opportunity to respond to. So, Ronsco provided
16 submissions to that interim report. So, if we go to
17 Page 44 so second paragraph starting the first sentence
18 Ronsco said, "Having reviewed the interim report Ronsco
19 also does not dispute that the tariff ---

20 MR. TRIVISONNO: Sorry, Mr. Maher, where are
21 you? The second paragraph starts with, "As the interim
22 report points out" --

23 MR. MAHER: Second paragraph from the bottom.

24 MR. TRIVISONNO: Ah.

25 BY MR. MAHER:

1 207. Q. "Having reviewed the interim report Ronsco
2 also does not dispute that the tariff
3 classification that was submitted for the
4 importations of AAR approved H36 wheels Class C
5 eighth and three eighth bore diameter during the
6 verification period was incorrect."

7 So, my understanding of that statement by Ronsco is that
8 Ronsco was in agreement with the CBSA that the goods did
9 not meet Tariff Item .21. Is that a correct
10 understanding of that?

11 A. I disagree with that.

12 208. Q. How?

13 A. We put them under the correct
14 classification. We determined that they were wheel
15 blanks. It's a term that is commonly used and very
16 appropriate wording for what we import. In the
17 situation that we were in we understood that that
18 terminology, their wording is very confusing. We looked
19 at maybe more appropriate areas within the tariff
20 classification that could better represent what we were
21 doing as a manufacturing input and have easier
22 clarification on the processes that we were actually
23 doing.

24 So, it wasn't a situation where we disagreed,
25 but we looked at an area that was better and more

1 appropriate for us to look at. It's an unfortunate
2 situation with wording of .21 where there's
3 interpretations that are very gray and although we still
4 believe and I personally believe very much that what we
5 were bringing in was very well described in .21, .30 was
6 another avenue that maybe made it clearer for everybody
7 involved that it was another avenue to look at.

8 209. Q. Okay so -- because here Ronsco clearly said
9 they agree that the declaration was incorrect -- hold on
10 -- in response to the interim report. So -- okay so
11 from what I understand is that when you were declaring
12 the goods you thought it was correct, but in responding
13 to the interim report you agreed with the CBSA that .21
14 was not the correct classification.

15 MR. TRIVISONNO: So, Mr. Maher I'll let you
16 rephrase the question, but you're not accurately
17 representing what it says in the sentence. The sentence
18 says, "Ronsco also does not dispute." The word "agree"
19 is not used anywhere in the sentence, that's your word.

20 BY MR. MAHER:

21 210. Q. Does not dispute that the tariff
22 classification of the goods during the verification
23 period was incorrect. So, okay why did you not dispute
24 that? Why didn't you argue that it fell under Tariff
25 .21?

1 A. The really poor wording of .21 I believe we
2 felt as an area that was something that we looked at
3 differently in the tariff codes. It was an area also
4 that we saw the, you know, the CBSA not having a good
5 understanding of their own wording. So, on review of
6 the tariff classifications and understanding of what we
7 had as a manufacturing input which was used, you know,
8 as an assembly that .30 was certainly something that was
9 as appropriate as .21 and we decided to pursue that in
10 our course.

11 211. Q. Okay. So, you say that .21 is -- could be
12 subject to different interpretation including the ones
13 that you had when you were -- the one that you had when
14 you were declaring the goods. You just decided not to
15 pursue that?

16 A. Upon review, you know, my understanding is
17 we had to decide to pursue one, we can't pursue two, so
18 we looked at .30 as an area that was very appropriate
19 understanding what we were doing and felt that it was
20 much clearer in terms of reference of what we were doing
21 versus the wording that was there in the tariff code.

22 212. Q. Okay and if you turn to Page 45 of Tab 5 of
23 the Defendants' Compendium, third paragraph I think from
24 the top. Here Ronsco stated,

25 "As a result having reviewed the physical

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1 characteristics of the goods in question in
2 light of the interim report as well as their
3 production process and usage in the market,
4 Ronsco accepts that the wheel bodies. Corps de
5 roue as imported do not fall within Tariff Item
6 .21."

7 So, do you know like what was the review -- what kind of
8 review of the physical characteristics was done?

9 A. I think the review which we undertook on our
10 own initiative because I don't believe anybody really
11 understood why .21 was written as it was, but it
12 certainly characterized wheel blanks is the terminology
13 that anybody in the railway would use and has used
14 forever as what a wheel represents for a wheel shop.

15 Whenever we would get tenders from CN or CP our
16 biggest clients it would always be wheel blanks. Upon
17 further studies I think it was only maybe looked at as
18 blanks could represent something else from a completely
19 different technical, you know, term. So, it created a
20 lot of confusion again and I think it was the work that
21 we did to look at that to try to understand it better
22 ourselves where we said okay the way it's written nobody
23 really understands why it's written that way, there
24 could be, you know, just a historical reason why people
25 were using this for wheel blanks and maybe nobody

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1 understood why it was written that way.

2 We chose to go to .30 to better represent it
3 because again it's very unclear. It was clear for us
4 what we were thinking we're bringing in, but from a
5 purely technical standpoint maybe it wasn't, so let's
6 separate ourselves from this, let's go to something that
7 we think is very appropriate. We had manufacturing
8 input, we were transforming something to create a
9 finished product and .30 could take the ambiguity away
10 of how people were wanting or choosing to interpret, you
11 know, .21.

12 213. Q. And you said the work that you did to assess
13 the correct tariff classification, what was that work?

14 A. Well we have clearly, you know, assistance
15 with, you know, Peter Clark's group and others to kind
16 of really look and try to understand, you know, what
17 that wording, you know, could mean.

18 214. Q. Okay and so later -- a bit further down that
19 page Ronsco stated,

20 "In fact Ronsco does not import blanks. A blank
21 is defined as a piece of metal or wood intended
22 for further shaping or finishing. As described
23 below the goods imported by Ronsco are not
24 merely pieces of metal when they leave their
25 country of origin destined for Canada."

1 So, I take it that at that stage responding to the
2 verification report Ronsco agreed with the CBSA that
3 they were not importing wheel blanks, is that a correct
4 understanding of that statement?

5 A. No, what it meant is we felt .30 was more
6 appropriate.

7 215. Q. Okay. So, you actually disagree with that
8 statement?

9 A. I believe what we were importing were wheel
10 blanks for the use of the railway industry which is what
11 we understood to be and it's a historical context. So,
12 you know, the idea that there could have been a better
13 code fit really well in what we did knowing that we were
14 transforming something, creating something new and .30
15 was something that we chose to look at, you know, in
16 that way. The ambiguity around the word "blanks" and
17 the way that was written certainly maybe wasn't the best
18 thing to try to figure out and argue, but .30 for us was
19 a very straightforward position on what we were doing.

20 216. Q. Okay and do you agree with that definition
21 of a wheel blank aka "a piece of metal or wood intended
22 for further shaping or finishing?"

23 MR. TRIVISONNO: The definition is actually of a
24 blank.

25 MR. MAHER: Yeah, okay.

1 THE WITNESS: I think you could have different
2 arguments on different things with blanks certainly, but
3 that is certainly one definition of a blank, yes.

4 BY MR. MAHER:

5 217. Q. Okay. Okay, so what is a wheel blank to
6 you; how would you describe it?

7 A. The wheel blank for us is an unfinished
8 product and what we were bringing in for us a blank is
9 you punch a hole in the middle and that is your blank,
10 that's the part that has to be finished and processed,
11 you know, it is a non-tolerance hole that needs to be
12 further worked, right?

13 And the term blanking is that, you know,
14 referencing into the middle, an unfinished product and
15 the terminology again, across Canada and it's easy to
16 define that's how people define a wheel used before they
17 were putting it onto a wheelset and that's just what I
18 grew up with within Ronsco, it's what the railways have
19 always used and, you know, that's how we define it and
20 today people still interchangeably use wheel blank,
21 wheel plates, rough wheels; these are all terms that
22 constitute what we view as something that needs to be
23 further processed before you put it on a wheel set to
24 try to, you know, differentiate between what am I
25 supplying, a wheel set or a wheel blank or a rough

1 wheel; these are all just terms that, you know, have
2 some sort of context in our industry.

3 218. Q. Okay. Does anybody refer to that type of
4 good as a wheel body or a corps de roue?

5 A. Wheel body is a term that's used as well.
6 Corps de roue is, you know, the French version is not
7 something I've heard, you know, too often for sure.

8 219. Q. Okay and so when you're at the wheel shop or
9 at Ronsco's warehouse where the goods are stored, the
10 H36 wheels, how would the people working there describe
11 the -- how would they refer to the goods; in different
12 ways? In one way?

13 A. It's all in different ways really, you know,
14 it could be as simply as saying hey can you -- I need
15 ten H36 wheels today, right? The context would be I'm
16 getting ten rough wheels, I'm getting ten wheel blanks,
17 I'm getting ten wheel plates, but the words are
18 interchangeable amongst the different people that, you
19 know, are there.

20 220. Q. Okay. So, I'd like you to go in the same
21 tab I think -- no, we'll go to Tab 8 of the Defendants'
22 Compendium which is Ronsco's Public Brief at the CITT
23 part of Ronsco's productions at Tab 12. So -- but this
24 is Tab 8 of Exhibit 1.

25 A. Sorry, which tab do you want me on?

1 221. Q. 8.

2 A. 8, okay.

3 222. Q. Sorry.

4 A. Yeah.

5 223. Q. And at Page 257. So, do you recognize that
6 document? It starts at Page 257.

7 A. I don't recognize it personally, no.

8 224. Q. Okay. So, it's a -- it's part of Ronsco's
9 Public Brief that was filed at the CITT Proceeding and
10 it's called, "Summary of Steps Involved in the Forging
11 Process." So, this was submitted by Ronsco. Do you
12 know who prepared that document; is it Ronsco or --

13 MR. TRIVISONNO: I believe that may be indicated
14 in the brief.

15 MR. MAHER: I think it's part of Tab 3 of -- so
16 -- so it's called in the index, "Ronsco Inc., Summary of
17 Steps Involved in the Forging Process." So, my
18 understanding is that it would be prepared by Ronsco.

19 MR. TRIVISONNO: There's a reference in one of
20 the footnotes at Page 231 which indicates that this
21 might be a Taiyuan document. If you look about halfway
22 down, the document is introduced here, Tae Yun Heavy
23 Industrial Railway Transit Equipment Co. Ltd. Taiyuan.

24 MR. MAHER: Yeah so ---

25 MR. TRIVISONNO: So, it refers to this document

1 as a Taiyuan document ---

2 MR. MAHER: Well, I mean if you go further up it
3 says,

4 "The forging process employed to produce wheel
5 bodies from the selection of raw materials to
6 the final good normally involves 18 steps which
7 Ronsco has summarized in a document at Tab 3."

8 So, putting aside the who prepared the document
9 question, this was filed by Ronsco in their -- in the
10 CITT Proceeding. Are you aware of that foraging
11 process, like are you generally aware of how ---

12 THE WITNESS: Yes, I'm very familiar with the
13 forging process, yes.

14 BY MR. MAHER:

15 225. Q. Okay. So, I see here at Step 1 the goods or
16 the first, you know, the early version of it, it says,
17 "Step 1 raw material check, Taiyuan obtains steel blooms
18 from a steel supplier." So, my understanding is that
19 the goods first start by being a steel bloom, is that
20 your understanding as well?

21 A. Yes, that's correct.

22 226. Q. Okay and what is a steel bloom?

23 A. A steel bloom is a raw piece of steel that
24 could be squared or it could be ---

25 227. Q. Okay.

1 A. --- circular.

2 228. Q. So, in this case would it be circular or
3 squared or both or --

4 A. I am uncertain what shape they get their
5 blooms in, but it could be either or.

6 229. Q. So, it's like a slice of steel that is
7 really not designed yet to be ---

8 A. No, it's just simply raw steel in a certain
9 shape that they will have determined need to go through
10 their process.

11 230. Q. So and then Steps 2, Saw Cut "the steel
12 blooms are sawn into cylindrical blanks, ébauches." Is
13 that what we would call wheel blanks from a
14 manufacturing perspective?

15 A. No, that's not what you'd call a wheel
16 blank, but I think when you saw cut you're just cutting
17 the blooms into certain smaller sizes that ultimately
18 then are beginning their journey through the wheel
19 process.

20 231. Q. Okay, so what is a blank?

21 A. Well, that's a great question. In this
22 context a blank is still something that's unformed.

23 232. Q. Okay and then there's Step 3 Blank Heating.
24 "The blanks are heated. 4. The heated blanks are then
25 descaled. 5. Preforming and then 6. I guess is a very

1 critical step which is called forging. So, the
2 preformed quoting:

3 "The preformed disc is forged to the specific
4 required diameter thickness specification. At
5 this stage the material has been differentiated
6 for a particular use and is no longer a blank."

7 So, do you know then what it is after Step 6?

8 A. It's beginning to take the shape of a wheel.
9 So, it's beginning to look like something.

10 233. Q. Okay. So, it has -- I take it that at that
11 step it has, you know, the specialized shape of a
12 railway wheel?

13 A. Right, the foraging hammer blanks out the
14 middle, like cuts a hole through it ---

15 234. Q. Yeah.

16 A. --- and it starts shaping the middle --
17 shaping that wheel into what it should look -- start
18 looking like.

19 235. Q. And it says the preformed disc is forged to
20 the specific required diameter thickness specification.
21 So, let's say an H36 wheel you told me that the 36 is
22 the thickness of the flange or is it the --

23 A. The 36 is the diameter of the ---

24 236. Q. Okay.

25 A. --- -- circumference of the wheel.

1 237. Q. Okay, so at this point am I correct to
2 understand that the wheel would have that specification
3 already?

4 A. Well, not after forging, but certainly after

5 ---

6 238. Q. Okay.

7 A. --- rolling ---

8 239. Q. Okay.

9 A. --- you know rolling basically gives it more
10 of a dimensional shape. Forging gives it a very rough
11 shape ---

12 240. Q. Okay.

13 A. --- and then the next steps are continuing
14 to bring it in to a more of a finished state.

15 241. Q. Okay and so -- and then it continues on,
16 there's a few other steps. So, when those 18 steps are
17 completed the goods have been manufactured and they're
18 shipped as is to Ronsco for example, is that correct?

19 A. Right, once the wheel has gone through its
20 full manufacturing process and has been certified by the
21 company then it should be ready to ship to Ronsco.

22 242. Q. Okay and I take it that this process really
23 hasn't changed much, like in 2015 that would be the
24 process that would have been applied to the goods?

25 A. For a forged wheel ---

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1 243. Q. Yeah.

2 A. --- this would still ---

3 244. Q. Okay.

4 A. --- generally be the process, yes.

5 245. Q. And before 2015 this would have been the
6 process as well for the goods?

7 A. Broadly speaking, yes.

8 246. Q. Yeah, okay and would you agree that Ronsco
9 was aware of that process as described in this document?

10 A. We're familiar with the manufacturing of
11 forged wheels, yes.

12 247. Q. Okay. Would you agree with me that Ronsco
13 in -- during the verification marketed itself as a wheel
14 supplier rather than a wheel manufacturer?

15 A. We do not manufacture wheels so, correct, we
16 would sell wheels.

17 248. Q. Okay and would you agree with me that Ronsco
18 never marketed itself as a wheel blank supplier?

19 A. I don't know how that would be.

20 249. Q. Okay. So, in the CBSA's Public Brief there
21 was an excerpt of Ronsco's website -- sorry the Public
22 Brief that was filed at the CITT and in that website
23 there was an excerpt where Ronsco was describing itself
24 as a wheel supplier rather than a wheel blank supplier.

25 MR. BAXTER: Which tab is this, Mr. Maher?

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1 MR. MAHER: Yeah, so it's not in those tabs,
2 it's in the productions. It's Tab -- I think it's Tab
3 21 -- yeah 21 of your productions.

4 MR. TRIVISONNO: What page do you want to take
5 us to?

6 MR. MAHER: PDF 83. So, just for the Record
7 this document is not part of the Defendants' Compendium,
8 but it is part of the Plaintiff's productions at Tab 21,
9 Page 83 of the PDF document.

10 250. Q. So, I was just alluding to the fact that in
11 this document at least the website -- an excerpt of
12 Ronsco's website, Ronsco describes itself as, "A long-
13 term supplier of freight and transit wheels" and then I
14 think you can look further down you can see a type of
15 wheel that you sell, H36 and -- which is described as
16 "36 inches one way AAR forged steel wheel." So, I just
17 wanted to confirm with you that Ronsco at least at the
18 time there marketed itself as a wheel supplier rather
19 than a wheel blank supplier.

20 MR. TRIVISONNO: And sorry, Mr. Maher at what
21 time is this? Like when was this screenshot taken from
22 the Ronsco website?

23 MR. MAHER: So, this must have been taken in
24 2019 when the brief was filed.

25 MR. TRIVISONNO: Do you know that?

1 MR. MAHER: I'm not sure, but it was filed with
2 the brief, so -- in 2019.

3 MR. TRIVISONNO: Okay.

4 BY MR. MAHER:

5 251. Q. But anyway I just wanted to make sure Ronsco
6 never really marketed itself formally at least as a
7 wheel blank supplier?

8 A. We didn't use the words blank in this
9 website, but the -- we would certainly get all tenders
10 of somebody asking for wheel blanks and we would submit
11 pricing based on that. So, again, what I've said the
12 interchangeability of terms is part of what we deal
13 with.

14 252. Q. Okay and I take it that before 2015 you
15 didn't have a wheel shop, so you weren't doing the bore
16 finishing, ---

17 A. Correct.

18 253. Q. --- but you were still importing the goods?

19 A. That is correct.

20 254. Q. So, you would sell -- you would supply the
21 goods to companies, customers as is in the way they were
22 imported?

23 A. That is correct.

24 255. Q. Okay. Would you agree with me that the
25 goods which are AAR approved at the time of importation

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1 are referred to in the AAR manual only as wheels and not
2 wheel blanks?

3 MR. TRIVISONNO: Mr. Maher, you'll have to turn
4 him to a reference.

5 MR. MAHER: Yeah, we can go to the AAR Manual.
6 Sorry.

7 MR. BAXTER: It's Tab 29, Counsel.

8 MR. MAHER: Yeah.

9 256. Q. So, my understanding of that document is
10 that they refer to the goods as wheels ---

11 MR. TRIVISONNO: I'm not sure that this document
12 is referring specifically to the goods, I mean these are
13 specifications.

14 MR. MAHER: So, you could ---

15 MR. TRIVISONNO: If you can point me to a
16 specific reference that you say is to the goods then
17 that might help us.

18 MR. MAHER: Yeah, just hold on. So, there are
19 multiple references to the goods or the word wheels. If
20 you go to Page 672.

21 257. Q. I take is that the goods, when they are
22 imported, they meet these requirements already?

23 A. Which requirements, sorry?

24 258. Q. Of the AAR Manual.

25 A. That is correct.

1 259. Q. Okay. So, it would be fair to say that your
2 Chinese manufacturer imports AAR approved H36 wheels?
3 That would be fair?

4 A. They would manufacture wheels to this AAR
5 standard, correct.

6 260. Q. Okay and if you go to Page 672 under their
7 section 16.0 Finish, 16.1 says, "Wheels shall be
8 rough bored and shall not have black spots in the rough
9 bore." So, my understanding of that is that the goods
10 must be rough bored and at that stage the AAR Manual
11 refers to the goods rough bore wheels as wheels and not
12 wheel blanks or wheel bodies or another term.

13 MR. TRIVISONNO: Sorry, just the question is not
14 clear. Are you referring to the stage before the rough
15 bore or after?

16 MR. MAHER: After. I mean when the bore is
17 rough.

18 MR. TRIVISONNO: So, are you asking after the
19 wheel has been bored is it called a wheel? Is that what
20 you're asking?

21 MR. MAHER: When the wheel has a rough cut bore
22 ---

23 MR. TRIVISONNO: Right.

24 MR. MAHER: --- it's called a wheel. I just
25 want to make sure that the AAR refers to the goods with

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1 a rough bore as a wheel and not another term.

2 THE WITNESS: The AAR would again use the term
3 maybe wheel for simplicity to kind of capture that term.

4 BY MR. MAHER:

5 261. Q. Okay. Just give me a minute. Just pardon
6 me one second. Okay, so do you know how the
7 manufacturer of the goods at issue, the Chinese
8 manufacturer, do you know how they market -- how they
9 call themselves, a wheel manufacturer or a wheel blank
10 manufacturer?

11 A. I'm uncertain how they would market
12 themselves.

13 262. Q. Okay and do you know how the goods are
14 referred to in the purchase contract between Ronsco and
15 the manufacturer -- the Chinese manufacturer?

16 A. I'm uncertain what we would have put on our
17 purchase order terms.

18 MR. MAHER: Okay, I'll ask for an undertaking to
19 get those documents to see how the goods are described
20 between the manufacturer and Ronsco.

21 MR. TRIVISONNO: What timeframe are we looking
22 at?

23 MR. MAHER: Well, I mean it can be just the
24 contract for the 2015 transaction.

25 MR. TRIVISONNO: Okay let me see if we can find

1 that.

2 MR. MAHER: So, I think they were produced in
3 the CITT Proceeding, but in the confidential brief so --
4 and that brief for obvious reason was not produced by
5 Ronsco so -- and we destroyed them as per our obligation
6 so we don't have them anymore, but I know they exist.
7 They were -- I think they were at Tab 20 of the -- of
8 Ronsco's brief.

9 MR. TRIVISONNO: So, let us go take a look and
10 subject to any objections that we had to producing them
11 publically at the time, we'll see what we can do.

U

12 BY MR. MAHER:

13 263. Q. Yeah and so if you take Tab 31 of the
14 Defendants' Compendium which is excerpts of the
15 verification file. If you go to Page 716. This was
16 filed by Ronsco during the verification process. So,
17 it's a commercial invoice by I guess it's issued by your
18 Chinese manufacturer to you. It's dated April 14, 2015
19 and if you go to description in the middle it says, "AAR
20 approved H36 wheels Class C with a certain diameter."
21 So, I understand that at least in the commercial
22 invoices of your Chinese manufacturer they refer to the
23 goods as wheels and not wheel blanks. So, from a
24 manufacturing perspective at least would you agree that
25 the goods are called wheels?

1 MR. TRIVISONNO: Just a second.

2 MR. MAHER: Yeah.

3 MR. TRIVISONNO: That question had a whole
4 paragraph of preface built into it, so I just want to
5 hear the question for the Witness.

6 MR. MAHER: Yeah, I was just describing what the
7 document says.

8 264. Q. So, do you know why they refer to the goods
9 as wheels in their invoice?

10 A. I do not know who created this document.

11 265. Q. Okay. It says Taiyuan Heavy Industry.
12 Isn't that your Chinese manufacturer?

13 A. Right. I don't know if they created it or
14 their broker created it. I'm not sure who created this
15 document, so --

16 266. Q. Okay.

17 MR. BAXTER: Counsel, can I just ask, I just
18 noted an undertaking that Mr. Trivisonno had taken, but
19 does this document at Tab 716 fulfill that undertaking?

20 MR. MAHER: No, so this is the invoice. We
21 would like the purchase contract which is different. It
22 was produced by Ronsco in their confidential brief.

23 MR. BAXTER: Purchase contract, okay ---

24 MR. MAHER: Yeah.

25 MR. BAXTER: --- thank you. I'll note that.

1 BY MR. MAHER:

2 267. Q. I think that's how it works usually.

3 Usually there's a contract and then there's invoices.

4 Is that how it works?

5 A. I would hope we had something like that,
6 yes.

7 268. Q. Okay. So, if we go back to the Responding
8 Submissions to the interim report at Tab 5, Page 54.
9 So, at the bottom of the page the section title says,
10 "Ronsco did not have reason to believe the tariff
11 classification fell within a category for which duty is
12 payable" and then Ronsco states,

13 "Ronsco agrees that the goods in question do not
14 fall within the tariff items selected by its
15 custom broker, FedEx, however given that both of
16 the goods at issue, the roller bearing and the
17 H36 wheels can be imported without any payable
18 duty, Ronsco did not have reason to believe that
19 either of these types of goods would fall within
20 a category on which duty is payable."

21 So, my understanding of that statement is that Ronsco
22 agreed, at least at this point, that it had reason to
23 believe that Tariff Item .21 was incorrect, but did not
24 have reason to believe that they would fall into a
25 dutiable category.

1 MR. TRIVISONNO: So, let's break your question
2 down piece by piece and I think you've already asked Mr.
3 Montgomery about the representations regarding Tariff
4 .21 in this document and he's already provided a pretty
5 clear answer to you ---

6 MR. MAHER: I haven't asked him about this
7 statement specifically.

8 MR. TRIVISONNO: Okay, so let's take these
9 questions one at a time, please.

10 BY MR. MAHER:

11 269. Q. Yeah. My understanding of that statement
12 made by Ronsco is that you agree that Tariff .21 was
13 incorrect, but you didn't have reason to believe that
14 the goods would actually fall into a dutiable tariff
15 item. Is that a fair understanding of that statement?

16 A. Let me just reread the statement.

17 MR. TRIVISONNO: And Counsel you've still
18 embedded two concepts in that question, so maybe let's
19 just take them one by one.

20 THE WITNESS: Okay. Your question, please?

21 BY MR. MAHER:

22 270. Q. So, my understanding is that here Ronsco
23 agrees that Tariff .21 was incorrect, first question.

24 A. The way I read this is we're talking two
25 different products and there's a broad statement for two

1 products; the bearings and the wheels. So, I'm not sure

2 ---

3 271. Q. So, my understanding is that it covers both
4 goods, but let's just park the roller bearing one
5 because it's not relevant.

6 MR. TRIVISONNO: So, do you want to repeat your
7 question for the Witness, please?

8 BY MR. MAHER:

9 272. Q. So, at that point in time responding to the
10 interim report did Ronsco agree that Tariff Item .21 was
11 incorrect?

12 A. I -- we are saying that the goods in
13 question do not fall within the tariff item selected by
14 its customs broker. So, by that I would say that the
15 Class C wheels we are saying that .21 was not the
16 correct one and that .30 was the correct one.

17 273. Q. And this is parts of wheels?

18 A. Yes.

19 274. Q. Okay. So, okay, later down the statement,
20 the last line of the paragraph -- well, first of all the
21 section title says, "Ronsco did not have reason to
22 believe the tariff classifications fell within a
23 category for which duty is payable." So, I understand
24 from that that Ronsco was in agreement that Tariff .21
25 was incorrect, you just confirmed, but Ronsco thought it

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1 fell into Tariff .30 which is also not dutiable.

2 A. That's how I would interpret this, yes.

3 275. Q. Okay and so if you go down on the next page,
4 the second paragraph from the bottom at this point
5 Ronsco was actually willing, "To pay the administrative
6 monetary penalty in order to make the required
7 corrections." So, my understanding is that the AMP
8 we're talking about is the one about the contravention
9 that allegedly Ronsco didn't self-correct when it had
10 reason to believe that its tariff classification was
11 incorrect.

12 A. I'm not familiar with the administrative
13 monetary penalty, what that represents, so I'm not ---

14 276. Q. It's actually the amount linked to the
15 contravention that you received.

16 A. Okay, so ---

17 MR. TRIVISONNO: So, what's the question, Mr.
18 Maher?

19 BY MR. MAHER:

20 277. Q. I just want to see -- so Ronsco agreed that
21 the Tariff .21 was incorrect at this point. Ronsco was
22 also willing to pay the amp linked with the
23 contravention that you're today fighting so why the
24 change in position now?

25 A. Again, I'm not familiar with the terminology

1 around the -- with that so maybe you can clarify again
2 that question for me; like what is the administrative
3 monetary penalty, what is that?

4 278. Q. It's just the \$500 amount that is linked
5 with the contravention that you received that is the
6 subject of this litigation.

7 A. So, we were willing to pay \$500?

8 279. Q. Yeah and accept the contravention and pay
9 the AMP because you agreed with the CBSA that Tariff
10 Item .21 was incorrect. So, I'm just wondering what
11 changed since then?

12 MR. TRIVISONNO: Well, Mr. Maher I don't think
13 you're being fair to the Witness. The administrative
14 monetary penalty as we both know is not linked to
15 whether the classification is correct or not, it's
16 linked to the concept of reason to believe.

17 MR. MAHER: Yeah, so if you're willing to pay
18 the AMP it's because you accept the contravention, no?

19 MR. TRIVISONNO: You haven't -- why don't you
20 ask Mr. Montgomery about reason to believe?

21 MR. MAHER: Perfect, that's where I was going
22 soon.

23 280. Q. Yeah, so if you take Tab 1 of our -- of the
24 Defendants' Compendium at Paragraph 37 this is your
25 Statement of Claim -- Ronsco's Statement of Claim in

1 this Action -- or just to be precise this is the Fresh
2 as Amended Statement of Claim.

3 A. The date on this, when did we create this?

4 MR. TRIVISONNO: It should be right at the back.

5 THE WITNESS: Okay.

6 MR. TRIVISONNO: May 7th, 2021.

7 THE WITNESS: Okay, perfect.

8 MR. BAXTER: Charles, is this the latest -- this
9 is the latest ---

10 MR. MAHER: Yeah without the ---

11 MR. BAXTER: Without the strike-throughs?

12 MR. MAHER: Because we never did a scratching,
13 yeah.

14 MR. BAXTER: Thank you.

15 BY MR. MAHER:

16 281. Q. Yeah, so at Paragraph 37 Ronsco states,
17 "Tariff .21 is not a legislative provision that is *prima
facie* evident and transparent as required by CBSA
18 policy, rather it is unclear and ambiguous." So, we can
19 go to tariff item if you want at Tab 4 and the one --
20 Tariff .21 is on the next page at Page 41 of the
21 Defendants' Compendium. So, you claim that the tariff
22 wording is unclear and ambiguous or was unclear and
23 ambiguous for Ronsco. Can you tell me how it is unclear
24 and ambiguous?

1 A. Boy, where do I start?

2 282. Q. Yeah.

3 A. I think a few parts to this question.

4 283. Q. Okay.

5 A. Number one is the finance department
6 explicitly expressed their belief that it was unclear
7 and ambiguous and needed changing through various
8 meetings that we had through this process with Scott
9 Winter and Yannick Mondy. We had heard that expressly
10 as well from Doug Band when we had met with him and he
11 encouraged us to continue our review with the finance
12 department because in his words it was very unclear and
13 ambiguous.

14 We had seen through the advanced ruling that we
15 obtained through our subpoenas that the CBSA, you know,
16 had determined that this was a proper clarification code
17 and that, you know, clearly must have had some ambiguity
18 to it because it got cancelled much later, you know, in
19 the process. So, I think, you know -- and those are
20 just from discussions, but it was also through our
21 review with our consultants where the language and how
22 you interpret language and where you want to stop and
23 start or how you articulate this could mean a lot of
24 different things to different people.

25 So, you know, there was no question anywhere

1 along this process for us that it was very unclear and
2 many government officials told us it was unclear and
3 today it's worded differently, it got changed and it's a
4 reflection of that poor, you know, that poor wording in
5 it and I think through our review there's a big
6 historical context of why this may have got done the way
7 it is, but I don't believe anybody in this process
8 really understood why .21 was written the way it was and
9 why people were choosing to, you know, put wheels, wheel
10 blanks through different categories, so --

11 284. Q. So, just for the Record and I don't -- it's
12 not a -- I'm doing to you, but I think the tariff
13 wording they added a category, but they kept .21 as is
14 just for the sake of the Record. I don't know if you're
15 aware, but --

16 A. I am not aware of what the current wording
17 is.

18 285. Q. Okay, that's fine. So, okay you talked
19 about the finance department, Doug Band, the advanced
20 ruling, those are all, you know, external factors but
21 I'm interested in how Ronsco finds this wording unclear
22 and ambiguous.

23 A. Well, first of all for us for what we do in
24 the industry it's very clear, what I'm bringing in is a
25 wheel blank for the use and the manufacture of a wheel

1 axle combination for a railway ---

2 286. Q. Okay.

3 A. --- which is what we do. However, depending
4 how people choose to interpret these words and how you
5 look at it, it could become unclear ---

6 287. Q. So, is it fair to say that the word blanks
7 is unclear? Is that what you're saying?

8 A. No, we -- where this paragraph or however
9 you want to call it runs in between railway and tramway
10 we're in a railway environment. So, right up to railway
11 to me it seems very clear. After railway and how these
12 things flow, you know, could be unclear depending on how
13 you'd want to look at it.

14 288. Q. Okay, so the word "blank" for you it's
15 clear?

16 MR. TRIVISONNO: And just a second, Mr.
17 Montgomery I just want to help clarify Mr. Maher's
18 questions because I don't think he's asking whether, you
19 know -- Ronsco had a certain view of this and Ronsco has
20 a certain view of this and you've been very clear that
21 it's, you know, clear and the goods should have been
22 imported, but I think Mr. Maher is asking you, you know,
23 given the various interpretations that had been given of
24 this provision, what aspects of it are unclear. Is that
25 fair, Mr. Maher?

1 MR. MAHER: I'm not sure, I just want to know
2 what aspects of this wording is unclear to Ronsco
3 because you claim they're unclear and ambiguous and this
4 is the crux of the whole contravention.

5 289. Q. So, I'm just wanting -- I'm trying to
6 explore with you what do you find unclear and ambiguous?

7 A. Well, the unclear part is the interpretation
8 on how this paragraph all works together as one ---

9 290. Q. Okay.

10 A. --- you know and then again what people
11 define as a blank as at the time and there could be
12 different interpretations. When we were bringing them
13 in all along wheel blanks is very clearly for us the
14 appropriate, you know, category. After further review
15 with our consultants the wording on how people interpret
16 this section may not be, you know, as clear and going to
17 .30 was clearer so we chose something that is clearer
18 than something that is very wordy.

19 291. Q. Okay, so we talked about you said that you
20 sometimes refer to the H36 wheels as wheel blanks in the
21 industry?

22 A. That is correct.

23 292. Q. Okay, so here I just see the word "blanks"
24 not "wheel blanks" is that -- would that be like some
25 interchangeable or --

1 A. You know I don't know how, you know, I've
2 seen this in different formats on where things are on
3 pages in different things, but the way you read it under
4 wheels whether or not fitted with axles, wheel blanks
5 kind of flows as one.

6 293. Q. Okay. Okay and do you know how a wheel
7 blank would be called in French?

8 A. It looks like it's right there, an ébauches.

9 294. Q. An ébauches? Yeah.

10 A. Ébauches, yeah.

11 295. Q. Okay. So, you also talked about the way the
12 wording works together, that it was wordy. So, it says,
13 "Blanks were used in the manufacture of wheel and axle
14 combinations for railway and tramway including subway
15 cars, passenger coaches." So, what's -- what are the
16 different interpretations that you see there that makes
17 it unclear?

18 A. It's covering railway which is what I look
19 at as freight, this is what we do every day and then it
20 transitions into something else which is not really as
21 much appropriate today, but you know, tramway, subway
22 cars, passenger cars and then it gets further in with
23 for self-propelled railway vehicles and baggage mailed,
24 express traffic.

25 It just goes into a lot of things that aren't

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1 really applicable, you know, for today, but it covers,
2 you know, the railway piece and extends into some other
3 things.

4 296. Q. So, maybe you're aware of that language, but
5 in the tariff classification industry when something is
6 for the use in something it's called an in-use tariff
7 item and this would be an example of that, the way we
8 interpret it. The blanks were for the use in the
9 manufacture of wheel and axle combinations for railway
10 and tramway passenger coaches. So, when you read that
11 do you -- is it clear to you that whether the blanks is
12 for railway or tramway it has to be passenger coaches?

13 MR. TRIVISONNO: Just a second, Mr. Maher,
14 whenever you read the tariff you don't seem to read the
15 entire wording, you go for railway and tramway passenger
16 coaches. There's "including subway cars" here. You've
17 got to actually read the entire tariff item to the
18 Witness.

O

19 MR. MAHER: Yeah, okay, point taken.

20 297. Q. So, wouldn't you agree that the blanks
21 referred to in that tariff item whether they were for
22 railway or tramway had to be used for passenger coaches?

23 A. Say that again, please?

24 298. Q. When reading that wouldn't you agree that
25 the blanks referred to at .21 whether they were for

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1 railway or tramway they were both for -- they needed to
2 be used in passenger coaches?

3 MR. TRIVISONNO: I think you're asking again for
4 a legal conclusion from the Witness. If you want to
5 reframe this ---

6 MR. MAHER: So, okay ---

7 MR. TRIVISONNO: --- there may be a way that you
8 can ask the question, but it's not that way.

O

9 BY MR. MAHER:

10 299. Q. Okay. So, is it fair to say that for you
11 what's mainly not clear in this is that the passenger
12 coaches does it refer to tramway only or to tramway and
13 railway?

14 MR. TRIVISONNO: Well, he's also already given
15 you evidence about what's unclear about the word
16 "blanks" so I don't think that's a ---

17 MR. MAHER: Okay well ---

18 MR. TRIVISONNO: --- fair question either. It's
19 not fair to the Witness' evidence.

O

20 MR. MAHER: Point taken.

21 300. Q. So, we discussed a bit about the term
22 "blanks" and how it has different meaning within the
23 industry, at least that's your evidence. Now, I'm just
24 talking about the passenger coaches part. Are you
25 saying it's unclear if passenger coaches refer to

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1 railway and tramway or only railway; is that the issue?

2 A. To my knowledge there's no ---

3 301. Q. Well, to Ronsco ---

4 A. --- passenger ---

5 302. Q. Yeah.

6 A. --- coaches on railway. Railway is freight
7 rail. You don't have a railway passenger -- the
8 terminology is not, you know, appropriate. There was a
9 time maybe when the railways had owned passengers, a
10 long, long time ago, but a railway is a freight railway
11 and that's what it is.

12 303. Q. Okay, so I thought railway was like a very
13 generic term for trains ---

14 A. Not in the industry. A transit system. A
15 railway is a terminology that, you know, us in the
16 industry were going as a Class 1 railroad, a short line
17 railroad railway, that is how we look at it. Somebody
18 that owns the track.

19 304. Q. Okay. So, but doesn't VIA Rail for example
20 uses the railway?

21 A. They use the rail, they don't own it. The
22 railway applies to the company that owns the track. So,
23 for us it's a terminology that CN owns the track, it's
24 their railway. CP owns the track, it's their railway.
25 VIA Rail is simply a user of a service, a brokering

1 service of somebody else's track ---

2 305. Q. So, they use the railway of CN?

3 A. Yes.

4 306. Q. Okay.

5 A. Yeah. The railway is CN's. It's a freight,
6 they own it.

7 307. Q. Okay. So, and then if we go to the French
8 version it says,

9 "Ébauches devant servir à la fabrication
10 d'ensembles de roues et d'essieux pour les
11 voitures à voyageurs de chemins de fer et de
12 tramways y compris les voitures de métro."

13 So, is it clearer in French for you?

14 A. I understand French, you know, quite well,
15 but I think, you know, certainly the English is clearer
16 for me, but, you know, the French version seems to be
17 written in a different way.

18 308. Q. Yeah, it seems to suggest that les voitures
19 les ebauches must be for the use in voitures à voyageurs
20 so passenger for both railway, chemins de fer and
21 tramway. Isn't that clearer to you?

22 A. So, yeah they're connecting people to a
23 rail, right.

24 309. Q. And tramway.

25 A. And tramway, right.

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1 310. Q. Okay. So, do you know if when you did --
2 you declared the goods at issue all those years, you
3 relied on the English or both versions or do you know?

4 A. The rail industry is for all intents and
5 purposes conducted in English and our interactions with
6 all our clients are in English and the AAR manuals
7 generally are all produced in English, so it becomes the
8 *de facto* words that we would reference.

9 311. Q. Okay and do you know if FedEx considered the
10 French version?

11 A. I do not know that, no.

12 MR. MAHER: I think it's a good time for lunch.

13 MR. TRIVISONNO: Okay, sounds good.

14 (LUNCHEON RECESS)

15 BY MR. MAHER:

16 312. Q. All right, so before we move -- we continue
17 on the reason to believe issue, we were talking about,
18 you know the tariff item wording. I just want to
19 clarify something with you that we discussed earlier on,
20 maybe you can take Tab 5 of our -- of the Defendants'
21 Compendium. So, if you go to Page 45 of that so -- and
22 sorry those are the Responding Submissions of Ronsco to
23 the interim report which were produced at Tab 2 of the
24 Plaintiff's productions. So, third paragraph from the
25 top starting with "as a result" -- yeah so,

1 "As a result having reviewed the physical
2 characteristics of the goods in question in
3 light of the interim report as well as their
4 production process and usage in the market
5 Ronsco accepts that the wheel bodies, corps de
6 roue, as imported do not fall within Tariff Item
7 .21"

8 and I think during your testimony earlier you said
9 Ronsco did some sort of analysis of the goods or work
10 and that's how you came to that conclusion. Is that
11 fair or --

12 A. We -- upon review of this and .30 we came to
13 the conclusion that .30 could be a better fit for what
14 we do and by default we determined that .21 wasn't the
15 applicable location.

16 313. Q. Okay, so was there any like internal
17 documents prepared within Ronsco's employees to
18 determine that?

19 A. I'm not familiar with that.

20 MR. MAHER: Okay. Can we have an undertaking on
21 that?

22 MR. TRIVISONNO: No, I think most of that is
23 going to be subject to at least litigation privilege and
24 some of it solicitor/client privilege. So, if there's
25 anything that is not privileged we can produce that to

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1 you, but I don't believe that there is.

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2 MR. MAHER: Okay, that's fine, but yeah any
3 communications, documents that would relate to that
4 internal work that Ronsco did during the verification
5 process regarding the, you know, assessing the nature of
6 the goods.

7 MR. TRIVISONNO: Understood. You have our
8 position.

9 BY MR. MAHER:

10 314. Q. And so I think at that time you were working
11 with Peter Clark from Grey, Clark, Shih and Associates?

12 A. Yes, Peter was assisting us.

13 315. Q. Okay and as a trade consultant, is that --

14 A. I don't know how I'd define Peter exactly,
15 but, you know, ---

16 MR. REGAN: None of us does.

17 THE WITNESS: Yeah.

18 BY MR. MAHER:

19 316. Q. Okay, so it's just if you have documents
20 that were prepared for consultancy purposes rather than
21 solicitor/client that would be captured by the
22 undertaking.

23 MR. TRIVISONNO: So, we'll take a look ---

24 MR. MAHER: Yeah.

25 MR. TRIVISONNO: --- and if there's anything

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1 that we believe is not privileged then we'll produce it
2 to you.

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3 BY MR. MAHER:

4 317. Q. Okay. Okay, so if we go back to your Fresh
5 as Amended Statement of Claim at Paragraph 42 ---

6 A. Which tab?

7 MR. TRIVISONNO: Tab 1 ---

8 MR. MAHER: So, this is Tab 1 of the Defendants'
9 ---

10 THE WITNESS: Yeah. Paragraph 42?

11 BY MR. MAHER:

12 318. Q. 42. It says, "Industry behaviour also shows
13 that Tariff .21 is not *prima facie* evident and
14 transparent. As from --" -- yeah, so I'll just stop
15 there. I just wanted to know what you mean by "industry
16 behaviour"?

17 A. How our customers and competitors were also
18 importing the wheel blanks and the wheels.

19 319. Q. So, you mean how they were declaring -- like
20 under what tariff item they were declaring identical or
21 similar ---

22 A. Yeah.

23 320. Q. --- goods?

24 A. Yes.

25 321. Q. Okay and then if we go on the sentence,

1 "As from 2005 to 2019 it was the CBSA's own
2 conduct that drove importer behaviour rather
3 than the tariff items' wording which remained
4 unchanged."

5 So, what do you mean by CBSA's conduct -- own -- yeah
6 own conduct?

7 A. I would believe it has related to the
8 advanced ruling that allowed, you know, our competitors
9 to import an exactly the same, you know, product that we
10 had been importing that was under .21 which was a
11 reference point that the industry whether it be FedEx or
12 others saw similar importation of goods coming in, you
13 know, into Canada.

14 322. Q. Okay, so how did that drove industry
15 behaviour?

16 A. Well, there was clearly a tariff code that
17 people were bringing stuff under that seemed very
18 appropriate and within a closed, very closed industry of
19 the rail industry where you have a handful of clients
20 bringing in a very unique product you look for
21 references as to what others would have been, you know,
22 doing and you know certainly whether it's Sumitomo or
23 from our understanding of CN, you know, people had been
24 bringing in under, you know, Code .21 and it was an
25 appropriate, you know, code to be bringing stuff in for

1 a long, long time.

2 323. Q. Okay. Ronsco also claims that it didn't
3 have reason to believe because of a 2010 policy
4 statement issued by the Department of Finance regarding
5 goods for manufacturing and maybe I'll bring you to Tab
6 5 again in the Responding Submissions to the interim
7 report, Tab 5 of the Defendants' Compendium at Page 55.

8 So, from what I've seen in the documents this is
9 the first time that -- so this is dated May 25, 2018.
10 This is -- and it's the second paragraph from the top
11 starting "in any event". The first time I saw that
12 statement,

13 "Given Finance Canada's March 10, 2010 statement
14 regarding Canada becoming a tariff free zone for
15 manufacturers attached as Annex O Ronsco had no
16 reason to believe that the goods in question
17 imported for manufacturing purposes were
18 dutiable."

19 Do you know when Ronsco got knowledge of this statement?

20 A. No, I'm unaware.

21 MR. MAHER: Okay, could we get an undertaking if
22 you can verify that?

23 MR. TRIVISONNO: We can see what we can find.

24 MR. MAHER: Yeah.

25 MR. BAXTER: Record Page 210 has the actual

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1 statement and it seems to indicate it was made public on
2 or about the date.

3 MR. MAHER: Yeah, I just want to know when
4 Ronsco had knowledge of that because there's a lot of
5 public documents, but maybe Ronsco wasn't aware of it.

6 MR. BAXTER: Right.

7 BY MR. MAHER:

8 324. Q. Well, so you don't know if Ronsco had
9 knowledge of that before the verification process?
10 Before 2018?

11 A. I know that I didn't have knowledge of it
12 personally.

13 325. Q. Sorry?

14 A. I don't know ---

15 326. Q. Okay.

16 A. --- personally.

17 327. Q. Okay. So, you don't know who got knowledge
18 of it also at Ronsco?

19 A. No.

20 328. Q. Okay. That will be part of the undertaking;
21 when Ronsco got knowledge and who had knowledge of that.

22 MR. TRIVISONNO: Okay, we'll see what we can
23 find.

24 MR. MAHER: Yeah.

25 329. Q. Isn't it true that Ronsco is not a

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1 manufacturer of wheels?

2 A. Say your question again, please?

3 330. Q. My understanding is that Ronsco is not a
4 manufacturer of wheels. Would you agree with that?

5 A. We do not manufacture rough bored wheels,
6 correct.

7 331. Q. Okay, but you manufacture what?

8 A. We create a finished wheel that can be put
9 on a wheel set.

10 332. Q. Okay, but before you opened the wheel shop
11 you didn't do that?

12 A. Before we opened the wheel shop, no, we sold
13 the product to another company that would finish the
14 wheel to put it on a wheel set.

15 333. Q. So, before whatever that date is that the
16 wheel shop was opened you weren't doing any
17 manufacturing work on the H36 wheels?

18 A. Correct.

19 MR. MAHER: Okay. Can we get an undertaking to
20 know when the wheel shop really opened, like its
21 activities?

22 MR. TRIVISONNO: So, when activities commenced
23 at the wheel shop?

24 MR. MAHER: Yeah.

25 MR. TRIVISONNO: We can do that.

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1 BY MR. MAHER:

2 334. Q. Okay. So, if we go to the actual statement
3 at Page 210 it's attached to these submissions, so I
4 think it's at the very end of it. So, it's called --
5 it's a Department of Finance Canada document that has
6 been archived dated March 10 -- sorry March 9, 2010. It
7 is attached to Ronsco's interim Responding Submissions
8 to the interim report and it is titled, "Canada Poised
9 to Become Tariff Free Zone for Manufacturers Thanks to
10 Budget 2010." So, how did that lead you to believe that
11 the goods should be classified under Tariff Item .21?

12 A. How did this memo?

13 335. Q. Yeah, this statement.

14 MR. TRIVISONNO: So, why don't we give Mr.
15 Montgomery a minute to read through the statement?
16 You've read the title to him and I thank you for that,
17 but let's give Mr. Montgomery a minute to read it.

18 THE WITNESS: Okay I've read it through so ask
19 me your question again, please.

20 BY MR. MAHER:

21 336. Q. Yeah, so how did that lead you to believe
22 that Tariff Item .21 was appropriate for the goods at
23 issue?

24 MR. TRIVISONNO: I'm not sure that we've
25 established that this led Ronsco to believe that Tariff

1 .21 was the appropriate tariff item and I'm not sure
2 that that's what it says in the section that you just
3 showed him.

4 MR. MAHER: Just give me a minute.

5 337. Q. So, okay if we go back to Page 55 and keep
6 that page -- yeah we'll go back to the statement. Page
7 55.

8 A. I think 54 reads -- flows into 55, so, okay.

9 338. Q. Okay so starting at, "In any event ---

10 A. Mm'hmm.

11 339. Q. --- given Finance Canada's March 9, 2010
12 statement regarding Canada becoming a tariff
13 free zone Ronsco had no reason to believe that
14 the goods in question imported for manufacturing
15 purposes were dutiable."

16 Okay, so how did that statement lead Ronsco to believe
17 that the goods were not dutiable?

18 MR. TRIVISONNO: I'm sorry, Mr. Maher the same
19 objection, you still haven't laid the foundation.

20 MR. MAHER: So, that's Ronsco's statement.

21 MR. TRIVISONNO: Yeah, you read a piece of the
22 document to Mr. Montgomery, you didn't ask him any
23 questions about it. You haven't laid a foundation that
24 the article itself led the company to believe anything.

25 You can ask Mr. Montgomery if he has knowledge of that.

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1 BY MR. MAHER:

2 340. Q. Okay, so if you take that document -- sorry
3 I don't want to rush you if you want to --

4 A. No, I've read through, I understand it,
5 yeah.

6 341. Q. Okay. If you go back to Page 210 so the
7 second paragraph says, "Measures and budget 2010 to
8 eliminate all remaining tariffs on manufacturing
9 inputs." So, my understanding of Ronsco's statement in
10 the responding submissions is that given this statement
11 Ronsco thought that the goods at issue were not
12 dutiable.

13 A. How I would interpret it is in this section
14 in this 54 and 55 we're saying that we think .30 is
15 appropriate and further on as an addition ---

16 342. Q. Yeah.

17 A. --- to reinforce that argument we have this
18 department memo from 2010 that says it's a manufacturing
19 input which a wheel is further processing to add to a
20 wheel set. So, it's kind of -- both pieces are
21 connected.

22 343. Q. What is a manufacturing input?

23 A. Something that you would have to process --
24 further process to make it work in your intended, you
25 know, final product.

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1 344. Q. Okay.

2 A. So, for us boring a wheel, creating a
3 chamfer to allow that wheel to be put onto an axle is
4 the manufacturing input you would put to that wheel
5 blank to allow it to function for its intended purposes.

6 345. Q. Okay and so before the wheel shop opened
7 though Ronsco was not doing that manufacturing work on
8 the goods?

9 A. That transformation? No, we were not. It
10 was done to Canadian clients that would do that
11 transformation.

12 346. Q. Okay and so I presume that Ronsco imports
13 different goods, not just the wheels, but axles, maybe
14 other goods?

15 A. Ronsco has a lot of stuff we do in business,
16 yes.

17 347. Q. Yeah, okay so -- okay so do you -- do you
18 import manufacturing inputs that are dutiable?

19 A. So, you're asking do we -- do we pay duty
20 today?

21 348. Q. Yeah on manufacturing input, be it a wheel
22 or an axle or roller bearing, I don't know all the
23 things that you import, but --

24 A. I'm unfamiliar where the duties would fall
25 for what we're doing today. I don't know.

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1 349. Q. Okay. So, this statement was a companion to
2 the federal budget. It was issued in the context of the
3 federal budget 2010 ---

4 A. Okay.

5 350. Q. --- okay? Did you know that?

6 A. Not in 2010, no.

7 351. Q. Okay. So -- and if you go into the
8 document, second paragraph from the bottom ---

9 MR. TRIVISONNO: It's Page 210.

10 THE WITNESS: 210?

11 MR. MAHER: Yeah.

12 THE WITNESS: So, right ---

13 MR. TRIVISONNO: Second paragraph, "The majority
14 of these 1500" ---

15 BY MR. MAHER:

16 352. Q. Yeah. "The majority of these 1541 tariffs
17 were eliminated March 5th, 2010 with the remainder being
18 gradually eliminated by no later than January 1st, 2015."
19 So, did you ever verify what those tariffs were? 1000
20 tariffs?

21 A. It's not something that I would have done.

22 353. Q. Okay. So, you don't know if Tariff Item .21
23 was included in that?

24 A. I ---

25 MR. TRIVISONNO: Wait a second. Mr. Maher we

1 know that Tariff .21 was not amended during the period
2 that is referenced here.

3 MR. MAHER: Okay. I'm just -- that's why I'm
4 asking questions because you rely on that document to
5 say that you didn't have reason to believe, so that's
6 all.

7 354. Q. Okay. Did Ronsco rely on this statement
8 prior to the verification process when declaring the
9 goods, do you know?

10 A. Rely on?

11 355. Q. On this to make its choice to use Tariff
12 Item .21.

13 MR. TRIVISONNO: I think we've already given you
14 an undertaking to check as to when we found out about
15 this statement.

16 MR. MAHER: Okay.

17 356. Q. Putting this aside for a bit. So, the
18 advanced ruling, did you know there was an advanced
19 ruling issued by the CBA to Sumitomo, correct?

20 A. I am aware of this, yes.

21 357. Q. Okay and can you confirm that a similar
22 advanced ruling was never issued or sent to Ronsco by
23 the CBSA?

24 A. I can confirm we had not received an
25 advanced ruling.

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1 358. Q. Okay. Do you know if that advanced ruling
2 was ever made public by the CBSA? Or what's your
3 understanding, what do you know about that?

4 A. I do not understand the CBSA's policy so I
5 don't know if -- but I know we have received it.

6 359. Q. So, would you agree with me that the
7 advanced ruling only applied to Sumitomo so between CBSA
8 and Sumitomo?

9 MR. TRIVISONNO: That's a legal question. *O*

10 MR. MAHER: Is it?

11 MR. TRIVISONNO: Yeah, you're asking about the
12 legal effect of an advanced ruling and whether it's only
13 binding as between CBSA and the person or entity ---

14 MR. MAHER: I just want to know ---

15 MR. TRIVISONNO: --- that -- I'm sorry, Mr.
16 Maher, please don't interrupt me when I'm speaking.

17 MR. MAHER: Finish.

18 MR. TRIVISONNO: Between CBSA and the importer.
19 That's asking for a legal conclusion.

20 MR. JOHNSTON: You're objecting? He's asked the
21 question, you're giving your objection?

22 MR. TRIVISONNO: Yeah, I've objected.

23 MR. JOHNSTON: Okay.

24 BY MR. MAHER:

25 360. Q. So, what's your understanding of the

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1 advanced ruling; it applied only to Sumitomo or to all
2 importers?

3 A. My understanding is the advanced ruling was
4 ruled to Sumitomo.

5 361. Q. Okay. So, maybe you'll remember that, but
6 during the CITT Proceeding Sumitomo agreed to share the
7 advanced ruling with Ronsco in the context of the CITT
8 Proceeding. My understanding is that Ronsco didn't have
9 a copy of that before and that's why we made all this
10 fuss with Sumitomo to have it shared. Is that your --
11 did Ronsco have a copy before that?

12 A. No, we did not have a copy before that.

13 362. Q. Okay. Yeah, so if we can go to a document
14 that is actually not in this actually. It's Tab 132 of
15 your productions. Do you have it?

16 MR. TRIVISONNO: This is a letter from Peter
17 Clark to Madam Gagnier dated November 20th, 2018?

18 MR. MAHER: No, sorry. This is -- yeah sorry
19 we'll get to that.

20 MR. TRIVISONNO: Do you have another version of
21 the document that hasn't been produced to us?

22 MR. MAHER: No, he just used Tab 132 of our
23 documents.

24 MR. TRIVISONNO: Ah, got it.

25 MR. JOHNSTON: And now we're having a network

1 issue so this may take a second.

2 BY MR. MAHER:

3 363. Q. So, yeah this is Tab 132 of the Plaintiff's
4 productions. It's a -- I think it's an email and letter
5 dated November 20th, 2018 drafted by Peter Clark on
6 behalf of Ronsco Inc. and at the bottom of the first
7 page -- so this is dated November 20, 2018,

8 "However it recently came to Ronsco's attention
9 that the CBSA had previously issued an advanced
10 ruling for tariff classification using [number
11 of the advanced ruling] that contradicts the
12 conclusion reached in the verification."

13 So, just stopping there my understanding is that Ronsco
14 got aware of the existence of the advanced ruling in --
15 sometime a bit before November 2018, is that fair?

16 A. That is fair.

17 364. Q. Okay and do you know how you got aware of
18 the existence of the advanced ruling?

19 A. From Sumitomo.

20 365. Q. Okay.

21 A. So, after we were shocked with Doug Band's
22 reversal where we thought we weren't going back
23 retroactively sometime after that period, you know, we
24 started inquiring more with the other wheel
25 manufacturers that we knew were importing goods duty

1 free and imply asked why weren't you paying duty? And
2 we were made aware that they were fully able to bring
3 wheel blanks under that code through a CBSA ruling.

4 366. Q. So, who did you talk to?

5 A. That came through probably Brian Lambert who
6 was the Senior Vice President or one of the vice
7 presidents at Sumitomo at that time.

8 367. Q. Okay, so you said we had conversations with
9 other importers, is it only Sumitomo or other people?

10 A. Sumitomo is, you know, primarily, but, you
11 know, we certainly inquired with our clients at, you
12 know, CN who had been bringing in wheels for Transcona
13 and who had never paid, you know, duty previous.

14 MR. MAHER: Okay. Can we get an undertaking to
15 get those communications if there's any trace of them?

16 MR. TRIVISONNO: I think we've produced
17 everything that's relevant, but we can take a look to
18 see if there are any written communications ---

19 MR. MAHER: Yeah.

20 MR. TRIVISONNO: --- related to the inquiries to
21 other importers.

22 MR. MAHER: Very specifically regarding the
23 existence of the advanced ruling and what -- how the
24 other importers were declaring the goods and what -- so
25 everything related to that.

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1 MR. TRIVISONNO: Yes, that's what I understood
2 the undertaking to entail.

3 MR. MAHER: Yeah, just to also be clear for the
4 Record because we all understand the case -- or the
5 details, but sometimes it's not as clear for someone
6 external.

7 368. Q. Okay. Is there a reason why Ronsco never
8 secured an advanced ruling for its goods?

9 A. From 2005 I would say we just had no idea
10 that that was a process that had to be followed. That's
11 when we started importing wheels. We had the
12 recommendation from our broker and nobody directed us in
13 any other, you know, fashion and we had been doing it
14 from that point in time under that guidance and so
15 everything came to a -- quite a shock to us to
16 understand that there could be another position.

17 369. Q. Okay and so I understand from your answer
18 that FedEx never advised you to maybe you should
19 consider getting an advanced ruling for those goods?

20 A. From my understanding that never happened.

21 370. Q. Okay. So, did that like strain your
22 relationship with FedEx?

23 MR. TRIVISONNO: Did what?

24 MR. MAHER: The fact -- like the whole
25 verification process and the result of it and the fact

1 that you didn't have an advanced ruling?

2 MR. TRIVISONNO: I'm not sure that that's
3 relevant. I don't know.

4 BY MR. MAHER:

5 371. Q. So, you say you don't -- you're not in
6 business with FedEx anymore, is that correct?

7 A. I don't believe FedEx is our broker at the
8 moment, yes.

9 Q. Okay. So, is there -- is this verification
10 process and the result of it, is that wholly or
11 partially -- did that influence the decision to not use
12 FedEx anymore?

13 MR. TRIVISONNO: That's not relevant.

○

14 MR. MAHER: Okay. Objection noted.

15 373. Q. So, moving onto the June 26th, 2018 meeting -
16 --

A. Which meeting is that?

18 374. Q. So, it's the meeting at CBSA's offices I
19 think. It's between the time you got the interim report

20 ---

A. Okay, so is that the meeting with Doug Band?

22 | 375. Q. Yeah.

23 A. Okay, perfect.

24 376. Q. But yeah just to like kind of situate
25 everyone and me and yourself, ---

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1 A. Yeah.

2 377. Q. --- so the interim report was issued, Ronsco
3 provided Responding Submissions in May 2018 and then
4 there was this June 26th, 2018 meeting which happened
5 just before the final verification was issued. I'm just
6 ---

7 A. Yeah, thank you.

8 378. Q. --- re-situating to help. So, who was there
9 at that meeting?

10 A. That meeting there was myself -- from Ronsco
11 myself and our Chief Financial Officer Mimma
12 Francescangeli and we had two advisors, Richard Mahoney
13 and Peter Clark and we met with two individuals who
14 happened to be there from the finance department, I
15 believe it's Laura -- Laura LaBelle and I think it was
16 David Hurl and then we had two individuals from the
17 CBSA, Doug Band was one and he had another individual,
18 Charles I believe his name was. So, the eight of us met
19 in a room. We were surprised, I don't think we thought
20 there was going to be that many people at that meeting
21 so it certainly caught us all a little surprised --
22 pleasantly surprised that we had all that, you know,
23 much people in that meeting.

24 379. Q. And who requested the meeting? How did the
25 meeting come to --

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1 A. My understanding the meeting came probably
2 primarily through the finance department through
3 correspondence that Richard Mahoney had through the
4 finance department and I think that's how it was set up.

5 380. Q. So, is it Ronsco who approached finance to
6 have a meeting, do you know?

7 A. I believe it was Richard who approached
8 finance, not Ronsco directly ---

9 381. Q. And so sorry just for clarity Richard
10 Mahoney is that person you're talking about?

11 A. Correct.

12 382. Q. Okay and that person was -- is what to
13 Ronsco at the time?

14 A. Again, he was an advisor ---

15 MR. BAXTER: He was a lawyer.

16 THE WITNESS: Yeah, as a lawyer maybe for ---

17 BY MR. MAHER:

18 383. Q. Okay.

19 A. --- these issues I guess.

20 384. Q. And Peter Clark was there too?

21 A. Yes.

22 385. Q. And from Ronsco per se it was you ---

23 A. And our Chief Financial Officer ---

24 386. Q. Yes.

25 A. --- Mimma Francescangeli.

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1 387. Q. Yeah, sorry I'm making you repeat, but just

2 ---

3 A. Yeah.

4 388. Q. --- for clarity, okay. Okay and what was
5 the purpose of the meeting?

6 A. The primary purpose of the meeting was to
7 explain our position within our company, you know, our
8 objection on a lot of the grounds especially on the
9 reasons to believe. So, the meeting was, you know
10 primarily started and driven by myself explaining, you
11 know, who Ronsco is, what we do, you know, how we
12 import, what we import, how our business runs and
13 operates and Richard and Peter's role was to document
14 what was done with CBSA particularly or with the finance
15 department on the different verifications and the work
16 that we had done to that point.

17 389. Q. Okay and so if we take Tab 1 of the
18 Defendants' Compendium at Paragraph 21 this is the Fresh
19 as Amended Statement of Claim.

20 A. Paragraph 21.

21 MR. TRIVISONNO: 21.

22 MR. MAHER: You're at Tab 2 I think.

23 MR. TRIVISONNO: Yeah.

24 THE WITNESS: Oh, sorry.

25 BY MR. MAHER:

1 390. Q. So, just maybe for clarification purposes
2 you said that there were CBSA people, but also
3 Department of Finance. I think here it says people from
4 the office of the Minister of Public Safety.

5 A. Okay.

6 391. Q. Would that refresh your memory?

7 A. That's possible, yeah.

8 392. Q. Okay. No, that's fine I just wanted your
9 recollection. Okay, so it says,

10 "On June 26th, 2018 Ronsco officials met with
11 representatives from the Office of the Minister
12 of Public Safety and with Doug Band. The CBSA's
13 director general responsible for the trade and
14 anti-dumping programs directorates. This
15 meeting addressed the interim report. In this
16 meeting Mr. Band acknowledged that the wording
17 of Tariff .21 was confusing and outdated and
18 ensured Ronsco that it would only be required to
19 pay duties for the items identified in the
20 interim report and going forward."

21 So, what do you know exactly about what Mr. Band said?
22 What's your recollection of what Mr. Band said about
23 Tariff Item .21?

24 A. So, I was sitting beside Mr. Band on the
25 same side of the table as him. After we had the

1 detailed presentation Mr. Band ---

2 393. Q. Which was given by you?

3 A. By myself ---

4 394. Q. Okay.

5 A. --- and then followed up with Richard and
6 Peter. Mr. Band, you know, made the statement again to
7 the part that we'd only be required to pay the duties in
8 the interim report and going forward you would have to
9 manage that with finance. It was, you know, certainly
10 his position after he made those comments that, you
11 know, in his opinion, you know, we'd have a good case
12 within the finance department because of the outdated
13 and confusing words in that document, but he says that
14 was not part of the CBSA's mandate, that's a finance
15 mandate.

16 395. Q. Okay, so here Ronsco states, "Mr. Band
17 acknowledged that the wording of Tariff .21 was
18 confusing and outdated." So, I just want to know how
19 did he acknowledge that to the best of your
20 recollection?

21 A. Verbally in the room.

22 396. Q. Okay. He agreed with Ronsco or he said
23 something about it? What --

24 A. It was his statement. My recollection it
25 was just his statement unprovoked.

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1 397. Q. Okay and did he explain how it was confusing
2 and outdated?

3 A. No, not to my recollection.

4 398. Q. Okay.

5 A. But it was an issue to manage with Finance
6 moving forward.

7 399. Q. Okay. So, you know, the verification
8 process was handled by, you know, an officer in the
9 Quebec region from CBSA. This meeting was with Doug
10 Band, he's at headquarters just to give you more context
11 on that, but did you ever -- do you recall someone or
12 you telling Mr. Band that the wheels at issue were for
13 freight cars and not passenger cars?

14 MR. TRIVISONNO: Wait, sorry, you have to
15 confine that question. What are we talking about?

16 MR. MAHER: So, at that meeting ---

17 MR. TRIVISONNO: Are we talking about within
18 that meeting?

19 MR. MAHER: Yeah.

20 400. Q. So, let's break it down. Do you recall you
21 telling CBSA that the wheels were for freight cars and
22 not for passenger cars at that meeting?

23 A. In my description of Ronsco it most
24 absolutely would have been referencing freight cars 100
25 percent.

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1 401. Q. Okay.

2 A. What we did, where we fit into the Canadian
3 railway supply chain and who our major customers were
4 absolutely that would have been part of how we described
5 Ronsco.

6 402. Q. Okay. In this same paragraph it says,
7 "Mr. Band assured Ronsco that it would only be
8 required to pay duties for the items identified
9 in the interim report and going forward."

10 So, what's your understanding of that or what Mr. Band
11 said about that?

12 A. Well, my understanding and we were
13 extraordinarily delighted to hear this by the way and it
14 was an exceptional meeting after as well talking to us
15 after the meeting was done, my understanding was we
16 would have to pay money in the period of that
17 verification.

18 There's a certain amount of money that I'm
19 uncertain to how much that was, but there would be no
20 retroactive duties for anything going backwards from
21 that period and that moving forward we would still be
22 paying duties until we got that tariff changed within
23 the finance department.

24 403. Q. Okay. Do you know when you started
25 contacting the Department of Finance to have the tariff

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1 changed?

2 A. The exact dates, no, but I do know I had met
3 myself with Scott Winter at some point in 2019 to
4 explore that, you know, that piece.

5 404. Q. And was that -- so would it be fair to say
6 that you started doing that after that meeting? That
7 process wasn't started yet.

8 A. Where I was involved I would say it was
9 after that meeting.

10 405. Q. And other?

11 A. I'm uncertain if there could have been
12 others that tried to initiate that before the meeting.
13 I am uncertain.

14 406. Q. Okay. During that meeting, the June 26th
15 meeting was Sumitomo ever mentioned or discussed?

16 A. I'm uncertain.

17 407. Q. Okay. Was the advanced ruling ever
18 mentioned?

19 A. We had not known the advanced ruling at that
20 meeting.

21 408. Q. Okay. So -- okay so then you have that June
22 26th meeting, you were delighted by what you were
23 hearing. So -- and then the final verification report
24 was issued on July 24, 2018. So, just a little under a
25 month after that meeting and that's where CBSA required

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1 Ronsco to correct its declarations going back four years
2 which in the end ended up 2015 to 2018. Do you -- so do
3 you know when Ronsco received the final report?

4 A. I don't know the exact date, no.

5 409. Q. Okay. So -- but to your recollection I
6 guess it was near a month ---

7 A. It was within, you know, months -- it was
8 that summer after that meeting for sure.

9 410. Q. Okay.

10 MR. TRIVISONNO: Do you want to provide Mr.
11 Montgomery with a date because I don't think this is
12 contested.

13 MR. MAHER: Oh, okay.

14 MR. BAXTER: It's in Paragraph 25 of the
15 Pleading, Mr. Montgomery.

16 THE WITNESS: Okay.

17 MR. BAXTER: That's not -- that's actually not
18 answering Mr. Maher's question of when you got it ---

19 MR. MAHER: Yeah.

20 MR. BAXTER: --- but that's the date ---

21 MR. TRIVISONNO: Would have been shortly
22 thereafter.

23 THE WITNESS: Okay.

24 MR. MAHER: Okay.

25 411. Q. So, I presume that you were shocked by the

1 result of the verification report or you were surprised

2 ---

3 A. We were absolutely stunned ---

4 412. Q. Yeah.

5 A. --- yes, absolutely.

6 413. Q. Why is that?

7 A. The meeting I would categorize we had within
8 that office was, like I said, exceptional for meetings
9 that I'm involved with and to the point where after the
10 meeting the different parties within the CBSA and, you
11 know, the other group the Public Safety were really
12 appreciative to have a Canadian company talk about what
13 they're doing, how they're doing it and how they're
14 growing jobs, how they're, you know, creating
15 manufacturing opportunities where there was none before
16 and so that level of connection because apparently it
17 was not common in my belief from what I heard that they
18 actually got that direct input on a manufacturer to them
19 doing their work.

20 So, that connection to me they felt was
21 rewarding and so, you know, we left that meeting all
22 very happy with that outcome expecting that that was the
23 conclusion of it, you know, we had to pay some money,
24 but -- and we had work to do moving forward, but going
25 back that part of it was, you know, handled at that

1 time.

2 414. Q. Okay so then you got their verification
3 report and -- around a month or so after the meeting.
4 Then the verification report did not reflect your
5 conversation at that meeting, it actually asked you to
6 go back four years, so to pay retroactive duties. So,
7 what did Ronsco do when you got the report?

8 A. You know after the shock wore off I think,
9 you know, obviously our team, our groups that were
10 involved with this tried to reach back out to the CBSA.
11 It wasn't myself directly with the CBSA, it was probably
12 Richard or Peter who had set up the meeting initially
13 and from my recollection they had had a call with Doug
14 Band and in simple terms the wording that we had was he
15 had the wrong file and he misspoke and what he said he
16 couldn't impact on a final verification so that we will
17 now have to abide by the final verification report that
18 came out.

19 415. Q. Okay and so that was a call, do you know
20 around when? August I think, but --

21 A. Maybe it's in here somewhere, but the ---

22 416. Q. Yeah, I'm not sure.

23 A. --- exact date, but it was -- I would assume
24 it's not very long after we got the final verification
25 report because there was certainly a lot of confusion

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1 amongst our group about some unprecedented, you know,
2 situation.

3 417. Q. Okay and so you mentioned a phone call, you
4 think Mr. Mahoney was there, someone else?

5 A. You know we can -- unless it's in here
6 somewhere I believe Mr. Mahoney and Mr. Clark probably
7 would be in that call, you know, the actual context,
8 day, you know, I'm uncertain as I sit here today.

9 418. Q. Okay. Yeah okay so -- and my understanding
10 of that confusion was that Mr. Band for some reason had
11 confused Sumitomo's file with Ronsco's file. Is that
12 your understanding as well?

13 MR. TRIVISONNO: Well, wait a second, you're
14 asking him about what representations were made to Mr.
15 Mahoney and ---

16 MR. MAHER: Yeah.

17 MR. TRIVISONNO: Okay.

18 THE WITNESS: What I understand is he had
19 misspoke and there was -- he had the wrong file. The
20 context around what that meant, I do know that he had a
21 file, a nice file with him that he referenced, you know,
22 during the meeting and I do know I spoke very well about
23 Ronsco and described Ronsco very well. So, to hear that
24 he had maybe the wrong file and maybe misrepresented who
25 he was talking to, again, was very difficult for us to

1 believe and understand especially in the context that he
2 did say that we were paying money in the interim period
3 and that we would have to get it changed moving forward.
4 For my feeling if he had Sumitomo's file they would have
5 not had to do any of that, they had an advanced ruling.
6 So, he was talking directly about Ronsco and talking
7 directly about our file.

8 419. Q. Okay and do you know if he mentioned
9 Sumitomo at that phone call explaining the confusion ---

10 A. I was not on the phone call so I could not
11 comment if he referenced anybody.

12 420. Q. Okay. So, to your knowledge Sumitomo does
13 import similar identical goods?

14 A. Identical ---

15 421. Q. Okay.

16 A. --- goods.

17 422. Q. And do they have a wheel shop or --

18 A. They do not have a wheel shop.

19 423. Q. Okay. So, moving from the meeting with Doug
20 Band you were given some information about CBSA on
21 different appeal routes on how to challenge the
22 verification report and its components. In late 2018
23 CBSA officer by the name of Sue Ogilvie gave you some
24 information and we can go there. It's Tab 7 of the
25 Defendants' Compendium.

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1 A. It goes backwards? Or it goes like this?

2 MR. TRIVISONNO: Yeah, like this.

3 THE WITNESS: Okay, gotcha.

4 BY MR. MAHER:

5 424. Q. So, just for the Record and for everyone's
6 benefit Sue Ogilvie was the Section 60 officer, that's
7 how we call them it's -- she's just -- she was the
8 officer responsible for issuing what we call a Section
9 60 Decision. So, she had an exchange with Mr. Clark,
10 Peter Clark and she states in her November 8th, 2018
11 email, "Good afternoon Mr. Clark, yes you are correct I
12 do not have jurisdiction under a Section 60 appeal to
13 deal with reason to believe ---

14 MR. TRIVISONNO: I'm sorry ---

15 THE WITNESS: Where -- sorry where are we going
16 ---

17 MR. TRIVISONNO: --- Mr. Maher ---

18 THE WITNESS: --- which page are we on?

19 MR. TRIVISONNO: --- I thought you were on the
20 first email from Ms. Ogilvie.

21 MR. MAHER: Oh, sorry, no I'm ---

22 THE WITNESS: So, you're going backwards?

23 MR. MAHER: --- just on the last one.

24 MR. TRIVISONNO: And just to give Mr. Montgomery
25 the full context ---

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1 MR. MAHER: Yeah.

2 MR. TRIVISONNO: --- because of course the first
3 correspondence isn't listed here, but this original
4 email from Ms. Ogilvie is in response to the appeal
5 letter concerning the tariff classification and that's
6 the document we were looking at before that's Ronsco's
7 position on the reassessment.

8 MR. MAHER: Sorry what document you referred to?

9 MR. TRIVISONNO: Well, she's responding to the
10 original letter from Ronsco dealing with the
11 reassessment.

12 MR. MAHER: Yeah. Sorry, where do you see that?

13 MR. TRIVISONNO: If you go back to the first ---

14 MR. MAHER: Yeah.

15 MR. TRIVISONNO: --- email I'm just pointing out
16 that this isn't the full ---

17 MR. MAHER: Yeah.

18 MR. TRIVISONNO: --- correspondence, it's
19 responding to a letter that's separately. That's the
20 only point I'm trying to make.

21 MR. MAHER: Yeah, no I just -- yeah because I
22 don't think it's clear if it's the main 2018 submissions
23 or later submissions, but okay it was in the context of
24 a letter sent by Ronsco.

25 425. Q. Yeah, so I was just at her last email when

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1 she says that,

2 "Yes, you are correct, I do not have
3 jurisdiction under a Section 60 appeal to deal
4 with reasons to believe. It's in the best
5 interest of the company to make the corrections
6 within the time limit approved by the CV
7 officer. Reasons to believe can only be dealt
8 with under the appeal of an AMP, Administrative
9 Monetary Penalty under Section 129 of the
10 *Customs Act.*"

11 So, I just had one question, is that based on this
12 advice that Ronsco brought the appeal of the notice of
13 penalty assessment in December 2019?

14 A. Our process through this whole case has been
15 based on advice that we got through the different people
16 within the different organizations and within the
17 government.

18 426. Q. Okay and is it fair to say that at that time
19 you were also advised by Peter Clark and maybe other
20 people on how to deal with that?

21 MR. TRIVISONNO: You're just asking for the fact
22 of whether ---

23 MR. MAHER: Yeah.

24 MR. TRIVISONNO: --- he was receiving
25 professional advice or whether ---

1 MR. MAHER: Yeah.

2 MR. TRIVISONNO: --- Ronsco was?

3 MR. MAHER: Yeah.

4 THE WITNESS: Well, Peter Clark's on this email
5 so, you know, one of his roles was trying to figure out
6 a path with ---

7 MR. TRIVISONNO: I don't want you to get into
8 the substance of any advice that was provided.

9 THE WITNESS: Okay.

10 BY MR. MAHER:

11 427. Q. Okay and then -- so okay so did you rely on
12 any other professionals outside of Mr. Clark or -- at
13 the time?

14 A. In which context?

15 428. Q. On how to challenge the reason to believe
16 issue.

17 MR. TRIVISONNO: I think -- that's getting to
18 the substance of the advice. You're now asking which
19 professionals provided advice on what issue. That's
20 into the realm of privilege.

0

21 MR. MAHER: Okay.

22 429. Q. So -- but I understand that Ronsco didn't
23 just blindly rely on information given by the CBSA, it
24 was also helped by some consultant people,
25 professionals?

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1 A. There was -- there definitely were other
2 people involved in helping us understand from the
3 government where's our path?

4 430. Q. Okay. Okay so then if we go to Ms.

5 Alimohamed's correspondence, I think it's Tab 60.

6 MR. TRIVISONNO: There's quite a bit here.

7 BY MR. MAHER:

8 431. Q. So, just for the Record it's a long exchange
9 that happened between Mrs. Natasha Alimohamed from the
10 CBSA and Mimma Francescangeli from Ronsco and there's
11 Mr. Clark cc'd on it and John Tucker from the CBSA.
12 Maybe you already said it, but who's Mimma ---

13 MR. TRIVISONNO: Just a second, Mr. Maher just
14 give the Witness an opportunity to look through the
15 document.

16 THE WITNESS: Okay.

17 BY MR. MAHER:

18 432. Q. So, I just wanted to know who's Mimma
19 Francescangeli?

20 A. She's our Chief Financial Officer.

21 433. Q. And so she was at the time also in 2020?

22 A. Correct.

23 434. Q. And she's still that?

24 A. She is, correct.

25 435. Q. Okay. So, if you go to page -- the second

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1 page of that it's an email by Ms. Francescangeli ---

2 A. Which is the second page? Which page are
3 you on?

4 436. Q. Yeah 5 ---

5 MR. TRIVISONNO: 581.

6 THE WITNESS: Okay.

7 MR. MAHER: 501 of the Compendium. At the
8 bottom it's a response by Ms. Francescangeli. So -- and
9 then on the second page ---

10 A. This is 582?

11 437. Q. Yeah.

12 A. Okay.

13 438. Q. She says,

14 "It was always Ronsco's understanding that the
15 result of Ronsco's Section 129 appeal was not
16 directly tied to the obligation to pay
17 retroactive duties, however, based on Mrs.
18 Ogilvie's advice [that we just went through] in
19 late 2018 and early 2019 we understood that
20 reason to believe which underlies both the duty
21 to make retroactive corrections and the penalty
22 assessment had to be challenged through the
23 Section 129 procedure."

24 And then she goes on to say,

25 "We understood that in the event of a successful

appeal [so an NPA appeal] Ronsco would then have to take further steps within the CBSA to correct the original decision regarding retroactive corrections on the basis of the Minister's conclusion with respect to reason to believe."

So, I understand from that that Ronsco understands that the NPA appeal which the question is did Ronsco contravene or not the act and the issue of how far back you need to go for your retroactive duties are two separate issues.

MR. TRIVISONNO: I don't think that you've fairly characterized a Section 129 appeal.

BY MR. MAHER:

439. Q. Okay and so and then what we read -- she says, "We understood that in the event of a successful appeal Ronsco would then have to take further steps within the CBSA to correct the retroactive duties." So, do you know what would be those further steps?

A. No, I do not know.

440. Q. Okay. So, I don't know if you're aware, but
in this case the CBSA contends that even if Ronsco
didn't have reason to believe it wouldn't change
anything because it would still have to correct from the
verification period going forward as per the
reassessment policy of the CBSA ---

1 MR. TRIVISONNO: I'm sorry, I'll let you finish.

2 MR. MAHER: Yeah, I understand this is our
3 reading of the reassessment policy, this is not Ronsco -
4 --

5 MR. TRIVISONNO: I'll just be clear with Mr.
6 Montgomery, that's the position that they take now in
7 the litigation, not necessarily at the time.

8 THE WITNESS: Okay.

9 BY MR. MAHER:

10 441. Q. Yeah, so CBSA takes the position that it
11 wouldn't change anything because we believe that the
12 reassessment policy says that if you have reason to
13 believe you have to go back to a maximum of four years.
14 If you didn't have reason to believe you correct only
15 from the verification period going forward, okay? So,
16 in this case it meant from 2015, which was the
17 verification period going forward, so including 2016,
18 2017, 2018. So, that makes four years. So, there's
19 actually an overlap of the four years and the
20 verification period and going forward if we read it our
21 way. So, do you still disagree with that position?

22 MR. TRIVISONNO: I'm sorry, Mr. Maher I
23 appreciate that you've explained your legal position to
24 our client, but our client isn't going to offer their
25 legal position by way of a fact witness on what you've

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1 just explained in not the clearest terms.

O

2 MR. MAHER: Okay, so on what documents and
3 evidence does Ronsco rely on to read the policy the way
4 it reads it?

5 MR. TRIVISONNO: We can ---

6 MR. MAHER: Do you have any?

7 MR. TRIVISONNO: We can get back to you on that

8 ---

9 MR. MAHER: Yeah.

10 MR. TRIVISONNO: --- the policy speaks for
11 itself I think and we're going to be examining your
12 witness tomorrow.

13 MR. MAHER: Okay, so if there's any other
14 documents or evidence that you rely on to support that
15 reading of the reassessment policy we would like to
16 know.

17 MR. BAXTER: Noted.

U

18 BY MR. MAHER:

19 442. Q. So and now just a few quick questions maybe
20 it's going to be more geared toward Counsel and through
21 an undertaking, but if we can take your Fresh as Amended
22 Statement of Claim, sorry at Paragraph 14. So, at
23 Paragraph 14 Ronsco talks about how it competes with
24 U.S. based companies in this industry and so -- and then
25 Ronsco states that,

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1 "The United States' companies benefit from a
2 duty free tariff treatment of rough bore wheels
3 for the wheel sets they will ultimately export
4 for sale into Canada."

5 So, my question is just did that -- the tariff treatment
6 of the goods in the U.S., what you're talking about, did
7 that ever play a role into you choosing Tariff Item .21
8 in Canada?

9 MR. TRIVISONNO: If you know you can answer.

10 THE WITNESS: That wasn't considered at all for
11 us.

12 BY MR. MAHER:

13 443. Q. Okay. Then to Paragraph 41. So, I just
14 want some clarification because I don't understand what
15 all this means. So, maybe it's not a question for the
16 Witness, but maybe you know, Mr. Montgomery. So, I just
17 don't understand how the CBSA granted a significant
18 further exemption window from paying duties ---

19 MR. TRIVISONNO: Sorry which -- I thought you
20 were at Paragraph 40?

21 MR. MAHER: 41, I'm so sorry. 41.

22 MR. TRIVISONNO: Okay.

23 MR. MAHER: So, I just don't understand how
24 there was a further exemption for Sumitomo by timing the
25 advanced ruling amendment with the enactment of the

1 comprehensive and progressive Transpacific partnership
2 free trade agreement. So, how did the enactment of that
3 and the timing of the amendment of the advanced ruling
4 have any impact on the duties owed by Sumitomo?

5 MR. TRIVISONNO: I believe it's the proximity in
6 time between the advanced ruling amendment and the free
7 trade agreement coming into play such that the window of
8 time in which Sumitomo would have paid duties is either
9 nothing or very small and maybe we'll find out a little
10 bit more about that tomorrow.

11 MR. MAHER: But so -- okay maybe I'm not aware
12 of all the intricacies of that trade agreement, but
13 wouldn't that also apply to any importers in Canada?

14 MR. TRIVISONNO: My understanding is that it
15 doesn't similarly apply to Ronsco.

16 MR. MAHER: Okay. So are you saying that CBSA
17 willfully timed the AAR amendment with the enactment of
18 that trade agreement?

19 MR. TRIVISONNO: Well, we'll examine your
20 witness on that tomorrow, but the word "willfully" is
21 not in there.

22 MR. MAHER: I'm just trying to get more
23 clarification because it's really not clear. So, was it
24 willfully or not? What are you saying? That's your
25 statement ---

1 MR. TRIVISONNO: The word "willfully" is not in
2 that paragraph. So, we're not saying that it was
3 willful ---

4 MR. MAHER: Okay.

5 MR. TRIVISONNO: --- we may find evidence
6 tomorrow to suggest ---

7 MR. MAHER: Okay, okay,

8 MR. TRIVISONNO: --- that it is, I can't presume
9 ---

10 MR. MAHER: Yeah. No, that's fine, I just
11 wanted clarification.

12 MR. TRIVISONNO: --- but willful is not alleged.

13 BY MR. MAHER:

14 444. Q. Okay, but -- okay it's just that you say
15 that CBSA granted Sumitomo so that means like an act
16 from CBSA a significant further exemption window by
17 timing it -- the amendment to coincide with the
18 enactment of the trade agreement, so do you have any
19 documents or evidence that show that there was an
20 intended timing of those two things?

21 MR. TRIVISONNO: There are no allegations in the
22 paragraph about intent or willfulness.

23 MR. MAHER: Okay.

24 MR. TRIVISONNO: I think I've made that fairly
25 clear and I think the paragraph speaks for itself.

1 MR. MAHER: Okay, I think the paragraph is not
2 clear, that's why I asked questions, but your answers
3 are actually helpful.

4 MR. TRIVISONNO: Thank you.

5 MR. MAHER: So, okay so we're almost done before
6 we take a little break or do you need a break now?
7 Maybe a 15 minute? No?

8 MR. TRIVISONNO: Well, if you're almost done
9 let's finish what you've got.

10 MR. MAHER: I'd like to just confer with my
11 colleague. Ten minutes? Five minutes?

12 MR. TRIVISONNO: Okay, that's all you want to do
13 ---

14 MR. MAHER: Yeah.

15 MR. TRIVISONNO: --- and then you might be done?

16 MR. MAHER: Yeah, yeah, there's not much ---

17 MR. TRIVISONNO: So, let's do that. We can go
18 off Record now.

19 | (SHORT RECESS)

20 BY MR. MAHER:

21 Q. So, I'm almost done with my part. So, as
22 you know ultimately the tariff classification proceeding
23 at the CITT ended up -- well, the CITT ended up
24 concluding that the goods were classified as wheels --
25 should be classified as wheels other. I believe that in

1 -- I think it's in April 2021, but maybe you know more,
2 the tariff was amended to include a new duty free
3 category which covers the goods at issue. Is that your
4 understanding?

5 A. It ---

6 MR. TRIVISONNO: What are you asking, are you
7 asking about the date? Are you asking ---

8 MR. MAHER: Yeah, yeah.

9 MR. TRIVISONNO: --- about the tariff?

10 MR. MAHER: Like around what time ---

11 MR. TRIVISONNO: Well, I think we can go to the
12 document.

13 THE WITNESS: I'm not sure the date.

14 MR. TRIVISONNO: I'd assume this would be in the
15 knowledge of His Majesty.

16 BY MR. MAHER:

17 446. Q. And is it -- was this changed following
18 Ronsco's representations to the Department of Finance?

19 A. It was changed after our engagement with the
20 Department of Finance, yes.

21 447. Q. Okay. So, my understanding is that as of
22 now Ronsco paid the 9.5 percent duties on the goods only
23 from the verification report up until April 2021?

24 A. I -- well I can certainly -- I believe that
25 could be correct, certainly up to April 2021 would seem

1 to make sense for sure. When it started I'm not sure.

2 448. Q. And so now my -- I presume that now Ronsco
3 imports the goods at issue under a duty free tariff
4 item?

5 A. As long as they're forged, correct.

6 449. Q. Yeah, I believe it's called forged wheels --
7 -

8 A. Correct.

9 450. Q. --- in the tariff item.

10 A. Yeah.

11 451. Q. Okay. So -- and I understand that from 2015
12 to 2018 the retroactive duties are still contentious.
13 So, putting that period aside it means that from 2005 I
14 think is when you started importing those goods?

15 A. Correct.

16 452. Q. To 2015, Ronsco actually didn't pay any
17 duties on those goods?

18 A. We did not pay duties on those goods in that
19 period of time, yes.

20 453. Q. Okay. So, for ten years at least Ronsco
21 benefitted from the duty free importation?

22 A. We didn't benefit, our clients -- Canadian
23 clients benefited. That's the premise of our, you know,
24 one of -- if we had reason to believe we could've put
25 the 9.5 percent on if that was the thing and just passed

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1 it along to the end users. It was -- we were doing
2 trade and not consuming in a manufacturing input at that
3 time so the benefit was National Steel Car had a better
4 input to create railcars to export, CN had a better
5 input, you know, to create wheel sets to put on their
6 cars. So, we had no benefit, there's just less cost in
7 the supply chain downstream. I mean for us it was if we
8 had known and it was the rule we would've just put the
9 duty in our pricing, the customer would have paid it and
10 it was done.

11 454. Q. But so if the pricing was higher wouldn't
12 that make you less attractive from your customer?

13 A. That's, you know, speculation, I think the
14 fact is in 2005 and 2006 there was a shortage of goods
15 in North America. The reason international foreign
16 wheels I would say kind of made a beginning push was
17 that there was a lack of production, a lack of supply in
18 North America.

19 So, you know, new car builds, EOM new car builds
20 hit an all-time record they needed to produce to supply
21 the demand on new cars that drove these wheels in. The
22 reality is the end users would have paid whatever price
23 they needed to pay to get it done at that time. So,
24 it's not a -- we certainly didn't benefit we certainly
25 could have put the 9.5 if it was understood that that's

1 what it needed. At the end of the day National Steel
2 Car got wheels, they produced cars, Canada benefitted,
3 everything benefitted that side. CN produced wheel
4 sets, they were able to move trains and our role was a
5 facilitator in the supply chain.

6 MR. MAHER: Okay, so that concludes my
7 questions. Thank you.

8 THE WITNESS: Thank you. Thank you, Charles.

9 **VIRTUAL EXAMINATION BY MR. JOHNSTON:**

10 455. Q. Hello Mr. Montgomery, I'm Adrian Johnston,
11 I'm another one of the lawyers for the Defendant in this
12 Action, so I'm a colleague of Mr. Maher. As we
13 mentioned at the beginning we've divided up the
14 territory today so I'm going to be asking questions
15 relating to damages in this case.

16 A. Okay.

17 456. Q. I actually would like to begin -- and let me
18 just say as well if at any point you want to take a
19 break, just let me know. We're pretty late in the day,
20 I know we just had a break, but if you need one just
21 say. I would like to follow up on the question that my
22 colleague, Mr. Maher just asked regarding why not pass
23 through -- the issue of whether you could pass through
24 these costs to the consumer and you made a statement
25 that you could have put the 9.5 if we understood we had

1 to do that at the time. I just wondered what time
2 period your comments applied to. Is that something
3 that's always been true or were you speaking about a
4 specific period of time?

5 A. For -- where his question a specific period
6 of time was in 2005 to 2015.

7 457. Q. Okay and do your comments apply after 2015
8 as well in terms of the dynamics of the market?

9 A. There's two very distinct pieces to our
10 business; one is buying wheels and selling them to
11 somebody else as a facilitator in the supply chain, the
12 other one is buying wheels to turn into wheelsets and
13 sell the wheel sets to the end user. So, there's two
14 very distinctive commercial arrangements, two very
15 distinctive competitive situations there and we look at
16 them, you know, completely different.

17 458. Q. I see so when you said 2005 to 2015 you're
18 talking about the time when Ronsco was simply selling on
19 wheel bodies as opposed to further working them?

20 A. Correct. So, you know, in the early 2005 to
21 2015 if a customer wants to buy it at a price they're
22 going to buy it, there's no implications really. If my
23 price is high they won't. If they absolutely need it
24 they're going to buy it, if they don't, we don't have
25 that opportunity.

1 In 2015 onwards in a wheel shop we're competing
2 against other wheel set manufacturers so we
3 contractually have to bid on jobs in a way that, you
4 know, have a big influence on what my wheel set cost is.
5 So, it changes how we look at investments primarily. I
6 mean a wheel shop is a heavy invest capital intensive
7 business and, you know, you have to make a return on
8 your investment which is selling wheel sets at a profit,
9 right? And so that profit is a function of your input
10 of your wheel which is by far in a wheel set the largest
11 contributing factor to that cost base.

12 459. Q. Right, so before 2015 let's say the effect
13 of the duty was to increase the cost of a wheel by say
14 \$10, you could pass that \$10 on to the purchaser ---

15 A. Right and if the market was able to support
16 that, then the market supported it. If it didn't, it
17 didn't, right? So, it's just a transaction.

18 460. Q. And so does that relationship not still
19 apply once you're making wheel sets? Your input cost
20 has gone up by \$10, can you just add \$10 to the cost of
21 the wheel set?

22 A. Well, it's a little different, I've invested
23 now in a wheel shop. So, you -- it's not as simple as
24 saying well then if I don't get the business this month
25 I don't care. So, there's a -- you made an investment,

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1 you made a commitment to your supply base, you have got
2 to find a way, you know, to facilitate, you know, that
3 transaction, you know, on what you do.

4 Traditionally our businesses from 2005 to 2015
5 were very transactional based; it was done in a certain
6 way. In a wheelset business it's contractually based,
7 so you're committed over longer periods of time on what
8 you have to charge or what you're able to charge. So,
9 it wasn't just hey I've got 5,000 wheels that I'm going
10 to ship to you over the next six months well here's your
11 P.O for 5,000 wheels for that six month period and when
12 it's done it's done, there could be another
13 transactional based situation.

14 In the wheelset business CN you're under
15 contract for three years and your price is X and now if
16 your input has changed dramatically, well then you've
17 just got a bad situation happening over that period of
18 time. So, that's where we look at fundamentally the
19 differences on how those, you know, businesses work for
20 us in the timeframes that, you know, we're talking
21 about.

22 461. Q. And then just one more thing to close this
23 issue off. Does the pre-2015 business continue for
24 Ronsco? Are you doing any business where you're simply
25 now just selling all the wheels as you did before, is

1 that still something that you do?

2 A. There could have been spot instances with
3 that, but it was very -- it became very difficult. We
4 haven't seen -- so, you know, the two spikes that you've
5 seen on a pure demand basis or supply versus demand
6 basis was 2005, 2006 and then 2015 which we talked about
7 and 2016 there was a fire at a factory in Canada at the
8 Griffin facility. That created a supply constraint
9 issue that caused our customers to look to buy the loose
10 wheel piece and, you know -- so then other than those
11 scenarios the ability to sell becomes a little more, you
12 know, a little more challenging.

13 462. Q. Why is that?

14 A. Well just it's market based, it's just kind
15 of where's the market? Where's the cost? There's
16 duties applicable to it, plus, you know, there's other
17 factors, transportation that goes into it as well. So,
18 the opportunity changes, you know, quite a bit.

19 463. Q. Okay. So, stepping back from that little
20 follow on to Mr. Maher's questions, I wanted to start
21 out actually just to orient you what I'm going to be
22 examining on if you turn up Tab 1 of our Compendium,
23 this is your Fresh as Amended Statement of Claim; it's
24 at Page 16 of the Compendium.

25 A. Page 16?

1 464. Q. That's right. Starting at Paragraph 67 and
2 this is the damages section. So, these are all of the
3 amounts which Ronsco has claimed as damages. Now, (c)
4 is actually we understand is no longer claimed as it was
5 struck out on the Canada's motion to strike (c) ---

6 A. This one (c) is gone?

7 465. Q. Yes ---

8 MR. TRIVISONNO: Other than (c) (iii) I believe.

9 THE WITNESS: Okay.

10 MR. TRIVISONNO: Right, the administrative
11 monetary penalty, that's right, yeah and so I'm not
12 going to ask any questions about (c) because it's gone
13 except for (iii), but the rest of it I understand is
14 your damages claim and so that's what my questions are
15 about today, trying to understand what's the basis for
16 this claim.

17 So, I'm going to start with the general damages
18 in the amount of \$1 million because as you see here at
19 Paragraph 67(a) it's just one line, it's not
20 particularized yet. I have a number of different sets
21 of questions to ask depending on what your general
22 damages claim is based on. So, I'd like to try to do a
23 bit of a scoping exercise now to understand what are the
24 different types of damages you're claiming as part of
25 your general damages, what's the basis for that claim?

1 MR. TRIVISONNO: So, we can undertake to
2 particularize our damages for you. I don't know that
3 the Witness is going to be able to tell you the
4 difference between general damages and special damages,
5 but he can certainly give you an overview of our damages
6 -- the damages that Ronsco suffered and we can give you
7 an undertaking to particularize the general damages.

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8 MR. JOHNSTON: Okay, sure. As I say I have a
9 number of sets of questions --

10 MR. TRIVISONNO: Yeah.

11 MR. JOHNSTON: --- I'll start each one with does
12 any part of your damages claim flow from this ---

13 MR. TRIVISONNO: Sure.

14 MR. JOHNSTON: --- and then that way if it
15 doesn't we can park it and I won't have to ask any
16 further questions and if it does we can go in.

17 MR. TRIVISONNO: Fair enough.

18 MR. JOHNSTON: Yeah.

19 MR. TRIVISONNO: Yeah.

20 BY MR. JOHNSTON:

21 466. Q. Okay. So, I want to start out while we're
22 in the Statement of Claim if you flip back to Pages 5 to
23 6, it's Paragraph 16 and 17 and I'll give you a second
24 to read those paragraphs.

25 A. 15 and 16?

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1 467. Q. Sorry, 16 and 17.

2 A. 16 and 17. Okay.

3 468. Q. Okay, so these paragraphs talk about plans
4 to expand in Western Canada. So, my first question is
5 whether those plans form any part of your damages claim;
6 are you seeking damages because of any impact on your
7 plans to expand in Western Canada?

8 A. Their impacts were expansion plans in
9 Hamilton as much as Western Canada to increase our
10 production within the Canadian market were done two ways
11 which would be in Hamilton itself or, you know, in
12 Western Canada.

13 469. Q. Okay and I certainly have some questions
14 about Hamilton which I'll get to, but with respect to
15 Western Canada is that -- does that form part of your
16 damages claim then? Is it an area we should go into?

17 A. It's part of our expansion plans completely,
18 yes.

19 470. Q. Okay. When were those plans developed?

20 A. Those plans were developed fairly soon after
21 we got into the wheelset, you know, business. It was
22 very well received. We did this basically as an
23 entrepreneurial company starting at brown field and, you
24 know, subsequent to us getting into the business -- or
25 after we got into the business, sorry, CN had two wheel

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1 shops; one was in Winnipeg and one was in Toronto and as
2 we got into the business they ended up eventually
3 shutting down the Toronto wheel shop they had and they
4 ended up shutting down the Transcona wheel shop that
5 they had.

6 So, the volume of opportunity, this supply
7 opportunity for us became, you know, far greater. So,
8 from our customers the idea was to expand what we had in
9 Hamilton our footprint and have a complimentary business
10 in Western Canada to support our customers from coast to
11 coast because wheel sets are, you know, our competitors
12 have multiple wheel shops and if you're able to, you
13 know, supply a commercial arrangement that can cover
14 them in different geographical locations there's some
15 big competitive advantages.

16 471. Q. Okay. So, you said it's soon after you got
17 into the wheel set business, so does that mean ---

18 A. Well, I think ---

19 472. Q. --- soon after 2015?

20 A. Somewhere you know 2018, you know, after we
21 had our first contract with CN through our first, you
22 know, period of time. Obviously the beginning of a
23 wheel shop you haven't proved yourself out. As we went
24 through our first, I'll say three year cycle with our
25 customers typically some of these contracts are three

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1 years, we recognized the opportunities and we've seen
2 what was happening in the Canadian wheel set market that
3 we're in it. It changed -- the landscape changed quite
4 a bit for us.

5 473. Q. Okay. Is there a document that your company
6 worked up that sets out what the business case was for
7 your Western expansion plan?

8 A. There's -- being an entrepreneurial company
9 there's not a formal, you know, business plan document,
10 it was more based on what our plans were on the success
11 and what we heard from our customers coming back, but
12 our template we had in Hamilton and the investments that
13 we were going to put in Hamilton were going to be the
14 same template that, you know, a wheel shop is what I
15 call a, you know, a cookie cutter, it has the same
16 layouts, it has the same equipment, it's very -- it
17 doesn't vary from one shop to another, so --

18 474. Q. Right so you -- I see, okay. How were you
19 planning to finance the expansion?

20 A. Financing being entrepreneurial we finance
21 it, you know, partially ourselves, you know, hopefully
22 also we would have, you know, some loan financing
23 through our banks and we basically make these investment
24 decisions. We're not, you know, we're a medium size
25 business, a lot of it is to do with the return on

1 investment that we were able to see through, you know,
2 extra business that we were able to generate,
3 profitability that we were able to generate, how can we
4 pay off, you know, our investments, you know, and how do
5 we support whether our equity going into the business or
6 going to a bank to say okay this is what we're probably
7 going to need, how is this going to look? So --

8 475. Q. So, how far along were you in the -- in this
9 expansion plan at the time you received the CBSA's
10 interim report in 2018?

11 A. The Western Canadian plan was certainly in
12 its discussion, you know, heavy discussion phase and
13 kind of next step phase. The Hamilton investment, you
14 know, or additional investment was certainly further
15 along.

16 476. Q. So, when you say for Western it was in the
17 discussion phase, like had you made a pitch for
18 financing through a bank or any institution at that
19 point?

20 A. I'm not aware what our financial people had
21 done for the financing piece at that moment, but I think
22 a lot of the discussions more revolved along the line of
23 with our customers was there a reliable customer that
24 was going to support an initiative to move and, you
25 know, the discussions that I'd have from an operational

1 and business standpoint were, you know, is the business
2 there to support the investment? So, we had created
3 Hamilton, Hamilton needed better equipment, you know,
4 better scenario to expand and then to capture more
5 business that was coming up we needed another wheel shop
6 in Western Canada.

7 477. Q. Had you sunk any costs into the expansion
8 plan at that point, by the time of the interim report?

9 A. I -- sitting here today I would not know
10 what costing we had done at that time.

11 MR. JOHNSTON: Okay. Can I get an undertaking
12 to provide that information?

13 MR. TRIVISONNO: So, I think that Mr. Montgomery
14 has told you that there was an impact on the business
15 and an impact on the expansion plans in Western Canada.
16 We'll get back to you as to whether we're actually
17 claiming that as damages. The request that you just
18 made I'll take it under advisement just on that basis.

19 MR. JOHNSTON: Okay, that's fine. To the extent
20 it's part of the damages claim I'll have to ask lots of
21 questions about it and see all of the documentation, so
22 I'm happy if you want to park it to come back with that
23 confirmation, but it's something we'll certainly have to
24 ask further questions on once we -- if you confirm yes.

25 MR. TRIVISONNO: So, I understand that that's

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1 your position and I think as with regard to Western
2 Canada I'm going to give you under advisements and we
3 will get back to you as to whether we're actually
4 claiming those as damages ---

5 MR. JOHNSTON: Okay.

6 MR. TRIVISONNO: --- and then I understand
7 you're going to get to asking Mr. Montgomery about
8 Hamilton after that.

9 MR. JOHNSTON: Sure, okay. So, I'll keep going
10 with some questions on this topic then and then
11 hopefully with the aim of averting the need to come
12 back.

13 478. Q. So, had things kept moving forward what was
14 the timeline for Western Canada then?

15 A. The ---

16 479. Q. When were the -- when would it have been
17 built? When would it have come online? All that.

18 A. It would have come online -- we had to
19 further invest in Hamilton and then Western Canada was
20 going to be the next step to kind of try to time it with
21 one of the contracts that CN we knew was going to come
22 up in their contract cycle.

23 480. Q. Okay. Are we talking like less than five
24 years?

25 A. Less than five years what?

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1 481. Q. From 2018 when you got the interim report.

2 A. It was in that period -- 2018 -- so we just
3 signed -- there was another contract with CN a couple
4 years ago so the timing was going to be with that
5 period.

6 482. Q. Okay.

7 A. Right? So, our customers have constantly --
8 our concern as a company is we have the smallest output
9 of wheel sets and a big factor that we compete against
10 is our customers are publically traded companies,
11 Greenbrier, Caterpillar, they have large networks that
12 they can draw on and, you know, the push from our
13 customers, primarily CN and CP were you have to do more,
14 you have to do more, you have to protect, you know, what
15 you have. So, as a smaller company we felt a risk that
16 if we didn't invest and continue to grow it we would
17 look as somebody that wasn't meeting the needs of our
18 customer.

19 483. Q. Okay. So, if you had gone full steam ahead
20 from the time of the interim report in 2018 and
21 everything had just moved as fast as it could, how
22 quickly could you have been producing for your Western
23 Canada expansion?

24 A. A wheel shop typically you would look for a
25 two year window to do that.

1 484. Q. Okay and the things that needed to happen
2 before that you would go full steam ahead were secure a
3 customer base I think I heard you say?

4 A. You'd have to time it with the contract
5 cycles ---

6 485. Q. Right.

7 A. --- because you wouldn't want to open a
8 wheel shop and not have the ability to capture business
9 ---

10 486. Q. Right.

11 A. --- so there is a nature cycle to make sure
12 you time that properly as well. There's site selection,
13 you know, the proper place in Western Canada, the -- and
14 then is there equipment, you know, acquisition, you
15 know, piece that goes along, you know, with it. So,
16 there's kind of three, you know, main factors that we
17 would look at as critical items.

18 487. Q. Okay. The paragraphs that I pointed you to
19 just now in the Claim specifically at Paragraph 16,
20 "Prior to the events giving rise to this
21 Proceeding, Ronsco had plans to expand its
22 operations in Western Canada by opening a wheel
23 shop"

24 and the final sentence of that paragraph is,
25 "However, as described below these plans were

1 upended due to CBSA's imposition of a 9.5
2 percent duty on rough bore wheels and its
3 imposition of retroactive duties on Ronsco."

4 So, why were the expansion plans put on hold
5 specifically?

6 A. The couple factors ---

7 488. Q. In Western Canada, sorry.

8 A. --- the return on investment for us just
9 wasn't looking -- when we built our business in
10 Hamilton, you know, Hamilton first of all had the fund
11 to generate the revenue to justify a further expansion.
12 So, if you didn't have the revenue, if your mothership
13 wasn't making money, well then you had no business case
14 at all to generate funds to do it.

15 So, in the beginning even when we opened in
16 Hamilton, you know, you don't open on day one with a
17 perfect business model, you evolve into it, you know, a
18 little bit; you're generating revenue, as you generate
19 more revenue and profit you're further investing in your
20 business. So, the implications was more on suddenly
21 Hamilton now and what we were in is not making money and
22 -- so you couldn't even go forward with what else you
23 wanted to do.

24 So, Hamilton was built on the fact that we
25 needed to have a diversified base of wheel manufacturers

1 to compete. We had Amsted Griffin in Winnipeg, they
2 were a supplier in Canada, but they're far away. So, I
3 had to drag wheels with high transportation costs into
4 Hamilton. That puts me in a bad competitive situation.
5 I would have had to drag wheels from, you know, the
6 United States as well which puts me in a bad competitive
7 situation. So, the way the market worked we blended
8 wheels from different manufacturers and it wasn't
9 necessarily your input purchase price, it's what my
10 landed price was in Ontario.

11 So, then that creates a wheelset cost or price
12 that I can sell to the market that competes against
13 people producing wheel sets for example in Chicago or
14 Pennsylvania who are my competitors and they had lower
15 input costs than I did maybe on the wheels because
16 there's wheel manufacturers around them, you know,
17 labour issues, other factors that go into it.

18 So, I needed to create a business model that was
19 able to be sustainable in Canada and I needed to have
20 negotiating power. So, having inputs from around the
21 world gave me the negotiation power. So, that was the
22 core foundation of our Hamilton operation that started
23 that business and as it went along we were starting to
24 make some money, we were making some headway and that
25 was all going to go back into Hamilton and also extend

1 into an additional wheel shop.

2 So, when the 9.5 percent duty thing surfaced it
3 completely impacted everything we looked at as okay am I
4 making a proper return to again to continue to expand or
5 even continue to exist in this business? So, you know,
6 it was a major impact. Wheels account for again I think
7 we had it in here, 80 percent of an input cost on a
8 wheel set. So, you know, there's two wheels on there,
9 you know, you're adding 10 percent to each one of those
10 wheels.

11 So, that changes the dynamics, you know,
12 completely for us. It's also a very mature -- it's not
13 a proprietary business so it's based on volume, it's
14 based on, you know, managing your costs very correctly,
15 you know, we're providing labour, we're providing
16 equipment, we're buying a lot of inputs and we've got to
17 process that correctly.

18 Those things change, the window is very small
19 for us to maintain a profit. So, there was all those
20 factors that went into changing how we looked at
21 Hamilton and changing how we looked at any further, you
22 know, expansion.

23 489. Q. Okay. So, at the time that the Western
24 plans went on hold was there a specific contract coming
25 up in the west that you had your eye on at that time

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1 that would be the catalyst for moving it forward?

2 A. All our contracts are geared around, you
3 know, CN and CP.

4 490. Q. Was there one on offer at that time that you
5 were contemplating?

6 A. There would be one somewhere in that cycle
7 for sure, absolutely, yeah.

8 491. Q. And again a cycle, can you help me to
9 understand what you mean by a cycle?

10 A. CN tenders, you know, in contract cycles,
11 it's three year cycles; award, business to a supplier
12 for a period of time. So, unless they're going to re-
13 tender you're basically you know that, you know, you've
14 got that business for that period of time.

15 492. Q. So, when they put something out to tender
16 when would be the start time usually under that type of
17 contract, like is there a certain lead time that's
18 customary that you get awarded and you now have some
19 time to get things in place to deliver or is it that
20 you're immediately expected to be delivering?

21 A. If you're a wheel shop you're immediately
22 expected to deliver. I mean there's a -- typically
23 there's a tender process, I mean one we went through
24 with CN recently, you know, the tender process started
25 in March, the contract started in September. So,

1 there's a negotiation window, there's a price
2 negotiation window, there's a, you know, terms and
3 conditions window and then you're expected to start.
4 So, you know, the railways don't let you get in the
5 wheelset business, they don't time it, you're either in
6 it, you prove to yourself what you can do and then you
7 go.

8 493. Q. You don't bid before you have built a wheel
9 shop presumably?

10 A. You could, absolutely. If you have a wheel
11 shop up and running ---

12 494. Q. Okay.

13 A. --- you can do that, absolutely. If you
14 have no history you're not going to do that, but if you
15 are bolting onto a business that you already have then
16 it's fully reasonable that you can pull it off, you
17 know, but opening up a wheel shop.

18 495. Q. And is that because you'd be shipping from
19 the original wheel shop to deliver or because you have
20 the know how and you can build another wheel shop in
21 time?

22 A. It's two, it's risk mitigation; if it, you
23 know, if it doesn't go as planned you do have that ---

24 496. Q. Right.

25 A. --- option and you know we -- so it's two

1 parts to that, you know, they know that they have --
2 they're going to still get wheel sets so the question is
3 how do I get wheelsets? You build a new one, you got a
4 price point, you got an existing one, worst case
5 scenario we still have wheel sets and, you know, you
6 move it from there.

7 497. Q. Right, but then you're eating the freight
8 cost of getting it out to them?

9 A. Yeah, you're going to eat the freight cost
10 for sure. I mean we've done some different things to
11 help with that, I mean we've created custom ways of
12 moving wheel sets subsequently to this into Western
13 Canada a little bit differently, but, you know, there
14 would be that factor, the railways just wouldn't be
15 that's too bad, you know?

16 498. Q. Okay. Since the Tariff Item .21 was amended
17 in April 2021 have you reinitiated the Western Canada
18 expansion plan?

19 A. We've, you know, like I said there's two
20 parts of what stopped for us was Hamilton investment and
21 the Western Canada investment and we are reinitiating
22 the Hamilton piece since that 2021 announcement so our
23 plans again, you've got to get your home base back in
24 order to again invest into subsequent expansions. The,
25 you know, demand is still there, you know and how we go

1 about doing it is going to be how well we're able to
2 integrate and get Hamilton, you know, further enhanced I
3 guess with technology. So, we have great plans with all
4 the stuff that we should've done many years ago, that's,
5 you know, been postponed, but now we're going to try to
6 initiate those.

7 499. Q. Okay. So, as of now there's no specific
8 timeline for the expansion in Western Canada?

9 A. If I'm successful with doing what we do in
10 Hamilton well then, you know, that will be the contract
11 cycle that we're currently in with CN we're contracted
12 with them through December of 2025. So, the reality is
13 the pressure for us is to be ready for that tender that
14 will hopefully be out at some point in 2025 for 2026,
15 you know, onwards. So, the timing of Western Canada is
16 not an immediate concern as long as we're able to fit,
17 you know, everything in and you know our immediate
18 concern again is Hamilton making sure that we are
19 producing wheel sets that make money that will then
20 allow us to again relook at what we're going to do in
21 Western Canada for the next contract cycle.

22 MR. JOHNSTON: Okay. Okay so just to clarify
23 then in terms of the undertaking you're going to confirm
24 whether this forms part of your damages claim and then
25 if so will you undertake to provide documentation about

1 the Western Canada expansion plan which was put on hold?

2 MR. TRIVISONNO: Yes, we will. So, I'll provide
3 that as an under advisement now depending on whether we
4 are pursuing damages based on the Western Canada
5 expansion.

A

6 MR. JOHNSTON: Okay, perfect.

7 500. Q. Okay then let's move on then and talk about
8 the Hamilton facility. So, do your plans to expand the
9 Hamilton facility form part of the damages claimed?

10 A. Yes.

11 501. Q. At the time of the interim report what was
12 the expansion plan for the Hamilton facility?

13 A. It was to increase our capacity from two
14 types of wheel sets which we call new mount wheelsets
15 which need the new wheels put on them and the other part
16 of it is turning wheelsets. So, you take old wheelsets
17 and you can create a new profile basically like a new
18 profile on that wheel on the wheel tread and both are
19 interconnected because, you know, the more new mounts
20 you need to do the more turns you need to do so when we
21 started in 2015 the equipment that we had was not high
22 production because the market didn't look like it does
23 today.

24 Like I said CN still had two wheel shops. We
25 were trying to fit ourselves into a niche. We were

1 exploring how well received a Canadian supplier could be
2 and so our plans, you know, after that three years with
3 CN where CN wanted us to do a lot more. The Ontario
4 market, Toronto for example which would be the core
5 consumption point for us has a lot wheelsets, far
6 greater than the capacity that we were able to produce
7 and CN was telling us that we want you to do for example
8 Brampton, but we can't do Brampton, my capacity was, you
9 know, 300 wheel sets a week where they wanted 800 wheel
10 sets a week.

11 So, we have to expand with all new equipment,
12 you know, to support that and we didn't do it, you know,
13 our choice was to step back, the finances didn't look
14 good. How is this whole opportunity going to, you know,
15 unfold for us? Could we continue to even support what
16 we're doing? So, it changed a lot for what we're doing,
17 you know, but luckily for us now, you know, since 2021,
18 you know, these plans are all back in place. We're very
19 far along with our equipment decisions right now on
20 turns and new mounts and we're very hopeful that that's,
21 you know, going to go in place very, very soon.

22 We actually, you know, took CN's wheel shop in
23 Toronto and we've bought that wheel shop from them. It
24 was a turning wheel shop, nothing to do with new mounts,
25 but that's been sitting again in storage waiting for us

1 to kind of figure out where this is all going to go and,
2 you know, how you invest it, so it's very far along.

3 502. Q. When did you buy that wheel shop?

4 A. It was in 2021 just around that, you know.
5 period of time when CN got --

6 503. Q. So, did the Hamilton facility ramp up
7 whatsoever after the interim report ---

8 A. No, it hasn't ramped up.

9 504. Q. --- in 2018?

10 A. We stuck with the same equipment and, you
11 know, our capacity has been generally the same.

12 505. Q. Okay, so the -- like the -- by that do you
13 mean the volume of production is the same year to year?

14 A. The volume of production is the same, yes.

15 506. Q. Okay and that's because you did not buy the
16 -- you did not make the decision ---

17 A. The new ---

18 507. Q. --- to buy the new ---

19 A. --- mount line is the key part of what we
20 do. So, 70 percent of all wheelsets are with new wheels
21 on it. That's just the way it is and, you know, that's
22 the key piece of equipment that we need to further our
23 thing along.

24 508. Q. Yeah and is that facility operating at its
25 maximum capacity?

1 A. You sound like CN. No, I think there's a
2 lot of questions, a lot of things that go in there;
3 labour, you know is another piece to that, but no, it's
4 not operating at its optimum. It's more geared towards
5 the type of equipment that we have. The risk is if you
6 push the stuff that we have too much you jeopardize what
7 you already have. So, we've been keeping it at a level
8 instead of going three shifts a day seven days a week,
9 you know, how do you run it in a way that protects what
10 you can do in a way that makes sense.

11 509. Q. How were you planning to finance the
12 Hamilton expansion?

13 A. Again, that's probably a better question for
14 our Chief Financial Officer. She says I just try to
15 spend the money, she has to find the money, but I think,
16 you know, again, we are a company that has some equity
17 depending on where we go and get our financing to
18 support it depends on the situation.

19 510. Q. Okay. I guess I'm wondering whether in the
20 decision to put it on hold is it -- was it about the
21 tariff rate increase going forward or was it about the
22 loss of capital from the retroactive duties or was it
23 about both?

24 A. Oh, it's about both, 100 percent. I mean
25 losing equity which you would use in a financing

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1 arrangement is a significant, you know, blow to the
2 business. I mean our company is a medium size business
3 and this is substantial dollars that we're taking away
4 on top of going forward your costs have now gone up,
5 right? And so those are two factors that weigh in on
6 how you build your business and how you, you know, move
7 your business moving forward.

8 So, you know, they're both critical, you know,
9 we're trying to manage them in separate ways. I mean,
10 you know, moving forward, you know, piece it was okay
11 how long was this impact going to be, you know, how is
12 it going to impact our cost structure and how was I
13 going to generate enough profit then we can rebuild our
14 equity pool in the business to then use that again for
15 financing or, you know, decide how we're going to
16 continue to invest in our business so there's a bunch of
17 different scenarios there.

18 511. Q. So, could you walk me through how expanding
19 ultimately translates into greater revenues basically,
20 like what's the -- when do the revenues start coming in?
21 Is it because you're selling more wheelsets? Is it
22 because you're landing new contracts with new customers?
23 What does that sort of practically look like? If the
24 expansion occurred when and how do you start seeing more
25 revenues as a result of that?

1 A. The revenue piece obviously the top line
2 piece changes dramatically because the opportunity to
3 sell more wheelsets is there and it's just not the
4 freight wheelsets, but there's other, you know, maybe
5 some other opportunities there, but the freight
6 wheelsets dominate our business by far, like the
7 majority of anything you would see under Tariff .21 code
8 or .29 code is not the exception it's the rule, right?

9 So, that is the business in Canada that drives
10 it and every wheelset you add to that increases your
11 revenue, but you have to do that profitably, right? You
12 can grow your revenue and decrease your, you know,
13 profitability if you don't have the right equipment
14 because then you're becoming more labour intensive,
15 you're becoming less efficient, you're creating poor
16 quality and your cost and quality now has gone up.

17 So, there's a whole other bunch of factors. You
18 have to do that with the right equipment, you can't
19 continue to add, you know, more people. So, that is how
20 we looked at it; more revenue but also with more
21 different equipment we increase our input costs as much
22 as we can to be competitive, you know, with the people
23 in the United States. The business we compete like I
24 said with folks out of Chicago, the labour piece is
25 different, their costs of their inputs are different.

1 So, the only thing that we do by moving it into
2 Canada versus the United States is if my costs are
3 higher well then the only gap I have is the cost it is
4 for them to move a wheel set from Chicago into Toronto.
5 So, that's my window. So, that's my advantage and that
6 decreases if my costs are higher. So, I have to go in
7 with as low or as competitive input costs and
8 competitive equipment as they have and then hope that
9 that gap stays there for us to, you know, to make our
10 profit and our margin.

11 512. Q. So, under your existing contracts that you
12 were serving as of 2018 with CN or whoever it would have
13 been, could you have just produced more under those
14 contracts to get more revenue or would it have had to be
15 landing new contracts in order to get more revenue?

16 A. If had more ability to produce they would
17 have, but, you know, it comes down to if I'm not making
18 money I don't want to produce more, right? So, it's a
19 simple you kind of step back and say well, I don't want
20 to lose more, but I have a contractual obligation maybe
21 to produce to X at least to stay in the game, but I'm
22 not going to go to Y if it's -- there's no net benefit
23 for me, right?

24 So, that's how we kind of looked at the business
25 is that we can't step on the gas, you know, we're not

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1 allowed to anymore, the whole thing has changed for us,
2 now let's just figure out how we can operate with what
3 we have in the conditions that we now know and manage it
4 as best as we can. So, for us, you know -- and there's
5 not an immediate change there, you know, the supply
6 chains too happen in a way that it's irrelevant whether
7 the wheel came from China or it came from Russia, we
8 have these contracts with the wheel input manufacturer,
9 we don't buy them week to week and say hey, now I need
10 ten, the supply chain is three to six months, you know
11 or even longer, right?

12 So, the impact of that is there with us. It was
13 with us when that ruling came down, I just wasn't like
14 snapping my fingers and said you're done and I'm going
15 to go to Sumitomo, well Sumitomo input costs are really
16 high, right? They were, you know, even if they didn't
17 have a tariff. So -- and we know because we bought
18 wheels from Sumitomo, yet we paid a 9.5 percent duty
19 because we brought them in and they didn't bring them
20 in, right? And that was, you know, one of these ironies
21 in this whole thing for me anyways so we needed time to
22 get ourselves out and then relook at the playing field
23 how was I going to source wheels now and where was I
24 going to source wheels from to help me understand where
25 this whole thing was going to go and that was a big

1 adjustment period for us.

2 513. Q. So, at the time that the plans -- the
3 expansion plans in Hamilton went on hold had you
4 actually incurred any kind of sunk costs toward that
5 expansion at that point or you just stopped before you
6 had incurred ---

7 A. No, we stopped. I mean what we had at the
8 time was there, I mean there's part of our investments
9 were a few things for us in Hamilton was number one, the
10 building. We leased that building. It has an exterior
11 piece to it that needed investment in it. That stopped
12 very quickly and it still hasn't been done today to, you
13 know, you've got to understand what you're doing with
14 our real estate because equipment has a lot of impact on
15 the insides of the building, you know, foundation work,
16 pits, you know, concrete that you need, it's very heavy.

17 That's a huge investment and if you make that
18 investment in a property that investment is there on
19 your books forever, like it doesn't -- if you decide
20 you're out of the business, well, it's sunk, it's
21 finished. We made some -- we've made little bits and
22 pieces where we thought it could add a little value, but
23 not really sink into it as much as we can, but that
24 whole thing, you know, changed and it caused us really
25 not to buy the building at the time where now in

1 hindsight, you know, the cost of that building is a lot
2 more than it is than it was and it certainly if I could
3 have bought it four or five years ago it would have been
4 much better than what is sitting there now and, you
5 know, it's a dilemma for us.

6 The equipment piece as well, we've invested in
7 some equipment, but we've never invested in the
8 automated equipment that we need, you know, to drive our
9 business to that next level. Like I said we're now
10 there, well, we're very close and I hope that's --
11 hopefully at some point next year that storyline will,
12 you know, will look better.

13 514. Q. I guess what I'm not understanding in terms
14 of the expansion is how price sensitive your customers
15 are for landing these ---

16 A. Right.

17 515. Q. --- contracts, like if we're talking about a
18 9.5 percent tariff, is it the case that if you build
19 that into your input cost and the input is 80 percent of
20 the value of what you're producing, can you not pass
21 that along to your end client? Is the demand not such
22 that you can do that?

23 A. The unfortunate part of our business is we -
24 - Class 1 railways hold all the power. I mean, you
25 know, they have all the negotiating power. They are our

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1 dominant buyer and if you want to look at CN, you know,
2 in a -- for example their pricing power with their
3 supplier -- their customers and with their suppliers is
4 enormous. It's, you know, the ability to pass prices
5 along is not a realistic, you know, scenario.

6 I know even through the simple pieces of, you
7 know, this Covid with us with CN they won't let you do
8 anything, I mean you can present what you want and our
9 U.S. competitors are ruthless in terms of, you know,
10 wanting to get back what we took. I mean, you know, big
11 customers we are smaller volume, we're kind of, you
12 know, in this little area here in Canada. They want
13 that business back and, you know, so they're not letting
14 up, they're -- the wheel shops there, you know, produce
15 30,000, 40,000 wheel sets at a time, you know, we're
16 producing, you know, 10,000 to 20,000 tops, right? And
17 -- so we don't have any of those -- economy is a scale.
18 So, there is -- the price sensitivity is huge with CN,
19 it's just the way it is.

20 516. Q. So, you say even without the 9.5 percent
21 tariff, the world you're in now ---

22 A. It's still very competitive, yeah, ---

23 517. Q. It's still very competitive.

24 A. --- 9.5 is just it's unheard of, I mean if
25 you want publically knowledge Greenbrier as a competitor

1 of ours in their parts wheelset business gross margins
2 are 5 percent, right? So, you put a 9 percent extra
3 cost on your inputs, what are you doing? Why are you in
4 the game, right? So that will beg the question of why
5 are you guys in this wheelset business? But we see a --
6 saw a need and we've seen price points by combining
7 international wheels with domestic wheels or U.S.
8 produced wheels it gave us this advantage that we were
9 able to use and we were able to move differently our
10 supply chains as, you know, as required.

11 Maybe in 2015, 2016, 2017 China was an
12 advantage. Well, maybe in 2005, 2006, you know, Russia
13 was an advantage. Maybe in another year Ukraine could
14 be an advantage, but we had the ability to use that
15 advantage and negotiate with multiple suppliers where
16 that's maybe one advantage I had better than our
17 competitors, you know because Ontario is a logistics hub
18 into Canada with the intermodal business moving stuff in
19 it gave us that opportunity. The ruling came out, it
20 took that whole opportunity away, right?

21 So, then I was at a disadvantage suddenly to all
22 my competitors who actually had the domestic producers
23 around them. So, that was what impacted a lot of what -
24 - you know how we looked at, you know, our growth plans
25 and what we wanted to do. Like I said we weren't --

1 everybody -- we took a huge risk because we saw the
2 market in Ontario being promising. We're the only
3 Canadian company ever doing this and so how this
4 progressed really severely impacted a lot of things and
5 how we looked at it. So, that's how we've come to those
6 conclusions.

7 518. Q. So, even now would you say there is risk
8 involved in the expansion? Is it a --

9 A. You know there's risk. I mean our -- we've,
10 you know, again began to source wheels and not have 9.5
11 percent duty, right? So, Taiyuan is now again somebody
12 we're bringing wheels in from where we weren't bringing
13 in for a period of time. So, they gave me -- they've
14 given me the negotiation to get some prices that make it
15 better for us and there's always a risk, but you know,
16 if you're able to create a business with the most
17 automated equipment now, you know, we were able to take
18 some more of those variables out of it.

19 Now, if suddenly there's another 9.5 percent
20 duty put back on it, I would say there's a major risk
21 again, you know, it kind of throws, you know,
22 everything, you know, back out the window and that's how
23 we looked at it too is that in the United States there's
24 no duties on any inputs for wheels, period. So
25 everybody we were competing against they can buy from

1 Russia and they can buy from China, they can buy if
2 they're able to logistically get it there.

3 They just -- they put it on a wheelset and then
4 that wheelset goes, you know, into Canada, no duty. I'm
5 buying the exact same wheel competing against them and I
6 have all these extra costs and the wheels are actually
7 going to the exact same location. So, the whole optics
8 of that, the whole idea, you know, behind it was, you
9 know, devastating for us because we were in this
10 terrible situation.

11 519. Q. Are there any differences between the
12 Hamilton expansion plan that you're pursuing now and the
13 one that you put on hold in 2018? Have you changed the
14 plan at all?

15 A. I think the idea, the plan now probably
16 coming out of Covid certainly made us look at can I get
17 that extra step of automation? Labour being what it's
18 become has certainly made us realize that the type of
19 worker that we thought was going to be there, you know,
20 machinists, laborers, mechanically inclined, that type
21 of worker seems to have, you know, disappeared a little
22 bit, so you know our focus with this equipment really is
23 to take that extra step for the automation to try to
24 really minimize, you know, as much as we can with, you
25 know, having to have worker interface as much and, you

1 know, again, can try to control our costs, but with
2 automation comes, you know, the more automation you do,
3 you know, it even increases the cost points, you know,
4 so you really got to feel very comfortable that your
5 business case is going to be solid for many, many years
6 because your input cost now is even going to be greater.

7 520. Q. And so what's the period of delay that you
8 say your expansion plan has suffered because you put it
9 on hold? How long -- how far behind are you in terms of
10 the timeline?

11 A. We're certainly three years plus behind.
12 So, I mean the -- you know, in a perfect world we would
13 have had it started with in 2021. So, if I believe, you
14 know, again I could be corrected is that the contract
15 cycle that we had with CN started again in September of
16 2021 and so that's the cycle that we're in right now.
17 So, the lead up would have been to that, you know,
18 contract right there.

19 So, we missed that window in a big way for
20 Hamilton, you know, and for any Western Canada
21 expansion. So, now we're looking at, you know, how do
22 we get ourselves in place for Hamilton and then by the
23 time 2025 comes along we're in a very good position to
24 say okay now I understand what's going on, I can price
25 this thing in a way that, you know, is going to, you

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1 know, be positive.

2 521. Q. So, what you mentioned for September 2021 a
3 new contract cycle? So, that means there was a contract
4 that would have started producing in September 2021, is
5 that what that means?

6 A. Well, it would have been an extension of an
7 existing contract we already had. We had been producing
8 before there, but we just couldn't go after additional
9 business, I mean it was just kind of what we were able -
10 you know what we were able to try to go after.

11 522. Q. So, are you talking about enlarging like the
12 terms of what you would deliver under ---

13 A. Oh, 100 percent, yeah.

14 523. Q. --- the contract? Okay.

15 A. And that's where our expansion plans were
16 for Hamilton, it was really I want to do all -- my goal
17 is to do all of Ontario which I still don't do all of
18 Ontario, I can't, but the opportunity is there, it was
19 there. That's the opportunity our customers are saying,
20 like you're in Ontario, why are we bringing in all these
21 wheel sets from Lewiston Pennsylvania? Why am I
22 bringing these wheel sets in from, you know, Chicago?
23 And that's what's happening today, they're all coming in
24 by truck and we're in Hamilton, Ontario all the wheel
25 sets are used in Brampton, in Concord, in Vaughn and we

1 are getting a small sliver of that and with the ESG
2 rules out there today the railways really having a huge
3 ESG mandate they're like why are we bringing all these
4 things on trucks? You guys are right there, why are we
5 dragging these things all -- we just we have not been
6 able to respond.

7 MR. TRIVISONNO: I'll just remind Mr. Montgomery
8 to wait for the question.

9 THE WITNESS: Okay.

10 BY MR. JOHNSTON:

11 524. Q. So, you -- I just want to understand these
12 contract cycles, the timing so if there was one in
13 September 2021 does that mean that was the three years
14 before that were part of one contract cycle, like what
15 are the time periods?

16 A. I'd have to see what the last cycle was, but
17 for us in Ontario it was you got a location, but if you
18 could ever do more we're still, you know, we have a base
19 of business that we operate with and, you know, for us
20 with CN it's once you do more you guys come and tell me,
21 like how do we do it, right?

22 525. Q. So, in September 2021 you did get a new
23 contract with CN?

24 A. Correct.

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1 A. That is correct, yes and that goes from it's
2 four years through into 2025.

3 527. Q. Right. So, is there any contract that you
4 simply haven't been on because of the delay to the
5 Hamilton expansion?

6 A. Any -- all the additional business for CN in
7 Ontario we just -- we have not been able to tell them we
8 can do it, period. CN -- CP as well which is another
9 client, you know, our ability, you know, hasn't been
10 there as well. So, what dominates the volume in Canada
11 is CN and CP, you know, the other ones are kind of small
12 and of course our ability to export is not there if we
13 can't even support our Ontario business, so --

14 528. Q. Okay. So, I'd like to move into asking some
15 questions about how the interim report impacted
16 contracts you were already serving in terms of
17 profitability for you essentially and so for this I'd
18 like to show you in our Compendium at Tab 22 on Page
19 647. So, this is a document from the Plaintiff's
20 productions Part 9, Tab 153 it's a letter from Ronsco to
21 Scott Winter in Finance dated April 29th, 2020 and so on
22 Page -- on the last page of this letter here,
23 "Ronsco is at a twofold disadvantage in
24 competing for this work. First, its plans to
25 expand its production in Hamilton and into

1 Western Canada have been put on hold due to the
2 capital consumed by CBSA's retroactive duty
3 reclassification. This is an expense that
4 continues to accrue as Ronsco is fulfilling
5 multiyear contracts entered into before the
6 unexpected retroactive charge at greatly reduced
7 profit margins."

8 Do those reduced profits on those contracts form part of
9 your damages claim?

10 A. Yes, they would.

11 529. Q. So, what contracts are we specifically --
12 are you specifically referring to as part of your
13 damages claim for lost profits?

14 MR. TRIVISONNO: We can get back to you on that.
15 Mr. Montgomery is not -- doesn't know those at the
16 moment.

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17 MR. JOHNSTON: Okay, so ---

18 MR. BAXTER: Why don't we do that by way of
19 undertaking?

20 MR. TRIVISONNO: Yeah, that's what I meant.

21 MR. JOHNSTON: Okay, perfect.

22 530. Q. In those contracts is there -- and if you're
23 not able to answer because you haven't seen them yet or
24 identified what they are, you can just say that, that's
25 okay, if you can answer though that would be helpful.

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1 In those contracts the pricing mechanism, is there an
2 ability to adjust prices based on changing input costs?

3 A. Absolutely not.

4 531. Q. No ---

5 A. No.

6 532. Q. --- price flexibility?

7 A. No.

8 533. Q. And what about in terms of termination,
9 what's your ability to terminate a contract if it's no
10 longer profitable?

11 A. It would be extraordinarily difficult. We
12 would have to declare a *force majeure* and that would
13 rupture permanently the relationship with the client.

14 534. Q. Do those contracts that -- these multiyear
15 contracts where you say you had greatly reduced profit
16 margins, I take it that that language means these
17 contracts were still profitable for Ronsco?

18 A. I can't answer to the profitability piece
19 today, but --

20 535. Q. Okay. Is that something your -- that your
21 CFO would need to speak to or you just need to know
22 which specific contract we're talking about?

23 A. I'd need more understanding of what
24 particular you're looking at for -- which contracts
25 exactly, yeah.

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1 536. Q. Okay.

2 A. But generally a lot of it has to do with how
3 you would expand based on, you know, what your profit
4 margin is, you know, what your contribution is to
5 support further expansion. That's the big piece.

6 537. Q. Right. Then I think we can leave that until
7 we know what contracts we're talking about here to get
8 into more specifics. The contracts, they're multiyear
9 contracts; what's the typical range of years?

10 A. Generally two to four years.

11 538. Q. So would some of the contracts that were in
12 place when the interim report was issued in 2018, would
13 some of them still have been active four years later?
14 Is that --

15 A. No.

16 539. Q. Okay.

17 A. No.

18 540. Q. And so I take it if the imposition of the
19 9.5 percent tariff reduced the profitability of your
20 contracts when the Tariff Item .21 was changed, it
21 increased the profitability of your multiyear contracts,
22 is that true?

23 MR. TRIVISONNO: Sorry, I don't understand the
24 question.

25 THE WITNESS: Yeah.

1 BY MR. JOHNSTON:

2 541. Q. Sorry, let me rephrase.

3 A. Yeah.

4 542. Q. When the language of Tariff Item .21 was
5 changed in 2021 which resulted in Ronsco being able to
6 import forged wheel bodies duty free, that would have
7 increased the profitability of any multiyear contracts
8 that you had by reducing your input costs, right?

9 A. If we had had any it would have -- I
10 wouldn't say it would increase it, it would have brought
11 it back to where our expectation was, absolutely.

12 543. Q. So, I'd like to ask you about one contract
13 in particular. Go to Tab 12 of our Compendium at Page
14 559 and this is from the Plaintiff's productions Part 5,
15 Tab 73. It's an email exchange between Richard Mahoney
16 and Doug Band. The top -- the first email in the
17 document is dated August 28th, but I'd like to ask you
18 about an email on Page 559. So, this is Richard
19 Mahoney's email to Doug Band if you'd like to take a
20 minute to read that.

21 A. Did you say August 28th?

22 544. Q. No, it's the 24th,

23 A. Okay, okay.

24 545. Q. Yeah, sorry.

25 A. So this right at the top of the page here?

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1 546. Q. Yes.

2 A. Okay.

3 547. Q. So, the second bullet point there Mr.
4 Mahoney writes,

5 "Ronsco should not be penalized because of the
6 fact that you may have misspoke. As I mentioned
7 in our telephone discussion Ronsco relied on the
8 results of that meeting and subsequently signed
9 a \$75 million deal with CN priced on assumptions
10 that they would not have to pay more than \$4
11 million in duties going back four years."

12 So, does that \$75 million deal with CN form part of your
13 damages claim?

14 MR. TRIVISONNO: We can undertake to let you
15 know.

U

16 MR. JOHNSTON: Okay.

17 548. Q. Did -- so Ronsco signed that deal with CN.
18 Do you know when Ronsco signed that deal?

19 A. I'm not certain how Richard came to that 75
20 million particularly sitting here today.

21 549. Q. Do you know what contract he's referring to?

22 A. I would say our largest contract would
23 certainly have been with CN Rail.

24 550. Q. Okay and did Ronsco enter into a contract
25 with CN Rail following the meeting with Mr. Band, but

1 before August 24th, 2018?

2 A. I believe we had entered an agreement with
3 CN absolutely that would have taken us from around this
4 timeframe through to 2021 which was now our subsequent,
5 you know, contract year.

6 551. Q. And so that agreement was premised on you
7 thinking you would not be subject to 9.5 percent ---

8 A. Correct.

9 552. Q. --- duties.

10 A. Correct, absolutely.

11 553. Q. And did that contract require you to ramp up
12 production in your Hamilton facility?

13 A. That contract certainly had the ability to
14 produce more for CN which we chose not to do to the
15 maximum.

16 554. Q. And you -- to the best of your knowledge --
17 well, I'll just ask if when you provide the information
18 in response to the undertaking like to know the exact
19 date on which the agreement was reached with CN.

20 MR. TRIVISONNO: If we're claiming damages based
21 on this contract we'll let you know.

22 BY MR. JOHNSTON:

23 555. Q. So, Mr. Band's representations at the
24 meeting they didn't suggest that you would not be facing
25 a 9.5 percent duty, right going forward?

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1 A. No, going forward my understanding from that
2 meeting was we would be still facing a 9.5 percent duty,
3 but talked with Finance, the idea was there was a
4 mechanism to have that changed. So, you know, my
5 immediate -- we didn't want to lose multiple millions of
6 dollars out of our bank account, but then we were able -
7 - we had a path forward that would help us mitigate, you
8 know, anything that, you know, could be in front of us
9 because we felt not just through our discussions with
10 Doug Band, but that the wording, the idea of a tariff
11 that was there was not applicable to the environment
12 that existed, you know, no matter which way you wanted
13 to interrupt it, you know, tariffs are there to protect
14 Canadian businesses to, you know, have some net benefit
15 to Canada and this tariff was creating a negative; it
16 was no net benefit, you know, to anybody.

17 So, we felt we at least had a path, whether we
18 knew it was certain or not we did not know at that time
19 with Doug Band, but certainly I felt very positive, you
20 know, in my meetings with Scott Winter which were
21 subsequent in 2019 that the Finance Department
22 themselves were aware and they had already created some
23 preliminary work on that tariff code that there was
24 enough in it to move it forward for a study, right?
25 Which Finance has a very procedural way of evaluating

1 it, you know, a fair way and, you know, Scott Winter
2 would able to -- Finance would be able to go down that
3 path once we were able to stop doing all the things we
4 were doing and then subsequently when we started dealing
5 with Yannick Mondy that ground work had already been
6 there and then they quickly executed the review that
7 they have to go through the procedure which ultimately
8 led to the work that got changed and which I think
9 fairly represents probably what is a good net benefit
10 for Canada.

11 556. Q. So, at the time you reached this agreement
12 with CN you knew that you would be facing a 9.5 percent
13 tariff unless Finance amended the tariff item?

14 A. At this moment in time with the Doug Band
15 meeting after we knew that -- once we knew that the 9.5
16 was going to be retroactive we still knew going forward
17 we still had a way of managing it with Finance, yes, but
18 the impact was it torpedoed, you know, a lot of the
19 money we had to go forward and also it was certainly not
20 a path that we were able to guarantee on what was going
21 to happen.

22 557. Q. Right, but this contract was priced to be
23 profitable for Ronsco based on a 9.5 percent tariff,
24 that's what you were facing when you agreed ---

25 A. Well, no this contract was bid before this

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1 August 2018, this thing -- this would have been bid
2 again most of the cycles happen -- the busiest time of
3 railways is in the winter. So, most of these contracts
4 get done by October or November and they start to get
5 bid well before that, you know, in the spring coming out
6 of a winter cycle. So, this happened -- we would have
7 bid this job already by the time we were alerted to this
8 situation.

9 558. Q. I guess I'm confused because in Mr.
10 Mahoney's email to Doug Band on Page 559 he says,
11 "Ronsco relied on the results of that meeting and
12 subsequently signed a \$75 million deal with CN." So, to
13 me the timeline that Mr. Mahoney is describing is you
14 meet with Doug Band and the date of that meeting was in
15 July of 2018, right?

16 MR. TRIVISONNO: No, it was in June.

17 BY MR. JOHNSTON:

18 559. Q. I'm sorry, in June.

19 A. Yeah.

20 560. Q. Of 2018 and then Ronsco relies, signs a \$75
21 million deal with CN and then learns they are going to
22 have to pay retroactive duties after. So, is it not
23 correct that Ronsco after meeting with Doug Band relied
24 on that meeting to enter into the ---

25 A. No, that's correct ---

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1 561. Q. --- contract with CN?

2 A. --- we were so far down this path with CN by
3 this point, I mean whether we physically signed it or
4 were through that, you know, negotiation stage it was
5 done. I mean to add back a 9.5 percent was an
6 impossible task at that stage.

7 MR. TRIVISONNO: I appreciate that we're very
8 near the end of the day, but I think we should take a
9 five minute break ---

10 MR. JOHNSTON: Sure.

11 MR. TRIVISONNO: --- and then let you go till
12 the end of the day.

13 MR. JOHNSTON: Yeah, thank you and I will say I
14 -- as much as I would like to end today, I don't think
15 it's going to happen ---

16 MR. TRIVISONNO: Okay.

17 MR. JOHNSTON: --- so -- and I apologize for
18 that, ---

19 MR. TRIVISONNO: Let's go off Record.

20 MR. JOHNSTON: --- but I'm happy to take a break
21 for whatever you need.

22 MR. TRIVISONNO: So, let's take five minutes
23 then you'll take your half hour or a little bit more
24 time ---

25 MR. JOHNSTON: Sure.

1 MR. TRIVISONNO: --- but if you need time
2 tomorrow then we'll finish tomorrow, ---

3 MR. JOHNSTON: Okay.

4 MR. TRIVISONNO: --- understood.

5 MR. JOHNSTON: Thank you.

6 (SHORT RECESS)

7 BY MR. JOHNSTON:

8 562. Q. So the deal with CN that we were just
9 speaking about, what was the duration of that -- what is
0 the duration of that contract with CN?

A. Our current contract?

Q. The contract that's referenced in Mr.

3 Mahoney's email that we were just looking at.

A. I believe that was from 2018 through 2021.

564. Q. Okay. Did Ronsco rely on representations by
Mr. Band for any other reason following that meeting?

A. Explain?

8 565. Q. So, Mr. Mahoney's email said that Ronsco
9 relied on Mr. Band's representations for the purpose of
10 a \$75 million contract with CN. Were there any other
11 contracts or any other business decisions immediately
12 following the meeting with Mr. Band that relied on his
13 representations?

24 MR. TRIVISONNO: I think your question is a
25 little too limited in scope because you're just talking

1 about business decisions. Why don't we go to the other
2 sets of damages and you can ask how those arise out of
3 Mr. Band's representations or whether they do?

4 MR. JOHNSTON: No, I'd like the Witness to
5 answer if there were any business decisions made in
6 reliance on Mr. Band's representations at that meeting.

7 MR. TRIVISONNO: Other than those we've already
8 discussed?

9 MR. JOHNSTON: Other than the CN contract that
10 we've already discussed. I don't ---

11 THE WITNESS: From a contractual an investment
12 piece that was the big, you know, piece that I would say
13 from where I would sit, you know, for sure. I mean in
14 terms of the case is another thing.

15 BY MR. JOHNSTON:

16 566. Q. Okay. So, I'd like to ask you about new
17 contracts that you entered into after getting the CBSA's
18 final report in July 2018. Do any of those new
19 contracts -- so contracts you've signed after receiving
20 the final report in July 2018, do any of those contracts
21 form part of your damages claim?

22 MR. TRIVISONNO: We can get back to you on that. *U*

23 MR. JOHNSTON: Okay.

24 567. Q. How would the events that your complaint is
25 about in the Statement of Claim, how would they impact

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1 the profitability of new contracts you entered into
2 after July 2018?

3 MR. TRIVISONNO: Just a second, I mean if we're
4 claiming on the basis of any new contracts afterwards
5 then we can undertake to provide you with the
6 particulars of that.

U

7 MR. JOHNSTON: Okay and then we'll have further
8 questions arising if there are such contracts.

9 MR. TRIVISONNO: I understand that that's your
10 position.

11 MR. JOHNSTON: I'm sorry are you asking me to
12 not ask the questions now so that we can wait to see if
13 you're relying on that and then I'll ask them later if
14 you are.

15 MR. TRIVISONNO: Well, I understand that that's
16 your position.

17 MR. JOHNSTON: I guess I'm not clear on what
18 your position is.

19 MR. TRIVISONNO: My position is it's going to
20 depend on what we produce to you.

21 MR. JOHNSTON: Okay. So, we'll wait and see
22 what you produce and we'll see if we have further
23 questions arising from those documents.

24 568. Q. A question about the cost of your inputs.
25 Let me just pull up a document reference for you here.

1 So, at Tab 150 -- sorry, the tabs don't go that high.
2 Okay, in the tariff relief questionnaire, so that's at
3 Tab 19 of the Compendium and I'll give you a page
4 reference here. At Page 5 of this questionnaire. So,
5 we're on Page 596 of our Compendium. This is the Tariff
6 Relief Questionnaire submitted by Ronsco to the
7 Department of Finance. It's in the Plaintiff's
8 productions Part 9, Tab 149. It talks about the forged
9 -- this is the second to last paragraph. "The forged
10 wheel bodies imported by Ronsco are produced in Brazil,
11 Spain, Russia, China and the United States." Are you
12 able to give me a breakdown of the proportions of the
13 wheel bodies that are sourced from each of those
14 countries?

15 MR. TRIVISONNO: I don't think that's relevant.

0

16 MR. JOHNSTON: Okay, objection noted.

17 569. Q. Of those countries that you've listed there,
18 from which countries does Ronsco actually -- let me
19 rephrase this question. So, until the tariff item was
20 changed in 2021, from which of these countries would
21 Ronsco have faced a 9.5 percent duty on imported wheel
22 bodies?

23 A. You know I'm uncertain of all these
24 countries, but my feeling would be Russia and China.

25 570. Q. And why -- so why not the other ones?

1 A. Well, the United States I'm going to assume
2 it's a duty free thing. Brazil and Spain it's possible
3 depending on, you know, whether it was applicable under
4 the tariff codes, but we primarily would buy transit,
5 you know, wheels from those countries.

6 571. Q. Meaning not for railway cars?

7 A. They would be for subway cars or, you know,
8 coaches.

9 572. Q. What I'm trying to understand is when the
10 9.5 percent tariff was applicable are there any of these
11 countries where it wouldn't have caught your import?
12 So, you've said the United States it wouldn't have
13 applied there.

14 A. Right. I think from a -- let's look at it
15 from a different way, which countries can produce --
16 which countries have a rail network similar to North
17 America, heavy haul rail network; so they have the
18 infrastructure in place to produce wheels we need.
19 Those two countries would be Russia, China from an
20 international standpoint.

21 573. Q. So, between Russia and China would you --
22 what's the relative amount of wheel bodies you're
23 importing from those two countries?

24 A. When?

25 574. Q. Between 2018 and 2021.

1 A. China would -- if -- I don't know the exact
2 details on how much, but I would think Russia stopped at
3 some point in that timeframe and if there was any it
4 would have still been from China.

5 575. Q. Why did Russia stop?

6 A. I believe there was just competitive issues
7 for them.

8 576. Q. Okay and with respect to Spain, so you're
9 not sourcing freight wheel bodies from Spain?

10 A. We sourced wheel bodies from Spain primarily
11 for transit, but they're small volume, they're not
12 really competitive on a high-volume wheel like a freight
13 wheel.

14 577. Q. And what about Brazil?

15 A. Brazil is in the same category.

16 578. Q. Okay. So, was the 9.5 percent tariff then
17 was it primarily affecting your imports from China?

18 A. It would have affected if we did -- it
19 affected imports from any country that could've produced
20 wheels for us really, I mean for freight. Who we choose
21 to use, again we try to negotiate and have multiple
22 countries to negotiate against. The 9.5 percent would
23 have impacted, you know, how we did that.

24 579. Q. Some of these countries have free trade
25 agreements with Canada, right?

1 A. Possible, I'm not sure which ones.

2 580. Q. So, for example the United States you said
3 your goods come in duty free ---

4 A. Correct.

5 581. Q. --- that's because of our free trade
6 agreement with the United States.

7 A. That's correct, yes.

8 582. Q. And I would suggest that for Spain for
9 example because of the CETA agreement, there's duty free
10 treatment. I don't know if you are aware of that or
11 not.

12 A. I'm not sure. I'm aware of the European
13 free trade agreement, so I'm not sure the timeframe on
14 that would have been applicable.

15 583. Q. So, when Ronsco started -- realized that it
16 faced a 9.5 percent duty did it consider whether it
17 could source wheel bodies from countries where Canada
18 had a free trade agreement instead?

19 A. We are always looking for the best
20 opportunity to give us a lender price in Hamilton,
21 that's what we do and that's what we always have to do
22 and so when the context of a 9.5 percent duty we would
23 have to look at, you know, how that would look,
24 absolutely.

25 584. Q. Do you know, did you look into that after

1 2018?

2 A. I would say 100 percent we did, you know,
3 and it comes down to, you know, if you don't have a 9.5
4 percent duty from Spain and Spain can't produce the
5 wheel, well, it's irrelevant. There's only so many
6 places in the world that can produce wheels at a price
7 advantage that makes sense for us to import them, you
8 know, to support the market. So, you have a very
9 limited, you know, look of what you can do.

10 585. Q. So, within that range of 2018 to 2021 where
11 were those possibilities; which countries?

12 A. Ukraine was another country that would have
13 been on the table and I believe we did go to some
14 Ukraine stuff eventually. You know, again the United
15 States was another one that we had to go into at a
16 severe cost disadvantage for us, but that was something
17 that we ended up doing as well, substantially more.
18 There was a forged wheel body manufacturer in
19 Pennsylvania which would have been, you know, applicable
20 for us.

21 586. Q. And Ukraine for example, did you know there
22 was a free trade agreement between Canada and Ukraine
23 which would have meant that the 9.5 duty wouldn't apply
24 to those imports?

25 A. We learned about that, yes.

1 587. Q. So, were you able to take advantage of that
2 duty free treatment on those imports?

3 A. I'm not sure how many wheels we produced from
4 the Ukraine, but it's certainly, you know, if it was the
5 right mix -- if they were able to produce and they were
6 able to ship it would have been something we looked at
7 for sure.

8 588. Q. So, does it really end up being about China
9 essentially where your wheels were coming from during
10 that period where they would have been catching the 9.5
11 percent duty?

12 A. Rephrase your question, please?

13 589. Q. Sorry, 2018 to 2021 was China the main
14 source of the wheels that you were importing -- wheel
15 bodies you were importing?

16 A. China I believe so. China we have a very
17 long history, very long relationship. We've developed -
18 - it's not -- you just don't turn the switch and it's
19 not like buying bread a little bit, but we have worked
20 in China, developed their quality procedures, we've
21 developed the standards where we feel comfortable.
22 We're liable for the wheelsets that we produce so our
23 inputs that we put on them we have to feel very
24 confident that they're there.

25 So, the ability to transition is just not

1 somebody hangs their shingle out and said I have an H36
2 wheel, you know, let's buy it. There's a lot more
3 technical things that go into it. The quality of the
4 steel, the AR produced, their AR approvals, their AR
5 allotments. The AR only allows certain wheel
6 manufacturers to make so many wheels and it's kind of a
7 procedural thing that happens. So, China certainly has
8 all that groundwork that we had been working with them
9 since 2006 to develop. So, it's a long process; it's
10 year and years and years and to transition to another
11 supplier has a lot of legwork and time to do that.

12 590. Q. And then in terms of suppliers from United
13 States, that would have cost disadvantages switching
14 there?

15 A. Yes, tremendous cost disadvantages, yes,
16 absolutely. So, there's two; Amsted and Standard Steel
17 and geographically not, you know, close to us for all
18 the things that we do.

19 591. Q. Okay. So, any contracts that you entered
20 into between 2018 and 2021 when the tariff was changed,
21 those contracts they would have been premised on the
22 idea of a 9.5 percent tariff, right because that's the
23 world you were in at that time?

24 A. No, the CN contract would not have been. I
25 think the question is more what business we could not

1 get because of the 9.5 percent duty, you know, certainly
2 if we were able to price it in knowing it we would have
3 where we could have, but it was more, you know, the
4 opportunity, the pool of business shrunk dramatically
5 for us because we just knew that we were not, you know,
6 competitive. Number one, could I get wheel blanks?
7 Number two was I competitive to get it and at what
8 profitability could I get it at?

9 592. Q. But for any contracts you did enter into
10 from 2018 to 2021 you're saying you would have priced it
11 into the contract?

12 MR. TRIVISONNO: I think you need to be more
13 specific in your timing from 2018 after the time of the
14 final verification report.

15 MR. JOHNSTON: Yeah.

16 MR. TRIVISONNO: So, ask the question again.

17 MR. JOHNSTON: Sure.

18 593. Q. So, from the time of the final verification
19 report in 2018 until the time of the tariff change in
20 2021, you would have been pricing in 9.5 percent tariff
21 as part of your costing structure for the contracts?

22 A. Correct, we would not have taken additional
23 contracts without acknowledging the additional costs.

24 594. Q. Acknowledging meaning passing them on in
25 terms of the sale price?

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1 A. Well, building them into our price points,
2 right? So, the client has a chance to take them if he
3 likes them and if you're too high you just don't get the
4 business, right? So, I didn't have the ability to pass
5 it through for example in terms of now I can increase it
6 because I have a new input that I didn't realize, it's
7 more I price it with this new cost structure and the
8 client has an ability to say yes or no and that's how it
9 will work.

10 595. Q. And so did Ronsco successfully enter into
11 any new contracts between the time of the final report
12 in 2018 and the time of the tariff change in 2021?

13 A. I don't believe we had any substantial
14 successes at all.

15 596. Q. What about contracts then that you were not
16 able to -- that you did attempt to secure and you
17 couldn't -- and your bid wasn't successful, were there
18 any?

19 A. Oh, there would have been some I'm sure,
20 absolutely and I think again it's our inability to
21 capture the increased business, for example, from a, you
22 know -- or the inability to go after additional business
23 on an existing contract were not priced appropriately,
24 you know, it's -- there's a few pieces to that.

25 597. Q. Okay. So, do any of those contracts between

1 the time of the final report in 2018 and the time of the
2 tariff change in 2021, do any of those contracts where
3 Ronsco bid, but was not successful, form part of your
4 damages claim?

5 MR. TRIVISONNO: We'll undertake to let you know
6 and if they do form part of our damages claim we'll
7 particularize them for you and produce documents
8 relevant to them.

U

9 MR. JOHNSTON: Okay, perfect.

10 598. Q. And similarly for that same time period
11 between the time of the final report in 2018 to the time
12 of the tariff change in 2021, were there any contracts
13 where Ronsco simply didn't bid because of the impact of
14 the 9.5 percent duty?

15 A. We would always bid.

16 599. Q. Okay. I'd like to ask you about -- Ronsco's
17 represented in a number of places that 80 percent of the
18 cost of wheel sets comes from wheel bodies, is that
19 accurate or perhaps ---

20 A. It's a good representation.

21 600. Q. Okay. So, does that just mean it's the
22 thing you're importing from abroad is 80 percent of the
23 value of what you end up selling to a customer in
24 Canada?

25 A. Yes.

1 601. Q. So, the remaining 20 percent covers what?

2 A. The labour and the profit.

3 602. Q. The reworking of the ---

4 A. Yes, the wheelsets.

5 603. Q. Okay. I'd like to ask you about the way
6 that Ronsco has the surety bond that Ronsco has posted
7 in relation to the retroactive duties. So, I can pull
8 that document up. It's Compendium Tab 28 and this comes
9 from the Plaintiff's productions Part 12, Tab 168. So,
10 this is the bond and I'll give you a chance to -- I'm
11 not going to ask you specifics about the language here.
12 I guess what I'd like to know is are you familiar with
13 how this instrument works, you know, why has Ronsco used
14 a surety bond as opposed to simply paying the duties;
15 what's the purpose of the surety bond for Ronsco?

16 A. I wasn't directly involved, you know, with
17 this, but I'm assuming it was a way of managing our cash
18 flow on this one.

19 604. Q. So, does it -- the surety bond means Ronsco
20 doesn't actually have to pay now ---

21 A. Now.

22 605. Q. --- its own cash ---

23 A. Right.

24 606. Q. --- for the outstanding duties?

25 A. That was my understanding on -- to the

1 extent we use this, yes.

2 607. Q. So, does that not mean that your available
3 capital is not currently reduced by that amount?

4 A. I'm not sure how it would, you know, impede
5 in our business to be quite honest with you, so I'm not
6 sure what guarantees went against it.

7 MR. JOHNSTON: Could I get an undertaking to
8 provide information on how this surety bond fits into
9 Ronsco's financial statements essentially, to understand
10 how it affects its capital?

11 MR. TRIVISONNO: Yeah, we can look and let you
12 know.

U

13 MR. JOHNSTON: Okay.

14 MR. BAXTER: So, could you state that request
15 again so that I can note it correctly?

16 MR. JOHNSTON: Yeah, sure.

17 MR. BAXTER: How does this bond fit into what?

18 MR. JOHNSTON: How does this bond fit into
19 Ronsco's financial statements; how does it affect its
20 available capital?

21 MR. BAXTER: Presumably it's a liability, but
22 we'll answer it more particularly.

23 BY MR. JOHNSTON:

24 608. Q. Okay and in the Statement of Claim, so Tab
25 1, Paragraph 67(b) this is -- there's a -- this is a

1 paragraph that describes the special damages Ronsco is
2 claiming, this is part of your damages claim. There's
3 an entry in (3) for surety bond 104,282. I'd like to
4 know what's the nature of that charge?

5 MR. TRIVISONNO: It's the cost of the bond from
6 what we understand.

7 MR. BAXTER: If it's anything different we'll
8 tell you, but that's the cost of the bond.

9 MR. JOHNSTON: Okay. So, it would be like a
10 onetime cost paid at the outset or if you could just
11 undertake to provide details about how that charge
12 works.

13 MR. BAXTER: Sure.

U

14 BY MR. JOHNSTON:

15 609. Q. And when would Ronsco have had to incur that
16 cost? When was that amount paid?

17 A. I don't know myself.

18 MR. JOHNSTON: Okay, if that could be part of
19 your answer ---

20 MR. TRIVISONNO: We can undertake to provide ---

21 MR. BAXTER: Do you mean when was the bond
22 eventually called -- when was the ---

23 MR. TRIVISONNO: No, when were the costs on the
24 bond ---

25 THE WITNESS: Yeah when are we ---

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1 MR. BAXTER: Okay.

2 MR. JOHNSTON: When did you have to actually pay
3 out of pocket that amount ---

4 MR. BAXTER: All right.

5 MR. JOHNSTON: --- or any part of that amount.

6 MR. TRIVISONNO: We can let you know.

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7 MR. JOHNSTON: Okay. Okay, so I see we're 4:28,
8 I think anything going further would be -- take more
9 than two minutes so I'd suggest that we wrap up for
10 today and continue tomorrow morning starting at 9:30 if
11 that's agreeable.

12 MR. TRIVISONNO: Yeah, fair enough. Let's go
13 off Record.

14

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18

19 --- WHEREUPON THE EXAMINATION ADJOURNED AT THE HOUR OF
20 4:29 IN THE AFTERNOON.

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Examination No. 23-0515.1B

Court File No. T-1295-20

FEDERAL COURT

B E T W E E N:

RONSCO INC.

PLAINTIFF

- and -

HIS MAJESTY THE KING, THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS, CANADA BORDER SERVICES AGENCY

DEFENDANTS

CONTINUED EXAMINATION FOR DISCOVERY OF KENT
MONTGOMERY, pursuant to an appointment made
on consent of the parties to be reported by
Catana Reporting Services, on May 3, 2023,
commencing at the hour of 9:33 in the forenoon.

APPEARANCES:

Colin Baxter
Chris Trivisonno
Sean Grassie for the Plaintiff
Charles Maher
Adrian Johnston for the Defendant

ALSO PRESENT:
Karen Alford
Kelly Bartlett
Don Regan

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NUMBER OF PAGES: 35

ADVISEMENTS, OBJECTIONS & UNDERTAKINGS

EXHIBITS

(None entered)

DATE TRANSCRIPT ORDERED: May 3, 2023

DATE TRANSCRIPT COMPLETED: May 24, 2023

KENT MONTGOMERY, RECALLED:CONTINUED EXAMINATION BY MR. JOHNSTON:

610. Q. Good morning, Mr. Montgomery. By way of reintroduction, I am Adrian Johnston. We are going to continue from yesterday. I am one of the lawyers for the Attorney General of Canada, and I still have some questions. Yesterday we began examining the damages claim that your company makes in this matter, so I have more questions to finish off today.

I wanted to loop back to a topic we covered a bit yesterday, the Hamilton expansion, and just get a few more details that I don't think I got yesterday.

When the Hamilton expansion plan went on hold in 2018, who made that decision within your organization? Who makes that kind of decision to say "We are going to put the Hamilton expansion plan on hold"?

MR. TRIVISONNO: How is that relevant?

MR. JOHNSTON: The Hamilton expansion plan going on hold has been identified as a possible -- or, as a certain basis of the damages claim, so we are trying to identify who took that decision, and I have some follow-up questions further to that, once we know that answer.

MR. TRIVISONNO: Okay. I don't see the relevance. I will let you take them one by one. I will let him answer who was responsible.

1 THE WITNESS: As a shareholder of the business, I
2 have some responsibility in that. As well, I have two
3 other shareholders in our business, who would primarily
4 look at investments within our business.

5 BY MR. JOHNSTON:

611. Q. Would there be a particular meeting where a
7 group would meet and take a formal decision on that type
8 of thing?

9 A. Within our business, being an
10 entrepreneurial firm, I mean, you know, it's rather a
11 small group of people that would be involved in those
12 decisions. So, they would be more verbal type of
13 decisions.

612. Q. Would there be any written record of the
decision?

A. I am uncertain of that.

MR. JOHNSTON: Could we have an undertaking to
look for a record of decision to pause the Hamilton
expansion plan in 2018?

MR. TRIVISONNO: Yes, we can take a look and
produce anything that we find that is relevant.

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MR. JOHNSTON: Similarly, could that undertaking
encompass any kind of analysis or internal exchanges
about why the plan was going on hold at that time?

MR. TRIVISONNO: Yes, we can include that in the

1 undertaking also.

2 MR. JOHNSTON: Perfect.

3 613. Q. Do you remember exactly when that decision
4 happened?

5 A. It was all within the timeframe of this
6 process being -- unfolding I guess you would call it.
7 The timing of the reversal from Doug Band was very much
8 in line with the cycle of what was happening within CN
9 and our advancement of, you know, increasing our
10 capacity. So, it was within that timeframe.

11 614. Q. So, are you talking ---

12 A. 2018.

13 615. Q. July, August 2018?

14 A. It was within 2018, absolutely.

15 616. Q. Once you put those plans on hold, was the
16 implication of that for your business really
17 significant?

18 A. Well, absolutely. There were two parts to
19 that; you know, two parts of the implication. One was
20 not being able to invest to go after future business,
21 which was what our expectation was, and then the other
22 impact was the financial impact on the reversal. So,
23 there was a compounding effect for us, as we were
24 running our business.

25 617. Q. And by the financial impact on the reversal,

1 what do you mean?

2 A. The money that, you know, ultimately is due
3 back for the four years, which we felt was -- you know,
4 we felt that Doug Band's decision was very good at the
5 time, the right decision, and the implication was,
6 number one, now we had money being stripped out of our
7 company and that changes how we can look at our
8 investments. And, number two, the business economics to
9 increase capacity just weren't there, until we
10 understood, you know, how this whole process was going
11 to unfold related to duties and our ability to manage
12 around those.

13 618. Q. So, that financial impact was immediately
14 apparent to you, at that point?

15 A. Immediate, absolutely. Absolutely, yes.

16 619. Q. We also talked yesterday about new contracts
17 that your company pursued, but did not get after
18 receiving the final report in 2018. We had a discussion
19 about this yesterday and, as I recall, you said there
20 had been instances where you bid, but didn't get the
21 contract after receiving the final report in 2018.

22 So, I just wanted to clarify; are you saying
23 that you didn't get those contracts because of the
24 impact of the implications of the final report?

25 A. There were businesses that we bid where our

1 prices would have been too high; that, you know, we
2 would not have got the business.

3 620. Q. And they were too high because of the 9.5
4 percent tariff?

5 A. Correct.

6 621. Q. Do you know who was awarded those contracts?

7 A. I would not know who sitting here, no.

8 MR. JOHNSTON: I am just not sure if we got this
9 undertaking yesterday I'm afraid. Could we have an
10 undertaking to identify those contracts which Ronsco is
11 claiming it did not obtain because of the impact of the
12 9.5 percent tariff?

13 MR. BAXTER: I am just checking the undertakings
14 from yesterday.

15 MR. TRIVISONNO: Yes, we gave you an undertaking
16 for the period July 2018 to April 2021.

17 MR. JOHNSTON: Perfect, thank you.

18 622. Q. There are a lot of reasons why you might not
19 get a contract, right?

20 A. Correct.

21 623. Q. Are they always awarded to the lowest
22 bidder, or can there be other considerations for a
23 customer?

24 A. Our experience has been that the lowest
25 bidder always wins, despite, you know, maybe talk to the

1 contrary. But our experience has always been, with our
2 customers, lowest bid wins.

3 624. Q. Does the quality of the product have any
4 bearing?

5 A. We certainly promote that, but our
6 experience has been that the price ultimately will win.

7 625. Q. And, similarly, a company's reputation, that
8 doesn't hold any weight in the decision? If you are
9 undercut, you won't get the contract?

10 A. Again, price, in our experience, is the
11 driving factor in our business.

12 626. Q. Do you know that you were not the lowest
13 bidder for those contracts?

14 A. I will assume, if we didn't get them, that
15 we were not the lowest bidder.

16 627. Q. But you don't actually know.

17 A. I do not know, exactly.

18 628. Q. Okay. I think that covers off the points
19 that I thought were outstanding from yesterday. I want
20 to pull up a document and ask you a few questions about
21 it. It's in the compendium, Tab 17, at page 558.

22 Oh, I'm sorry, it must be in Tab 11.

23 MR. TRIVISONNO: It looks like Tab 12.

24 MR. JOHNSTON: I have an incorrect reference
25 here, so I am going to find it the old-fashioned way.

1 It's Tab 17 of the compendium. It's a letter to
2 Minister Freeland, and I am on page 558.

3 629. Q. It is the paragraph in the middle of the
4 page, starting "This past summer". I would ask you to
5 read that paragraph and the following paragraph.

6 A. I have read those two paragraphs.

7 630. Q. Perfect. The second paragraph is what I
8 want to focus on. It says, "The same ruling," and there
9 it is referring to the previous paragraph you just read,
10 which talks about the CBSA's -- essentially, the final
11 report and the reversal -- what you described as the
12 reversal of the position.

13 "The same ruling has the perverse effect of
14 forcing a 9.5 percent handicap on Ronsco and competing
15 against U.S. entities in our own backyard. Ronsco's
16 U.S. competitors can import the same parts, from the
17 same source, into the U.S., duty free, under U.S. Tariff
18 8607.19.12. Our U.S. competitors then process the same
19 parts, in the same fashion as Ronsco, and ship the
20 finished wheelset to Canada, duty free, via NAFTA."

21 So, in that paragraph you are comparing Ronsco
22 and its U.S. competitors, right?

23 A. That is correct.

24 631. Q. And you are saying that Ronsco now has a 9.5
25 percent handicap, whereas the U.S. competitors can

1 import duty free.

2 A. Correct.

3 632. Q. So, you are at a competitive disadvantage.

4 A. Correct.

5 633. Q. So, between the time of the final report in
6 2018 and the tariff item change in 2021, what were the
7 main countries that Ronsco sourced its wheel bodies
8 from?

9 MR. TRIVISONNO: We have already been through
10 this. You asked these questions yesterday. You brought
11 up a document that listed four countries and you asked
12 Mr. Montgomery a number of questions about those four
13 countries.

14 MR. JOHNSTON: Can I again clarify whether we
15 got an undertaking to provide the value of Ronsco wheel
16 body imports by country for that period?

17 MR. TRIVISONNO: No.

18 MR. BAXTER: I don't think so.

19 MR. JOHNSTON: Okay. I would like to ask for
20 that undertaking.

21 MR. TRIVISONNO: I don't think that's relevant.

22 MR. JOHNSTON: Okay. So, it's a refusal or an
23 under advisement?

24 MR. TRIVISONNO: Well, it's a refusal, but if
25 you can explain to me why you think it's relevant...

1 MR. JOHNSTON: Yes, I think the subsequent
2 questions will make that clear. So, will you take it
3 under advisement for now?

4 MR. TRIVISONNO: No, I am going to give you a
5 refusal.

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6 BY MR. JOHNSTON:

7 634. Q. Was China a major source of wheel bodies for
8 Ronsco during that period?

9 A. Sitting here today, I don't know who we
10 bought during that period of time, but I believe we
11 continued to pay duties, so I would believe that China
12 could have been a source of wheels.

13 MR. TRIVISONNO: We went over this yesterday.
14 You asked these very same questions.

15 MR. BAXTER: You asked the very same question,
16 I've got it all in my notes.

17 MR. JOHNSTON: I apologize for that, if I have
18 repeated a question. I am going to come to questions
19 which were not asked yesterday right now. So, I am
20 going to continue with the questions.

21 MR. BAXTER: Well, just so you do, you asked
22 about China, you asked about Russia, you asked about
23 Ukraine, you asked about the U.S.A. You also, I
24 believe, asked about Brazil and Spain.

25 MR. JOHNSTON: Okay, thank you.

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1 MR. BAXTER: So, those questions have been asked
2 and answered.

3 MR. TRIVISONNO: And you asked about the
4 applicable treaties on those countries.

5 BY MR. JOHNSTON:

6 635. Q. Do some of your U.S. competitors source
7 wheel bodies in China?

8 A. Yes, they do.

9 636. Q. Is that an important source for them in
10 making their wheel sets?

11 A. It is a source; I can't speak to the
12 importance.

13 637. Q. Do you know if you were ever in a situation
14 where you were competing against a U.S. company who was
15 using Chinese wheel bodies in its wheelsets?

16 MR. TRIVISONNO: I'm sorry, this is getting
17 really far afield. I don't see the relevance of where
18 the U.S. competitors are getting their wheels from.

19 MR. JOHNSTON: Again, I am asking a series of
20 questions to lay the foundation for a document that I am
21 going to put to the witness. So, are you refusing to
22 answer that question?

23 MR. TRIVISONNO: Yes.

24 BY MR. JOHNSTON:

25 638. Q. Okay. If we could turn up, please, Tab 19

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1 of the compendium, at page 596.

2 This is Ronsco's submission to the Department of
3 Finance.

4 MR. TRIVISONNO: This is a document we looked at
5 yesterday. We looked at this very same document, with
6 this very same list of countries.

7 MR. JOHNSTON: I am showing you a document. We
8 looked at this document at some point yesterday, that's
9 true. I'm just not sure what point you are making.

10 MR. TRIVISONNO: You seem to be mistaken about
11 what ground you covered yesterday, and I am trying to
12 assist you by telling you that you have already covered
13 this ground.

14 MR. JOHNSTON: I am going to a portion of this
15 document which was not covered yesterday. And if I
16 could please proceed with my questions without
17 interruption, that would be greatly appreciated.

18 MR. TRIVISONNO: I am not interrupting you,
19 please continue.

20 BY MR. JOHNSTON:

21 639. Q. At page 596 of this document there is a list
22 -- (a), (b), (c) -- in the middle of the page. As I was
23 saying, just for the purpose of the record, to be clear
24 on what we are looking at, this is Ronsco's submission
25 to the Department of Finance requesting tariff relief.

1 In other words, a change to the Tariff Code. This is in
2 our compendium at Tab 19, and the source is Ronsco's
3 productions, Part 9, Tab 149.

4 There is a portion in the middle of the page
5 which reads:

6 "The 9.5 percent duty, which CBSA believes
7 Ronsco should pay, makes Ronsco uncompetitive with its
8 foreign competitors, listed above, who:

9 (a) pay no duty on importing the same goods,
10 i.e., wheel bodies for use in the manufacturing of
11 finished forged wheels into the U.S.;

12 (b) pay no duty on finished NAFTA-qualifying
13 wheelsets exported from the U.S. to Canada;

14 (c) unlike Ronsco's exports to the U.S., which
15 are limited by Buy American rules for transit contracts,
16 do not need to comply with similar rules in Canada,
17 i.e., Canada does not have Buy American rules."

18 MR. TRIVISONNO: I'm sorry, you misread the
19 document. It says, "Canada does not have Buy Canadian
20 rules."

21 MR. JOHNSTON: I'm sorry, "does not have Buy
22 Canadian rules," that's correct.

23 640. Q. There is a footnote to sub (a), which is No.
24 6. I will read that footnote out now.

25 "Note that the United States has recently

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1 imposed tariffs on goods imported from China, pursuant
2 to section 301 of the *Trade Act* of 1974 [19 U.S.C., s.
3 2411]. Ronsco understands that these newly imposed
4 tariffs apply to goods imported under U.S. Tariff Items
5 8607.19.12: parts of railway/tramway,
6 locomotives/rolling stock wheels, whether or not fitted
7 with axels."

8 The footnote continues with further references
9 to the U.S. *Trade Act*, and provides a link to a USTR
10 press release, and the final sentence of the footnote
11 says:

12 "Going forward, Ronsco understands that wheel
13 bodies imported from China to the U.S. will, therefore,
14 be subject to an additional duty of 25 percent."

15 Have you had a chance to read that footnote in
16 full?

17 A. I have read it, yes.

18 641. Q. Am I right that it is saying that in 2018,
19 the U.S. imposed additional duties of 25 percent on
20 certain goods imported from China?

21 A. There seems to be a reference to that, yes;
22 a link.

23 MR. BAXTER: What is the date of this document,
24 counsel, at Tab 19?

25 MR. JOHNSTON: It is from Ronsco's production.

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1 I don't think it was dated, actually, in the production,
2 so we were curious about that, as well.

3 MR. BAXTER: You just put to the witness that it
4 occurred in 2019; that this tariff hike ---

5 MR. JOHNSTON: Sorry; in the footnote there is
6 reference to a June 2018 press release from USTR, "USTR
7 Issues Tariffs on Chinese Products in Response to Unfair
8 Trade Practices," June 2018.

9 MR. TRIVISONNO: This is the tariff
10 questionnaire that we are looking at that was submitted
11 to the Department of Finance. Correct?

12 MR. JOHNSTON: You have labelled it as "Tariff
13 Relief Questionnaire", yes.

14 MR. TRIVISONNO: So, I believe it was May of
15 2019 that the document was created.

16 BY MR. JOHNSTON:

17 642. Q. Okay. So, Ronsco is indicating in this
18 document: "Going forward, Ronsco understands that wheel
19 bodies imported from China to the U.S. will, therefore,
20 be subject to an additional duty of 25 percent."

21 So, was that your understanding?

22 A. That's what this document says, yes.

23 643. Q. Is that tariff still in effect?

24 A. I am uncertain about that.

25 644. Q. A 25 percent markup on those inputs would be

1 a significant consideration for your competitors in the
2 U.S., wouldn't it?

3 A. Absolutely, 25 percent. But I think the
4 part that is trying to be represented here is that this
5 is not a China question. This is a policy question, and
6 whether Canada and the United States had different
7 policies on treating these wheel imports, whether it was
8 from China or whether it was from Russia, we were
9 penalized wherever it came from.

10 The United States had no tariff -- general
11 tariff. This tariff was a particular political tariff
12 that was used for political reasons. But the overall
13 tariff in the United States didn't penalize wheel bodies
14 from whatever country it came from.

15 And the reality is, the majority -- 80-plus
16 percent of production of all wheels happens in the
17 United States, yet they didn't even have a tariff that
18 penalized any foreign wheel manufacturers coming in.
19 Yet, all the business happened in the United States.

20 Canada has a duty -- a standard duty, no
21 political reasons -- apparently to protect companies
22 within Canada, yet we had one wheel manufacturing plant.

23 So, that policy is dramatically different
24 between the two countries. So, what we were trying to
25 point out here is, again, another reason why Tariff Code

1 21 is not applicable -- or, is not representative of
2 really what is happening in the market.

3 If I'm in the United States and I'm a wheel
4 producer, and I'm Amsted and I have four manufacturing
5 plants, and I have not asked for a duty to be put on my
6 competitors in Canada, why? Yet in Canada we have one,
7 for no reason that we can apparently see.

8 So, this document is more to describe the
9 general idea behind tariffs and why they were posed
10 differently between two countries that actually, you
11 know, work together. The Chinese tariff coming in was
12 political in nature, but the United States could still
13 go to Russia and get their wheels, if they wanted to.
14 They could go anywhere in the world and bring them in,
15 and there is no duty applicable as a standard duty.

16 And the U.S. tariff -- you know, maybe it comes
17 off on the Chinese product, maybe it doesn't.

18 It's also possible that people get special
19 exemptions with these tariffs that got put on for
20 political reasons, as well.

21 So, there is a whole series of things behind it
22 that, you know -- the relevance for us is that the
23 countries' policies are completely different and our 9.5
24 percent was protecting nobody, compared to the United
25 States, which should have had the protectionist

1 practices.

2 645. Q. Do you know if any companies -- your
3 competitors -- have obtained exemptions?

4 A. I do not know personally, no.

5 646. Q. In your letter that we just looked at to
6 Minister Freeland -- and it's not your letter, sorry,
7 it's Mr. Regan's letter -- it says at page 588,
8 straightforward: "Ronsco's U.S. competitors..."

9 A. Just a second, I haven't got 588.

10 MR. TRIVISONNO: Page 588 is in another
11 document. Let's orient ourselves, because we are going
12 back and forth between documents. This is the January
13 11, 2019 ---

14 THE WITNESS: Okay, perfect.

15 MR. JOHNSTON: Yes, Tab 17, page 588, the letter
16 from Don Regan to Minister Freeland.

17 647. Q. "Ronsco's U.S. competitors can import the
18 same parts, from the same source, into the U.S., duty
19 free, under U.S. Tariff 8607.19.12."

20 But you would agree that is not true, if they
21 are importing that part from China, at the time that
22 letter was written?

23 A. It's possible, depending on that tariff,
24 yeah. If you are talking strictly a Chinese question --

25 648. Q. Yes.

1 A. -- which this is not a Chinese question, but
2 applicable to China, it would be.

3 Q. So, to the extent that one of your U.S.
4 competitors -- similarly situated -- they want to source
5 the same wheel body as you from China to make the
6 wheelset that will compete with you, in 2019 they have a
7 25 percent tariff on that input, and you have a 9.5
8 percent tariff.

9 A. If they were applicable for that tariff,
10 that would be the case, is my understanding.

11 650. Q. So, in that scenario you have the
12 competitive edge.

13 A. If the tenders ask specifically for Chinese
14 product, and that is how it would work, and they didn't
15 have tariff relief, that would be the scenario.

16 651. Q. The next set of questions -- to understand
17 the damages claim, I am looking to understand how the
18 duties applied to wheel bodies impacted Ronsco's
19 business over time.

20 So, here I would like to see an undertaking for
21 Ronsco's financial statements, showing revenues,
22 expenditures, profits, from 2015 to the present, so that
23 we can see the picture of financial impact on the
24 business.

25 MR. TRIVISONNO: We will take that under

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1 advisement.

2 BY MR. JOHNSTON:

3 652. Q. How would you say that the implications of
4 the final report impacted Ronsco's profits, following
5 from the issuance of the final report?

6 MR. TRIVISONNO: Counsel, isn't that what we
7 have been exploring for the last half-hour and the last
8 hour of yesterday?

9 MR. JOHNSTON: Let me make my question more
10 specific.

11 653. Q. At what point did it start to impact your
12 profits, at what time?

13 A. As soon as we have to pay duties, it impacts
14 our profits.

15 654. Q. Perfect, thank you.

16 Okay. I am ready to move on to the procedural
17 costs issue. If we could turn up Tab 1 of Ronsco's
18 compendium, the Statement of Claim, paragraph 67(b),
19 which is at page 17 of Tab 1 of the compendium.

20 Just to orient our discussion here, so far we
21 have been talking about financial impacts on Ronsco's
22 business, and this discussion is going to focus on the
23 specific categories of what are called special damages,
24 which are enumerated here in the claim.

25 I will read this paragraph for some context:

1 "Special damages in the amount of
2 \$1,000,006,641.91 in professional fees incurred by
3 Ronsco as a result of CBSA's breaches. Ronsco expressly
4 asserts and does not waive privilege over any of the
5 relevant privileged documents or information in this
6 regard. Ronsco claims the following amounts: legal,
7 \$347,378.15; trade consultants, \$550,065.76; surety
8 bond, \$104,282; and experts, \$4,916."

9 We talked about the surety bond yesterday, so I
10 won't cover that, but we haven't talked about the other
11 three categories.

12 Counsel, with respect to each of these
13 categories, the Defendant needs to understand what
14 specific proceedings those charges relate to.

15 For example, in the legal category, if we pull
16 up Tab 27 of the compendium, there is an invoice from
17 Conway -- professional fees paid to Conway Baxter. This
18 is from the Plaintiff's productions, Part 11, Tab 163.

19 We see a list of all statements billed to and
20 paid by Ronsco for legal services rendered, up to and
21 including September 2020, and the invoice dates start
22 from May 31st, 2018 and go until October 22nd, 2020.

23 In that timespan, there have been a great many
24 different proceedings here, and it is entirely possible
25 that a court, if it finds liability, will find that

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1 there are breaches with respect to certain proceedings
2 and not others. So, we need to be able to connect
3 invoices to proceedings.

4 So, with respect to this invoice, and the
5 others, as well, we are going to seek as an undertaking
6 to identify which amounts in each invoice connect with
7 which proceedings, and I have a list of 14 different
8 proceedings, by our count. So, I can give you that list
9 before you make the undertaking, so you understand what
10 we are hoping to get.

11 MR. TRIVISONNO: Okay. Read the list out.

12 MR. TRIVISONNO: One would be Ronsco's
13 participation in the trade compliance verification.

14 Two would be Ronsco's request for further
15 redetermination for the sample goods covered by the
16 verification.

17 Three would be Ronsco's CITT appeal for the
18 sample goods covered by the verification.

19 Four would be the decision of whether or not to
20 appeal that CITT decision to the Federal Court of
21 Appeal.

22 Five would be Ronsco's self-corrections for the
23 blanket DASs filed for 2015, 2016, 2017 and 2018. Those
24 were the goods that were not sample goods in the
25 verification.

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1 MR. TRIVISONNO: Those were the self-corrections
2 that were filed in December of 2018 or January of 2019?

3 MR. JOHNSTON: I don't have the specific date at
4 hand, but that's what I am talking about, yes.

5 Six would be Ronsco's request for further
6 redetermination for those blanket DASS for 2015, 2016,
7 2017 and 2018.

8 Seven would be Ronsco's CITT appeal for the
9 blanket DASS filed for 2015, 2016, 2017 and 2018.

10 Eight would be Ronsco's application for judicial
11 review.

12 Nine would be Ronsco's appeal to the minister of
13 the Notice of Penalty Assessment.

14 Ten would be the present action under section
15 135 of the *Customs Act*.

16 Eleven would be Ronsco's request for tariff
17 relief to the Department of Finance.

18 Twelve would be Ronsco's request for tariff
19 remissions to the Department of Finance.

20 Actually, I only have 13.

21 Thirteen would be any other matter or
22 proceeding, if I have missed anything.

23 MR. TRIVISONNO: Can you just repeat the
24 undertaking you are looking for, now that we have this
25 helpful list?

1 MR. JOHNSTON: Yes, it's to identify the amounts
2 which are in connection with each of those proceedings.

3 MR. TRIVISONNO: I am going to take that under
4 advisement, just because I am conscious of the privilege
5 issues. I understand what you are asking for. I
6 understand the need to particularize. Let us get back
7 to you on what we can give you in pursuit of that.

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8 MR. JOHNSTON: Sure.

9 MR. TRIVISONNO: And I thank you for making this
10 list. It's very helpful in considering the undertaking.

11 MR. JOHNSTON: The request is with respect to
12 the Conway invoice that I showed you at Tab 27 of the
13 compendium; it also applies, though, to the other
14 invoices, which are in the ---

15 I will give the references to ---

16 MR. TRIVISONNO: Counsel, why don't I assist
17 you, because I think it's better if we give the
18 Affidavit of Document references at the beginning of ---

19 MR. JOHNSTON: Yes, sure.

20 MR. TRIVISONNO: I think you are talking about
21 the professional fees paid to McMillan Vantage at Tab
22 160, fees paid to Grey, Clark, Shih and Associates at
23 Tab 161, fees paid to PWC at Tab 162, as well as the
24 Conway Baxter fees at Tab 163. And the under advisement
25 will include all of those.

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1 MR. JOHNSTON: So, you have four tabs there.

2 MR. TRIVISONNO: Yes, that's correct.

3 MR. JOHNSTON: That's correct, perfect.

4 With respect to each of those invoices, we would
5 also have these two questions. Once they are
6 particularized by proceeding, what is the amount of them
7 that you are seeking to recover as special damages.

8 Right now I just see a list of invoices, I don't
9 know if it's the full amount or a portion of it. So,
10 what is the amount that Ronsco is seeking to recover for
11 each.

12 And do those invoices reflect all of the special
13 damages for professional fees that you are seeking to
14 recover. So, we want to confirm that there are not
15 further invoices to those organizations or to other
16 organizations that are not currently in the production.

17 MR. TRIVISONNO: Okay. We will encompass this
18 all in the same under advisement.

19 MR. JOHNSTON: Sure. And then I just have a few
20 questions, and I appreciate that those under advisements
21 will help to get clarity on those issues. I think I
22 have some questions that I could still ask now that
23 would also assist us in understanding the special
24 damages claim, so I will proceed with those.

25 655. Q. Is the reason that Ronsco is seeking to

A

1 recover professional fees as special damages because the
2 CBSA took inconsistent procedural positions?

3 MR. TRIVISONNO: That is one reason.

4 BY MR. JOHNSTON:

5 656. Q. What are the other reasons?

6 MR. TRIVISONNO: Also because of the
7 representations made by Mr. Band, and the choice to
8 impose a verification, and then retroactive duties on
9 Ronsco and not its competitors.

10 And we can provide you any other reasons on
11 which that is based. *U*

12 MR. JOHNSTON: In terms of the allegation that
13 the CBSA provided inconsistent advice, was the first
14 instance of that the email from Sue Ogilvie in November
15 2018?

16 MR. TRIVISONNO: In terms of procedural advice?

17 MR. JOHNSTON: It's at paragraph 55 of the
18 Statement of Claim, Tab 1 of the compendium.

19 MR. BAXTER: I was just going to say, counsel,
20 that the Statement of Claim deals with some of this. I
21 will let Mr. Trivisonno expand on that.

22 MR. TRIVISONNO: In terms of the procedural
23 advice, I believe that Ms. Ogilvie's advice is the first
24 advice, and if there is something prior to that, then we
25 will let you know. *U*

1 MR. JOHNSTON: So, that's another undertaking?

2 MR. TRIVISONNO: Yes, it is.

3 MR. JOHNSTON: Do Ronsco's claims for special
4 damages include its work in deciding to pursue Tariff
5 Item 30, rather than Tariff Item 21, during the
6 verification process and following?

7 MR. TRIVISONNO: We can tie that back to the
8 original under advisement, because I think that would be
9 answered in there, depending on our answer.

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10 MR. JOHNSTON: Has the CBSA initiated any of the
11 legal proceedings that I listed in 1 to 13, with the
12 exception of the trade compliance verification?

13 MR. TRIVISONNO: We will review and let you
14 know, but certainly the verification process, which is,
15 of course, the catalyst to everything else.

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16 MR. JOHNSTON: So, that's another undertaking?

17 MR. BAXTER: Well, we just answered ---

18 MR. TRIVISONNO: No, let's undertake to provide
19 it.

20 MR. BAXTER: Can you repeat the question,
21 please, Mr. Johnston?

22 MR. JOHNSTON: Sure. Has the CBSA initiated any
23 of the legal proceedings that I listed, except the trade
24 verification.

25 MR. BAXTER: You want to know the catalysts,

1 essentially, when we are formulating our answer?

2 MR. JOHNSTON: Just who initiated the
3 proceeding, yes, is what the question was. Who brought
4 an appeal, who filed a Notice of Application.

5 MR. BAXTER: I understand the distinction you
6 are trying to make, and I think you are going to get the
7 answer we give you.

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8 MR. JOHNSTON: Prior to initiating legal
9 proceedings which it initiated, did Ronsco obtain advice
10 on whether it was an appropriate avenue to pursue a
11 remedy?

12 And I am not asking for the content of the
13 advice, just the fact of whether it was obtained.

14 MR. TRIVISONNO: I will give you an under
15 advisement.

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16 MR. JOHNSTON: As part of its damages claim, is
17 it seeking to recover the cost of that very advice?

18 MR. TRIVISONNO: Yes, we will take that under
19 advisement.

A

20 MR. JOHNSTON: Are any of the legal costs that
21 Ronsco is claiming as special damages amounts that
22 overlap with legal costs which it has or could recover
23 in those legal proceedings?

24 I am trying to understand if there is overlap
25 between the amount you are claiming as special damages

1 and the amount that can be the subject of a court's cost
2 award.

3 MR. TRIVISONNO: The only court proceeding we
4 have is the section 135 action, so I don't believe there
5 is any overlap, but we will ---

6 MR. JOHNSTON: And the judicial review, as well.

7 MR. TRIVISONNO: We will let you know.

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8 MR. JOHNSTON: To the extent that any claimed
9 fees are connected with Ronsco's CITT appeal of the
10 blanket DASSs, would you agree that that proceeding is
11 currently in abeyance?

12 MR. TRIVISONNO: I'm sorry, are you just asking
13 me if the proceeding is in abeyance? Because if that is
14 the question, put that question.

15 MR. JOHNSTON: That's the question.

16 MR. TRIVISONNO: The question is: Is the CITT
17 proceeding in abeyance.

18 MR. JOHNSTON: Yes.

19 MR. TRIVISONNO: Yes, it is.

20 MR. JOHNSTON: And just to clarify, you are
21 answering on behalf of Mr. Montgomery right now?

22 MR. TRIVISONNO: Well, I don't think that Mr.
23 Montgomery is in ---

24 MR. JOHNSTON: No, I'm just asking if you are
25 answering on his behalf. Are these Ronsco's answers to

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1 these questions?

2 MR. TRIVISONNO: Yes. My understanding is that
3 the proceeding is in abeyance. If the Attorney General
4 has another understanding as to whether the proceeding
5 is in abeyance, then I would like you to let me know
6 right now.

7 MR. JOHNSTON: So, the only step that has been
8 taken in that proceeding is filing a Notice of Appeal.

9 MR. TRIVISONNO: Do you contest the position
10 that the proceeding is in abeyance? I want to know
11 right now.

12 MR. JOHNSTON: No, the proceeding is in abeyance
13 is our understanding, yes.

14 My next question is: The only step that has
15 been taken in that proceeding is the filing of a Notice
16 of Appeal, correct?

17 MR. TRIVISONNO: I would have to go back and
18 look.

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19 MR. JOHNSTON: Is there any other source of
20 special damages that Ronsco will claim that are not
21 enumerated currently in 67(b) of the Statement of Claim?

22 MR. TRIVISONNO: If there are any other sources
23 of special damages that we are claiming, we will let you
24 know. That's an undertaking.

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25 MR. JOHNSTON: Still in paragraph 67 of the

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1 Statement of Claim, sub (c). We mentioned this briefly
2 yesterday, that most of this subparagraph has been
3 struck, further to the Attorney General's motion to
4 strike, with the one exception being an administrative
5 monetary penalty of \$1,000.

6 Is Ronsco, in fact, claiming \$1,000 for the
7 administrative monetary penalty, or is it, in fact, the
8 \$500 that was assessed based on the contravention in
9 issue here?

10 And I can take you to a document, if that would
11 be helpful.

12 MR. TRIVISONNO: No, we will get back to you. *U*

13 MR. JOHNSTON: I was hoping we could end on a
14 high note, to clarify that it's \$500, rather than
15 \$1,000.

16 MR. BAXTER: Do you want to give us the document
17 reference, so that when we get back to you ---

18 MR. JOHNSTON: Certainly.

19 MR. TRIVISONNO: We can take a look at it.

20 MR. JOHNSTON: If you turn up Compendium Tab 10,
21 this is at page 415 of the compendium. This document is
22 the Notice of Penalty Assessment, dated October 3rd,
23 2019.

24 MR. TRIVISONNO: Mr. Johnston, I think I see
25 where you are going. We will take a look at this

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1 document and we will get back to you.

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2 MR. BAXTER: So, are we to refer to page 414 and
3 page 415?

4 MR. JOHNSTON: Yes, refer to 414 and 415, and
5 our position is that Ronsco was contesting only
6 Contravention C-352, and as you will see on page 415,
7 that amount is for \$500, not for \$1,000.

8 MR. BAXTER: Thank you for that. We will comply
9 with the undertaking.

10 MR. JOHNSTON: Is there any other source of
11 damage that we have not discussed yesterday or today
12 that Ronsco is relying on for the purpose of its damage
13 claim?

14 MR. TRIVISONNO: If there is, we will let you
15 know. I have given a number of undertakings that may
16 provide that, as well.

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17 MR. JOHNSTON: Before wrapping up, if we could
18 take a break perhaps. I would like a chance to confer
19 with my colleague. Perhaps a 15-minute break.

20 (SHORT RECESS)

21 MR. JOHNSTON: I do have one final question, or
22 request for an undertaking. At paragraph 67(b) of the
23 Statement of Claim there are the four categories of
24 special damages identified: legal, trade consultants,
25 surety bond, and experts.

1 The undertaking we are seeking is simply to
2 connect the four invoices that you have produced and the
3 amounts with those different categories.

4 For example, Peter Clark, we are not sure
5 whether he is legal, a trade consultant or an expert.

6 So, we just want to understand the content of
7 those four categories as they connect to the invoices
8 you have presented.

9 MR. TRIVISONNO: Okay. We can undertake to
10 provide you with that.

11 MR. JOHNSTON: Before adjourning, I would like
12 to thank Mr. Montgomery. You have answered a lot of
13 questions, and I appreciate your time in answering those
14 questions.

15 With that I will adjourn our examination,
16 subject to the answers to undertakings and advisements,
17 and any questions that we have further to those
18 responses.

19 MR. TRIVISONNO: Thank you.

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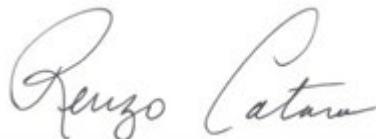
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2 10:38 IN THE FORENOON
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Ronsco Inc. v. HMTK, et al.
Undertakings Chart of Kent Montgomery
Examinations Held May 2-3, 2023

No	Pg	QQ	Undertaking	Response
1.	40	156	To investigate and advise if there are any other instances (apart from the memo at Tab 5 of Defendants' Compendium) where advice was taken on Tariff Item 21?	
2.	49	180	To investigate who would have declared the goods at p.712 of Defendants' Compendium in (a) the ACROSS system and (b) the CCS system.	
3.	75	262	To review purchase contract for the 2015 transaction and advise how the goods are described between the manufacturer and Ronsco.	
4.	93-94	313	Produce any 'non-privileged' internal documents prepared by Ronsco's employees to support the determination that 30 could be a better fit for what Ronsco does and that 21 wasn't the applicable location. (Any communications/documents that would relate to internal work that Ronsco did during the verification process regarding assessing the nature of the goods.)	
5.	95	316	To produce any documents that were prepared for consultancy purposes, rather than solicitor-client, that would be captured by the above undertaking (#4). (UT is to produce such docs that are not privileged.)	
6.	97	323 & 328	To produce/advise of when Ronsco became aware of Finance Canada's March 10, 2010 statement regarding Canada becoming a tariff free zone for manufacturers attached as Annex O. Also to advise who at Ronsco became aware of this statement.	

No	Pg	QQ	Undertaking	Response
7.	99	333	Advise when activities commenced at the wheel shop.	
8.	109	367	Produce any communications from Sumitomo, or any clients/importers, advising that they had been importing duty free through the CBSA's 2005 Advanced Ruling. Very specifically, regarding the existence of the advanced ruling and how other importers were declaring their goods.	
9.	133	441	To produce any documents or evidence that Ronsco relies on to support their reading of the reassessment policy.	
10.	147	465	To particularize Ronsco's damages: an overview of their damages suffered (general damages).	
11.	181	529	Advise which contracts specifically Ronsco is referring to as part of their damages claim for lost profits.	
12.	185	547	Advise if the \$75 million deal with CN is part of Ronsco's damages claim.	
13.	186	554	If Ronsco is claiming the \$75 million deal with CN as part of their damages claim, to provide the exact date on which the agreement/contract was reached with CN.	
14.	192	566	Advise if any contracts entered into after receiving the final report in July 2018 are part of Ronsco's damages claim.	
15.	193	567	Provide particulars of how the events in the Statement of Claim impact the profitability of any new contracts (after July 2018), <u>if</u> they are a part of the damages claim.	

No	Pg	QQ	Undertaking	Response
16.	203	597	Advise which, if any, of the contracts Ronsco bid on between July 2018 (the final report) and 2021 (the tariff change) and were not successful, are a part of the damages claim.	
17.	205	607	Advise how the surety bond (re retroactive duties) fits into Ronsco's financial statements in order to understand how it affects Ronsco's capital.	
18.	206	608	To provide details regarding the surety bond of \$104,282 claimed at para 67(b) of the Statement of Claim.	
19.	207	609	When did Ronsco have to pay the surety bond of \$104,282	
20.	212	612	To look for and produce a record of decision to pause the Hamilton expansion plan in 2018.	
21.	213	612	To have undertaking #20 (above) include any kind of analysis or internal exchanges about why the plan was being placed on hold at that time.	
22.	235	656	To provide any additional reasons (other than those provided at discovery) re why Ronsco is seeking to recover professional fees as special damages. If Ronsco was provided with procedural advice prior to Ms. Ogilvie's email in November 2018, to produce same.	
23.	236	656	To advise if the CBSA initiated any of the legal proceedings that Mr. Johnston listed (#1-13 at pp 231-232), other than the trade verification (#1).	
24.	237	656	To advise who initiated the proceedings listed in items #1-13 at pp 231-231.	

No	Pg	QQ	Undertaking	Response
25.	238	656	To advise if any of the legal costs that Ronsco is claiming as special damages amounts overlap with legal costs which it has or could have recovered in those legal proceedings.	
26.	239	656	To confirm that the only step taken in the CITT proceeding is the filing of a Notice of Appeal.	
27.	239	656	To advise if there is any other source of special damages that Ronsco will claim that are not currently listed in 67(b) of the Statement of Claim.	
27.	240	656	To advise if Ronsco is claiming \$1000 for the administrative monetary penalty or the \$500 that was assessed based on the contravention in issue. (Reference Compendium Tab 10, pp 414- 415 – Notice of Penalty Assessment dated October 3, 2019)	
28.	241	656	To advise if there is any source of damage that was not discussed during the discoveries of Kent Montgomery that Ronsco is relying on for the purpose of its damage claim.	
29.	242	656	To breakdown the 4 invoices that Ronsco has produced as the correspond to the four special damages categories listed at para 67(b) of the SOC (legal, trade consultants, surety bond, and experts)	

No	Pg	QQ	Advisement	Response
1.	54	203	To produce the invoices and contracts related to the transactions re NC certificate (Defendants' Compendium at p. 719) and National Steel Cars certificate (p. 718)	
2.	152	477	To provide information on any costs incurred regarding the expansion plan at the time of the interim report.	
3.	163	499	In the event that Ronsco is pursuing damages based on the Western Canada expansion, to provide documentation about said plan which was put on hold.	
4.	229	651	To provide Ronsco's financial statements, showing revenues, expenditures and profits from 2015 to present.	
5.	233	654	To identify which of the 13 proceedings identified at pp. 231-232 of the transcript of K. Montgomery's examination are applicable to the following invoices: McMillan Vantage (Tab 160), Grey Clark Shih and Associates (Tab 161), fees to PWC (Tab 162) and CBW fees (Tab 163).	
6.	234	654	Once #5 above is particularized by proceeding, advise what is the amount of them that Ronsco is seeking to recover as special damages for each item. To confirm that these invoices (described at #5) reflect all of the special damages for professional fees that Ronsco is seeking to recover.	
7.	236		Advise if Ronsco's claims for special damages include its work in deciding to pursue Tariff Item 30 rather than Tariff Item 21 during the verification process onward.	

No	Pg	QQ	Advisement	Response
8.	237		Advise if Ronsco obtained advice, prior to initiating legal proceedings, on whether it was an appropriate avenue to pursue a remedy. This is being requested since Ronsco is seeking to recover the costs of this advice.)	

No	Pg	QQ	Refusals	Response
1.	49	182	Would you agree that ultimately it is the importer's responsibility to make sure their goods are declared correctly?	Objection – this is a legal question and not an appropriate question for this witness.
2.	50	184	Are the custom brokers your agent when they act as a customer broker for Ronsco?	Objection – this is a legal question and not an appropriate question for this witness.
3.	88	296	See transcript.	Objection – Mr. Maher was not reading the entire tariff item to the Witness when posing his question.
4.	89	298	When reading Tariff 21, would you agree that the blanks referred, whether they were for railway or tramway, they were both to be used in passenger coaches.	Objection – asking the witness for a legal conclusion.
5.	101	339	How did that statement [see transcript] lead Ronsco to believe that the goods were not dutiable.	Objection – Mr. Maher did not lay the foundation that the article itself led the company to believe anything.
6.	106	359	Would you agree that the advanced ruling only applied to Sumitomo (so between Sumitomo and CBSA)?	Objection – asking witness for a legal conclusion.
7.	111	372	Is the verification process and the result of it, is that wholly or partially – di that influence the decision to not use FedEx anymore.	Objection – not relevant.

No	Pg	QQ	Refusals	Response
8.	128	427-428	Did you rely on any other professionals outside of Mr. Clark at that time re how to challenge the reason to believe issue?	Objection – privilege.
9.	133	441	Do you still disagree with the CBSA's position that there is an overlap of the 4 years and the verification period?	Objection – fact witness not going to provide a legal position.
10.	194	568	Are you able to give me a breakdown of the proportions of the wheel bodies that are sourced from each of those countries (Brazil, Spain, Russia, China and USA)?	Objection – not relevant.
11.	219	633	To provide the value of Ronsco wheel body imports by country for the period between the final report in 2018 and the tariff item change in 2021?	Objection – not relevant.
12.	220	637	To advise if Ronsco was ever in a situation where they were competing against a U.S. company who was using Chinese wheel bodies in its wheelsets.	Objection – not relevant.

**Costs Incurred by Ronco Inc.
in Preparing for and Attending
Examination for Discovery of Kelly Bartlett**

Task	Hours	Amount
Preparation for Examination for Discovery of Kelly Bartlett	CSB: 6.45 hours CT: 28.35 hours SMG: 21.85 hours LC2: 0.90 hours	CSB: \$3,536.25 CT: \$8,505.00 SMG: \$4,545.75 <u>LC2: \$148.50</u> Subtotal: \$16,735.50
Costs of attending Examination for Discovery of Kelly Bartlett	CSB: 5.75 hours CT: 5.75 hours SMG: 5.75 hours	CSB: \$3,450.00 CT: \$1,725.00 <u>SMG: \$1,581.25</u> Subtotal: \$6,756.25

Subtotal Colin Baxter = \$2,336.25 (4.45 hours) (\$525 per hour) (2022)

Subtotal Colin Baxter = \$4,650.00 (7.75 hours) (\$600 per hour) (2023)

Subtotal Chris Trivisonno = \$10,230.00 (34.10 hours) (\$300 per hour) (2023)

Subtotal Sean Grassie = \$4,284.50 (20.90 hours) (\$205 per hour) (2022)

Subtotal Sean Grassie = \$1,842.50 (6.70 hours) (\$275 per hour) (2023)

Subtotal LC2 = \$148.50 (0.90 hours) (\$165 per hour) (2023)

Subtotal all counsel: \$23,491.75

HST at 13% = \$ 3,053.92

Total fees = \$26,545.67

Court File No. T-1295-20

FEDERAL COURT

B E T W E E N:

RONSCO INC.

Plaintiff/Moving Party

and

HIS MAJESTY THE KING, THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS, CANADA BORDER
SERVICES AGENCY

Defendants/Responding Party

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

**WRITTEN REPRESENTATIONS
OF THE MOVING PARTY, RONSCO INC.**

August 15, 2023

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FEDERAL COURT

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RONSCO INC.

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OVERVIEW

1. This motion arises out of the Defendants' decision to put forward as their discovery representative a low-level employee (Kelly Bartlett) who had almost no relevant knowledge regarding the matters at issue, who had no relevant decision-making authority, who had failed to inform herself by speaking to her superiors or others with relevant knowledge, and who, incredibly, had never once communicated with the Plaintiff, Ronsco Inc. ("Ronsco").
2. Ms. Bartlett was not a proper and knowledgeable witness and she was unable to give broad discovery, as the law requires. She was utterly unsuitable.
3. Putting forward Ms. Bartlett has frustrated Ronsco's right to a meaningful discovery and has now created further delays in this litigation. The Defendants knew or ought to have known that their choice would have these effects. In the circumstances, their conduct appears designed to create a tactical advantage, including by allowing them to craft answers to questions in writing while shielding a key witness from examination.
4. Doug Band is the most appropriate witness to serve as the Crown's discovery representative. At the very least, he is in a much better position to give evidence than Ms. Bartlett, and therefore satisfies the applicable legal standard. He continues to serve as a CBSA employee and he is available to testify.
5. Mr. Band was the source of crucial representations that form the basis of Ronsco's claim. On June 26, 2018, he told the company that it would not be subject to retroactive duties, which ultimately amounted to nearly \$2.5 million. Ms. Bartlett did not attend this meeting and could not answer relevant (and basic) questions regarding the meeting and Mr. Band's representations.
6. Mr. Band also has direct knowledge of the decision-making behind CBSA's series of reversals on its position following these representations: first disavowing Mr. Band's representations, then completing an internal analysis suggesting that his representations should be honoured, then reversing course again to abandon this analysis and impose retroactive duties on Ronsco. He oversaw the department responsible for

making these decisions. Ms. Bartlett admitted that she did not know how these significant decisions were made and could not answer relevant questions regarding them.

7. By contrast, Ronsco produced Kent Montogomery, its Executive Vice-President and Chief Operating Officer, as its discovery representative. Mr. Montgomery attended the crucial meeting with Doug Band and, on examination, provided detailed evidence of the representations made at that meeting, given his first-hand knowledge. He was able to give broad discovery on the matters at issue in this proceeding based on his own involvement in the interactions between Ronsco and CBSA.

8. The Defendants should be required to produce a witness who is similarly knowledgeable and capable of answering relevant questions. That is the basic requirement of a discovery witness, which Ms. Bartlett fell far short of meeting. The Defendants should not be allowed to hide behind an ill-prepared witness with little relevant knowledge. They should be ordered to produce Doug Band and to pay the costs incurred by Ronsco in preparing for and attending Ms. Bartlett's discovery on a lump sum basis.

PART I - FACTS

A. RONSCO'S CLAIM FOR BREACH OF PUBLIC LAW DUTIES

9. Ronsco's action seeks damages against the Defendants for a series of breaches of their public law duties, including by making significant misrepresentations to Ronsco, treating Ronsco differently and unfairly as compared to similarly situated importers, and providing a series of conflicting mis-directions with respect to the appropriate appeals route.

10. Ronsco is the only Canadian-owned independent railway wheelset manufacturing shop in Canada. It supplies products and services to North American and international rail, mining, and transit industries. Ronsco is headquartered in Montreal, with five locations across Canada. Ronsco has been active for over 50 years.

11. Beginning in July 2017, Ronsco was subjected to a Trade Compliance Verification for goods imported by Ronsco between January 1, 2015 to December 31, 2015. Among the goods reviewed were “AAR approved H36 Wheels Class C, 8-3/8” bore diameter” (“**rough bore wheels**”).

12. On April 20, 2018, Ronsco received an Interim Report from the CBSA, advising that the duty-free tariff item (8607.19.21 or “**Tariff 21**”), under which Ronsco and other importers had imported rough bore wheels for many years, was no longer applicable. Instead, Ronsco was told that the goods should be imported under Tariff Item 8607.19.29 (“**Tariff 29**”) with a duty rate of 9.5%.¹

13. Ronsco was informed that it would have to make corrections and pay duties going back four years, on the basis that it purportedly had “reason to believe” that its initial tariff declaration was incorrect based on CBSA’s purported position that Tariff 21 is *prima facie* clear and evident.²

14. On June 26, 2018, Ronsco officials met with Doug Band, a Director General with CBSA and representatives of the Minister of Public Safety (the “**Doug Band Meeting**”). 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.³

15. CBSA takes the position that Mr. Band made these representations based on a memo that was erroneously prepared for the meeting, which addressed Sumitomo Canada Limited (“**Sumitomo**”).⁴ Sumitomo had similarly imported rough bore wheels under Tariff 21 for years. But it benefited from a preferential agreement with CBSA in the form of an advanced ruling, which made clear that Tariff 21 applied to the goods.⁵

¹ Interim Verification Report, pp. 4-5, Ex. E to Affidavit of Susan Gutteridge (“**Gutteridge Affidavit**”), Motion Record of Ronsco (“**MR**”), Tab 2, pp. 63-64.

² Interim Verification Report, pp. 4-5, Ex. E to Gutteridge Aff., MR, Tab 2, pp. 63-64.

³ Affidavit of Peter Clark (“**Clark Aff**”), paras. 17-18, MR, Tab 3, p. 155.

⁴ Transcript of the Examination for Discovery of Kelly Bartlett (“**Bartlett Aff.**”), p. 90, q. 264-268, MR, Tab 4, p. 265; Issue Sheet, Ex. F to Gutteridge Aff., MR, Tab 2, p. 68.

⁵ Sumitomo Advanced Ruling, Ex. D to Gutteridge Aff., MR, Tab 2, p. 56.

16. Following the meeting, CBSA reversed its position from what was represented by Doug Band, and instead issued a final verification report (the “**Final Report**”) on July 24, 2018, requiring Ronsco to pay retroactive duties going back four years on the basis that Ronsco had “reason to believe” that Tariff 21 was not the correct classification.⁶ CBSA did so despite the fact that Ms. Bartlett’s manager Grant Tebbutt had determined that Tariff 21 was not clear and evident, such that Ronsco did not have reason to believe.⁷

17. Subsequent to the issuance of the Final Report, CBSA again reversed its position based on further analysis that determined that Ronsco, in fact, did not have “reason to believe.” Accordingly, CBSA concluded that the Final Report should be amended, such that Ronsco would not be required to pay retroactive duties going back four years.⁸

18. Despite these findings, something unknown happened within CBSA which resulted in it deciding to reverse course again. Ronsco has no visibility into why CBSA changed its mind again, and decided not to amend the Final Report and to instead compel Ronsco to pay four years of retroactive duties.

19. Ronsco appealed the CBSA’ findings to the CBSA President, including attempting to appeal the finding that Ronsco had “reason to believe.”

20. On November 8, 2018, Sue Ogilvie, an Appeals Officer with the CBSA’s Toronto Trade Appeals Unit, advised that the CBSA President did not have jurisdiction to consider the findings regarding “reason to believe” on appeal. Ms. Ogilvie advised that these findings could only be challenged by appealing the Administrative Monetary Penalty that Ronsco would receive, under section 129 of the Customs Act.⁹

21. Ronsco’s appeals to the CBSA President, and subsequently to the Canadian International Trade Tribunal (“**CITT**”), were denied.

⁶ Final Verification Report, pp. 3-4, Ex. I to Gutteridge Aff., MR, Tab 2, pp. 83-84.

⁷ Bartlett Transcript, pp. 100-101, qq. 307-310, MR, Tab 4, pp. 275-276.

⁸ Bartlett Transcript, pp. 115-116, qq. 353-354, MR, Tab 4, pp. 290-291; Memo to CBSA President dated August 10, 2018, p. 3, Ex. K to Gutteridge Aff., MR, Tab 2, p. 94.

⁹ Email from S. Ogilvie dated November 8, 2018, Ex. N to Gutteridge Aff., MR, Tab 2, p. 104.

22. On October 11, 2019, the CBSA issued a Notice of penalty Assessment to Ronsco stating that Ronsco had “reason to believe” that it had selected the incorrect Tariff for the goods subject to the retroactive corrections. Ronsco filed an appeal, which was eventually dismissed.

23. 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, 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”.¹⁰

24. CBSA now takes 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, as Ronsco had attempted to do in the first instance before being thwarted by Ms. Ogilvie.

B. PROCEDURAL HISTORY

25. Ronsco commenced this action on October 29, 2020 pursuant to s. 135 of the *Customs Act*, originally seeking to challenge CBSA’s finding with respect to “reason to believe” and to quash the July 2020 DAS, among other relief.

26. On May 7, 2021, Ronsco amended its statement of claim to assert a public law cause of action based on *Paradis Honey Ltd v Canada*, 2015 FCA 89 and a claim in negligence, in addition to the relief sought pursuant to s. 135 of the *Customs Act*.

27. On July 23, 2021, the Defendants brought a motion to strike Ronsco’s claim.

28. The motion was originally scheduled to be heard on September 27, 2021. It was adjourned twice at the last minute due to the sudden illness of counsel to the Defendant.

29. The motion to strike was heard by Justice Gleeson on December 17, 2021.

¹⁰ Email from Natasha Alimohamed dated August 17, 2020, Ex. O to Gutteridge Aff, MR, Tab 2, p. 108.

30. Justice Gleeson issued reasons on July 13, 2022, granting the motion in part. Justice Gleeson ordered that the following portions of Ronsco's pleading be struck:

- (a) Ronsco's claim for damages of \$2,544,628.30 to compensate for the imposition of retroactive duties;
- (b) Ronsco's request that the July 2020 DAS be set aside; and
- (c) Ronsco's claim in negligence.

31. Justice Gleeson allowed Ronsco's claim for breach of public law duties to continue, finding that the allegations "could warrant a discretionary monetary award if proven."¹¹

32. The parties exchanged documents in the fall of 2022.

33. The parties originally contemplated scheduling discoveries in late March. However, the Defendants requested a later date because the discovery representative they originally selected (Karen Alford) was unavailable. Ronsco asked the Defendants to consider an alternative discovery representative, but the Defendants refused.¹²

34. On February 27, 2023, the Defendants notified Ronsco that they would put forward a different discovery witness (Kelly Bartlett), despite their earlier refusal to put forward an alternative witness to accommodate the March discovery dates.¹³

35. Examinations for discovery commenced on May 2, 2023. The parties agreed that each would be permitted 1.5 days of examination. Ronsco's representative Kent Montgomery was examined over the course of May 2 and the morning of May 3.

¹¹ *Ronsco Inc. v. Canada*, 2022 FC 1029 ("Motion to Strike Decision"), para. 72, Ronsco's Book of Authorities ("BOA"), BOA, Tab 1.

¹² Emails between C. Trivisonno and C. Maher dated January 27, 2023, Ex. R to Gutteridge Aff, MR, Tab 2, p. 140.

¹³ Email from C. Maher dated February 27, 2023, Ex. S to Gutteridge Aff, MR, Tab 2, p. 146.

36. Mr. Montgomery is Ronsco's Executive Vice-President and Chief Operating Officer.¹⁴ He has held that executive position for years, including throughout the time of the verification period.¹⁵

37. It is uncontested that Mr. Montgomery was an appropriate discovery witness who provided evidence based on his first-hand knowledge and his involvement in the interactions between CBSA and Ronsco. Mr. Montogomery provided detailed responses to the Defendants' questions, including with respect to the following, among other things:

- (a) A detailed explanation of the goods at issue and the finishing process for rough bore wheels;¹⁶
- (b) Ronsco's relationship with its customs broker, Fedex;¹⁷
- (c) Ronsco's submissions to CBSA regarding the interim verification report;¹⁸
- (d) Ronsco's understanding of Tarriff 21;¹⁹
- (e) Industry behaviour in importing the goods at issue under Tarriff 21;²⁰
- (f) The Sumitomo Advanced Ruling and how Ronsco became aware of it;²¹
- (g) The Doug Band Meeting, which Mr. Montgomery attended personally with other representatives of Ronsco;²²

¹⁴ Transcript of the Examination of Discovery of Kent Montgomery ("Montgomery Transcript"), p. 5, q. 12, MR, Tab 6, p. 370.

¹⁵ Montgomery Transcript, p. 5, q. 14, MR, Tab 6, p. 370.

¹⁶ Montgomery Transcript, pp. 19-22, qq. 76-90, MR, Tab 6, pp. 384-387.

¹⁷ Montgomery Transcript, pp. 31-34, qq. 123-137, MR, Tab 6, pp. 396-399.

¹⁸ Montgomery Transcript, pp. 55-58, qq. 206-211, MR, Tab 6, pp. 420-423.

¹⁹ Montgomery Transcript, pp. 86-92, qq. 289-311, MR, Tab 6, pp. 451-457.

²⁰ Montgomery Transcript, pp. 96, qq. 321-322, MR, Tab 6, p. 461.

²¹ Montgomery Transcript, pp. 108-109, qq. 364-367, MR, Tab 6, pp. 473-474.

²² Montgomery Transcript, pp. 112-118, qq. 378-402, MR, Tab 6, pp. 477-483.

- (h) The distinctions between Ronsco's business in re-selling rough bore wheels and its business in manufacturing and selling wheel sets;²³
- (i) Ronsco's planned expansion into western Canada;²⁴
- (j) The effect of CBSA's actions on Ronsco's expansion plans;²⁵ and
- (k) Ronsco's expansion of its Hamilton facility.²⁶

C. THE DEFENDANTS PUT FORWARD AN UNSUITABLE WITNESS

38. Ronsco commenced its examination of the Defendants' discovery representative, Kelly Bartlett, on May 4, 2023. Ronsco was forced to adjourn the examination after only a few hours because Ms. Bartlett was unable to answer relevant questions.

39. At the time of the events underlying the claim, Ms. Barlett was a policy advisor. She reported to a manager, who reported to a director, who reported to Mr. Band. Ms. Bartlett was not able to identify the vice-president to whom Mr. Band reported, because she did not interact with CBSA's senior leadership at the time.²⁷

40. Ms. Bartlett never once communicated with anyone from Ronsco.²⁸

41. Ms. Bartlett admitted to having no involvement in the vast majority of the matters at issue:²⁹

- (a) She was not involved in the verification audit of Ronsco;
- (b) She was not involved in preparing the Interim Verification Report;
- (c) She was not involved in preparing the Final Verification Report;

²³ Montgomery Transcript, pp. 142-145, qq 457-461, MR, Tab 6, pp. 507-510.

²⁴ Montgomery Transcript, pp. 148-152, qq 468-476, MR, Tab 6, pp. 513-517.

²⁵ Montgomery Transcript, pp. 156-158, q. 488, MR, Tab 6, pp. 521-523.

²⁶ Montgomery Transcript, pp. 163-167, q. 500-510, MR, Tab 6, pp. 528-532.

²⁷ Transcript of the Examination for Discovery of Kelly Bartlett ("Bartlett Transcript"), pp. 7-8, qq. 29-37, MR, Tab 4, pp. 182-183.

²⁸ Bartlett Transcript, p. 12, q. 57, MR, Tab 4, p. 187.

²⁹ Bartlett Transcript, pp. 10-12, q. 47-55, MR, Tab 4, pp. 185-187.

- (d) She did not attend the Doug Band Meeting
- (e) She had no involvement in Ms. Ogilvie's misleading representations to Ronsco; and
- (f) She had no involvement in Ms. Alimohamed's misleading representations to Ronsco.

42. Ms. Bartlett also failed to adequately inform herself, as required by [Rule 241](#) of the *Federal Court Rules*. In advance of her discovery, she did not speak to any of the following individuals with relevant knowledge of the matters in question:³⁰

- (a) Doug Band;
- (b) Any of the other government officials who attended the Doug Band Meeting;
- (c) Lucie Gagne, who authored the Final Verification Report;
- (d) Grant Tebbutt, Ms. Bartlett's direct superior at the relevant time who drafted a memo finding that Ronsco did not have "reason to believe";
- (e) Yannick Mondy, Grant Tebbutt's superior at the relevant time, who reported to Mr. Band and appears to have been involved in discussions related to CBSA's many reversals in position;
- (f) Sue Ogilvie; or
- (g) Natasha Alimohamed.

43. Ms. Bartlett could not provide any evidence of what transpired at the Doug Band Meeting. She could not give any evidence as to what was discussed or what representations were made.³¹ She was not even aware of who attended the meeting.³²

³⁰ Bartlett Transcript, p. 13, qq. 58-66, MR, Tab 4, p. 188.

³¹ Bartlett Transcript, pp. 74-85 qq. 238-248 MR, Tab 4, pp. 249-260.

³² Bartlett Transcript, pp. 70-71, qq. 228-233, MR, Tab 4, pp. 245-246.

All of these questions were taken under advisement by the Defendants. Ms. Bartlett admitted that Mr. Band never provided her with details of what occurred at the meeting and she did not obtain those details prior to her discovery.³³

44. Ms. Bartlett could not provide direct evidence on whether Mr. Band believed he was meeting with Ronsco or Sumitomo.³⁴ This evidence is key because the Defendants now attempt to justify Mr. Band's representations to Ronsco based on his purported belief that he was meeting with Sumitomo.

45. Ms. Bartlett could not confirm whether or not Mr. Band made the key representations alleged in this proceeding, namely that Ronsco would not be subject to retroactive duties. She merely surmised that these representations were made.³⁵

46. Ms. Bartlett's primary relevant involvement was that she drafted preparatory materials for the Doug Band Meeting. Those materials mistakenly referenced Sumitomo. Ms. Bartlett admitted that this error arose, not because of her own fault, but because her superiors failed to advise her of the correct company and failed to identify the error when they reviewed the materials she prepared.³⁶

47. Importantly, Ms. Bartlett could not explain why CBSA ultimately decided not to amend the Final Verification Report, and to instead require Ronsco to pay retroactive duties, despite Mr. Band's representations, and despite internal memoranda suggesting that Ronsco did not have reason to believe.³⁷ She could not even confirm at what level this decision was made.³⁸

48. As a result, Ronsco has not been permitted any visibility into the ultimate decision that led CBSA to require the retroactive duties. Something unknown happened

³³ Bartlett Transcript, pp. 89-90, q. 263, MR, Tab 4, p. 264-265.

³⁴ Bartlett Transcript, pp. 72, 78, qq. 234, 239 (lines 5-8), MR, Tab 6, pp. 247, 253.

³⁵ Bartlett Transcript, pp. 89-90, qq. 263-268, MR, Tab 6, p. 264-265.

³⁶ Bartlett Transcript, pp. 55, 58-59, 93-95, qq. 185-187, 202-207, 281-287, MR, Tab 4, pp. 230, 233-234, 268-270.

³⁷ Bartlett Transcript, pp. 147-148, q. 442, MR, Tab 4, pp. 322-323.

³⁸ Bartlett Transcript, pp. 145-146, qq. 437-440, MR, Tab 4, pp. 320-321.

within CBSA and, despite asking these questions of Ms. Bartlett, Ronsco has no further information about this decision.

PART II - STATEMENT OF ISSUES

The issues on this motion are:

- (a) Should the Defendants be required to produce Doug Band as a witness?
- (b) Should the Defendants be required to pay Ronsco's costs thrown away in preparing for and attending the examination of Kelly Bartlett?

Although the Crown has the right to select its representative to be examined for discovery, a party may move for an order that some other person be examined pursuant to [Rule 237\(3\)](#) of the *Federal Court Rules*.

The principles to be considered on a motion to substitute a discovery witness are well-established:³⁹

- (c) The party being examined must put forward a proper and knowledgeable witness;
- (d) The witness must be able to give broad discovery, including as to supplemental questions;
- (e) The onus is on the party examining to demonstrate objectively the unsuitability of the witness in an application for a second discovery by demonstrating that:
 - (i) that the first witness is either incapable of giving evidence of his own knowledge or by informing himself; or

³⁹ *Liebmann v. Canada (Minister of National Defence)*, [1996 CarswellNat 527](#) (not available on CanLii), para. 31, BOA, Tab 2; *Benisti Import-Export Inc. v. Modes TXT Carbon Inc.*, 2004 FC 539, (“*Benisti*”) at [para. 3](#), BOA, Tab 3; *Nike International Ltd. v. Rebellion Inc.*, 2009 CF 785, (“*Nike*”), [para. 29](#), BOA, Tab 4.

- (ii) that the second witness is in a much better position to give evidence;
- (f) Convenience may be a factor, for in some instances it is more desirable and practical to have the individual involved examined, rather than to have a witness inform herself or himself;
- (g) The expense of a second witness is a factor;
- (h) The circumstances of the case, including the responsiveness of the witness, the degree to which the witness has taken pains to inform herself or himself and the materiality of the evidence sought to be canvassed with the second witness are also factors.

The Federal Court has made clear that parties must not put forward “straw witnesses” who are unable to answer questions directly and who are put forward tactically so that a party may later craft its answers as responses to undertakings.⁴⁰

PART III - SUBMISSIONS

A. Ms. BARTLETT WAS UNSUITABLE AS A WITNESS

49. Contrary to the requirements set out above, Ms. Bartlett was unable to give “broad discovery” and she was not a “proper and knowledgeable witness.”⁴¹ She had almost no involvement in the matters relevant to this proceeding.

50. Ronsco’s action seeks damages against the Defendants for breaches of their public law duties, including significant misrepresentations made to Ronsco, treating Ronsco differently as compared to similarly situated importers, and providing a series of conflicting mis-directions with respect to the appropriate appeals route. As such, Evidence of the interactions between Ronsco and CBSA will be crucial at trial, particularly evidence related to the representations made at the Doug Band Meeting.

⁴⁰ *Teva Canada Limited v. Eli Lilly Canada Inc.*, 2016 FC 1131, (“Teva”) [paras. 9-12](#), BOA, Tab 5.

⁴¹ *Liebmann*, para. 31, BOA, Tab 2.

51. Despite this, the Defendants put forward a witness who never communicated with Ronsco and who could not give evidence on the representations made to Ronsco. She was in a junior position, two levels of reporting below Mr. Band, and did not have authority to make decisions on whether to impose retroactive duties on Ronsco.

52. She could not give any evidence on CBSA's ultimate decision to impose retroactive duties on Ronsco instead of amending the final verification report.⁴² She was not present at and could not give evidence on an earlier meeting where it was decided that Ronsco did not have reason to believe that its declarations were incorrect.⁴³

53. She had no involvement in the interim or final verification reports, which determined that Ronsco had reason to believe.⁴⁴ She was not involved in any of the misrepresentations made to Ronsco about the appropriate procedure to challenge the retroactive duties.⁴⁵ In sum, she could not give evidence on any of the matters forming the basis of Ronsco's claim.

54. Despite her lack of relevant first-hand knowledge, Ms. Bartlett took no steps to inform herself by speaking to her colleagues at CBSA who were involved in the matters at issue and who communicated directly with Ronsco.⁴⁶ This runs directly contrary to her obligation to inform herself by making inquiries of present and former CBSA employees pursuant to [Rule 241](#).

55. As a result, Ms. Bartlett was unable to answer relevant questions. The Defendants gave undertakings to 36 questions and took 73 questions under advisement. If no order is made to substitute Ms. Bartlett, the Defendants will be able to craft written answers to each of these questions such that Ronsco will not have a meaningful opportunity to test the Defendants' evidence.

⁴² Bartlett Transcript, pp. 147-148, q. 442, MR, Tab 4, pp. 322-323.

⁴³ Bartlett Transcript, pp. 168-169, qq. 488-489, MR, Tab 4, pp. 343-345.

⁴⁴ Bartlett Transcript, p. 10, qq. 47-49, MR, Tab 4, p. 222-224.

⁴⁵ Bartlett Transcript, pp. 10-11, qq. 52-55, MR, Tab 4, p. 185-186.

⁴⁶ Bartlett Transcript, p. 13, qq. 58-66, MR, Tab 4, pp. 233-241.

56. This is particularly significant where many of the undertakings relate to the representations made at the Doug Band Meeting. The credibility of the witnesses who attended that meeting will be a crucial consideration for the trial judge. Without an order for substitution, Ronsco will be unable to test the credibility of any of the Defendants' witnesses who attended the meeting. Instead, the Defendants will have the tactical advantage of being able to craft written answers that best serve their position, while shielding the relevant witness.

57. By comparison, the Defendants were permitted the opportunity to test the evidence and credibility of one of Ronsco's top executives who will likely be a key witness at trial. Mr. Montgomery provided detailed evidence concerning the representations made at the Doug Band Meeting, the interactions between Ronsco and CBSA, and Ronsco's business in general, as well as responding to other questions posed by the Defendants. Ronsco's choice to put forward Mr. Montgomery was consistent with the spirit of [Rule 237](#) and the requirement to put forward a "proper and knowledgeable" witness.

58. Ms. Bartlett, by contrast, was the very definition of a "straw witness" who did not have relevant knowledge or involvement, who did not inform herself prior to the examination, and who could not answer relevant questions. In the circumstances, the Defendants' choice to put Ms. Bartlett forward appears to have been tactical.

59. At the very least, the Defendants ought to have known that this choice would frustrate Ronsco's right to a meaningful examination for discovery and provide the Defendants a significant and unfair tactical advantage, including by giving them the opportunity to answer key questions related in writing. The Defendants were aware that Ms. Bartlett lacked relevant knowledge and involvement. They were aware that she had not taken steps to inform herself and, apparently, they did not direct her to speak to any of the relevant witnesses. The Defendants' conduct cannot stand. Ms. Bartlett was an unsuitable witness and she must be replaced by Doug Band.

B. DOUG BAND IS IN A MUCH BETTER POSITION TO GIVE EVIDENCE

60. Mr. Band has much greater first-hand knowledge of the matters at issue in this proceeding, in particular the representations made at the Doug Band Meeting and the crucial decision to impose retroactive duties on Ronsco, despite these representations. He is in a much better position to give relevant evidence than Ms. Bartlett.

61. With respect to the Doug Band Meeting, he will be able to answer questions related to the representations he made at that meeting, the rationale for those representations, and the details of what transpired. Mr. Band is the only witness who can give evidence on his state of mind during that meeting and, in particular:

- (a) Whether he believed he was meeting with Sumitomo or Ronsco;
- (b) Whether he realized during the meeting that he was speaking to Ronsco and not Sumitomo; and
- (c) The reason that he represented to Ronsco that it would not be required to pay retroactive duties.

62. These issues are crucial to evaluating CBSA's explanation that the representations were based on a simple confusion between Sumitomo and Ronsco. Ronsco's position is that this explanation is not credible, including because Ronsco's business was discussed in detail at the meeting, it was made clear to Mr. Band that Ronsco was a Canadian company, and Mr. Band cited duty amounts that were specific to Ronsco. Ronsco should be allowed the opportunity to examine Mr. Band and test the credibility of his evidence concerning the meeting, which will be an important consideration at trial.

63. Justice Stratas' explanation of the crucial importance of allowing a party the opportunity to confront evidence presented against their position is instructive in this case:

[T]he right of parties in a civil action to confront evidence presented against their positions is paramount. Their main instrument is cross-examination—what

Wigmore has called “beyond any doubt the greatest legal engine ever invented for the discovery of truth” and what the Supreme Court has called “a vital element of the adversarial system applied and followed in our legal system...since the earliest times,” of “essential importance in determining whether a witness is credible”: [citations omitted] For this reason, counsel are given the greatest latitude in cross-examination and restrictions are rare ...⁴⁷

64. While these comments were made in the context of hearsay evidence, they are equally applicable to the right to examine an appropriate witness for discovery in order to test their credibility. Allowing the Defendants to maintain Ms. Bartlett as their representative will shield Mr. Band and the Defendants from having their evidence meaningfully tested. Even if Ms. Bartlett were able to answer questions at a second discovery, all of those answers would essentially be hearsay based on information received from others.

65. More than half of the undertakings and under advisements provided by the Defendants will likely require them to consult with Mr. Band. The sheer number of questions directed at Mr. Band’s knowledge demonstrates his importance as a witness and the fact that he is much better suited than Ms. Bartlett. The Defendants should be permitted to ask these questions of Mr. Band directly rather than to rely on written answers.

66. Allowing written answers would also prevent Ronsco from asking follow-up questions of Mr. Band. Without an order for substitution, any questions arising from the written answers would have to be asked of Ms. Bartlett at a continued examination. The Defendants would then consult with Mr. Band and craft further written answers. If any further follow-up questions arose, the parties would need to continue with a similar process. Such a procedure would be inefficient, ineffective, and would result in unnecessary costs to all parties. If an order for substitution is made, Ronsco will be able to ask the questions directly of Mr. Band, consistent with the requirement to put forward a “proper and knowledgeable” witness.

⁴⁷ *Pfizer Canada Inc. v. Teva Canada Limited*, [2016 FCA 161](#), para. 96, BOA, Tab 6.

67. Mr. Band would also be able to answer questions concerning the series of reversals that occurred between the Doug Band Meeting and CBSA's ultimate decision not to amend the final verification report. He was involved in an internal meeting during this time where it was determined that Ronsco did not have reason to believe.⁴⁸ On August 16, 2018, it was Mr. Band who communicated to Ronsco that CBSA would not honour the representations made at the Doug Band Meeting.⁴⁹ Subsequently, Doug Band reviewed further submissions from Ronsco and maintained CBSA's position that Ronsco had the requisite reason to believe at the time of import.⁵⁰

68. As such, Mr. Band is in the best position to explain why CBSA decided not to amend the Final Verification Report, despite the internal memo advising that Ronsco did not have reason to believe.

69. In this way, this case is similar to *United Terminals Ltd. v. Minister of National Revenue*. There, the Federal Court Appeal Division (as it was then referred to) upheld a decision ordering the Minister of National Revenue to attend for examination for discovery. The order was made because the Minister took steps contrary to the recommendations of his subordinates to issue tenders for a license.⁵¹

70. Similarly, here, Mr. Band took steps to impose retroactive duties despite the memorandum drafted by Grant Tebbutt, which concluded that Ronsco had no reason to believe and that the Final Verification Report should be amended. This is the crucial decision at issue in this proceeding, as it resulted in the requirement that Ronsco pay retroactive duties. Ms. Bartlett was unable to give any evidence on the rationale for this decision. Mr. Band is in a much better position to give evidence and he should be substituted as the discovery representative.

⁴⁸ Bartlett Transcript, pp. 168-169, qq. 488-489, MR, Tab 4, pp. 343-345.

⁴⁹ Affidavit of Peter Clarke, pars. 21-22, MR, Tab 4, pp. 156-157.

⁵⁰ Email from Doug Band dated August 21, 2018, Ex. L to Gutteridge Aff., MR, Tab 2, p. 96.

⁵¹ *United Terminals Ltd. v. Minister of National Revenue*, [1992 CanLII 14789](https://www.canlii.org/en/ca/canlii/jurisdb/canlii/1992/14789.html), p. 305, BOA, Tab 7.

C. MS. BARTLETT SHOULD NOT BE ALLOWED TO BETTER INFORM HERSELF

71. The law is clear that a motion to substitute should be granted where a witness would not be able to answer further questions through their own knowledge and would have to obtain information from others.⁵² This is, in part, because a continued examination of the witness without first-hand knowledge would create an inefficient procedure requiring further undertakings instead of direct answers to supplemental questions.⁵³

72. Ms. Bartlett's lack of relevant information and knowledge makes clear that she will not be able to answer further questions, including supplemental questions related to undertakings already given, based on her own personal knowledge. Allowing her to appear again would create the inefficient process of further undertakings that this Court determined was unacceptable in *Benisti Import-Export Inc. v. Modes TXT Carbon Inc.*⁵⁴

73. Ms. Bartlett previously had the opportunity to properly inform herself by speaking to other persons with greater knowledge, as she was required to do under *Rule 241*. The Defendants chose not to have her do so and instead produced a witness who could not answer relevant questions. Ms. Bartlett should not be given the opportunity to better inform herself, having failed to do so previously. The Defendants should be required to face the consequences of their choice to put forward an inadequate witness who failed to meet her obligation to inform herself. Mr. Band is in a much better position to give evidence and he should be ordered to appear for examination.

D. THE DEFENDANTS SHOULD BE REQUIRED TO PAY RONSCO'S COSTS THROWN AWAY

74. Ronso incurred significant costs in preparing for and attending the examination of an unsuitable witness who was unable to give broad discovery as required. These costs should be compensated on a lump sum basis.

⁵² *Benisti*, [paras. 5-8](#), BOA, Tab 3; *Nike*, [para. 30](#), BOA Tab 4.

⁵³ *Benisti*, [paras. 5-6](#), BOA, Tab 3.

⁵⁴ *Benisti*, [paras. 5-8](#), BOA, Tab 3.

75. The Federal Court has awarded substantial lump sum awards for “costs thrown away” in preparation for a trial, hearing, or other procedural step. These costs awards have been towards the high end, including awards of 30% and 66%.⁵⁵

76. Costs thrown away are awarded as a lump sum regardless of whether the conduct of the party causing the adjournment was “reprehensible, scandalous or outrageous.” For example, in *Eli Lilly Canada Inc. v. Apotex Inc.*, the costs of a cross-examination that was adjourned at the last minute due to an illness of the Applicant’s counsel were set-off against a costs award against the Respondents, in effect awarding costs thrown away to the Respondents.⁵⁶

77. Here, Ronsco should be compensated for its costs thrown away on a lump sum basis because these costs were wasted and Ronsco will need to incur further costs to prepare for and attend a further examination.

78. Further, lump sum costs should be awarded to deter similar conduct by parties who choose to put forward an unsuitable witness. Whether or not the Defendants’ conduct was, in fact, intended to be tactical, the consequences of putting forward Ms. Bartlett were certainly foreseeable. The Defendants chose to put forward a “straw witness” contrary to the explicit warning of this Court in *Teva*.⁵⁷ The only way to deter this sort of litigation conduct is to make an award of lump sum costs.

79. Ronsco seeks its lump sum costs in the amount of \$13,272. This represents 50% of its actual costs incurred in preparing for and attending examinations for discovery. Further, discoveries will not take place until many months after the original discovery dates in May of 2023. As a result, Ronsco will be forced to incur significant costs in preparing again for discoveries. The amount claimed by Ronsco is reasonable given the complexity of the matter, the sophistication of the parties, the amount at issue in the

⁵⁵ *Abdelrazik v Canada*, [2019 FC 769](#), paras. [23](#) [*Abdelrazik*], BOA, Tab 8; *Packers Plus Energy Services Inc v Essential Energy Services Ltd*, [2021 FC 986](#), paras. [34-36](#), BOA, Tab 9.

⁵⁶ *Eli Lilly Canada Inc v Apotex Inc*, [2015 FC 1165](#), paras. [2](#), [23](#), BOA, Tab 10; see also *Abdelrazik*, paras. [21-23](#), BOA, Tab 8.

⁵⁷ *Teva*, paras. [9-12](#), BOA, Tab 5.

proceeding, and the fact that the parties agreed to 1.5 days of examination for each witness.

PART IV - STATEMENT OF THE ORDER SOUGHT

80. Ronsco respectfully requests an order:

- (a) Requiring the Defendants to produce Doug Band as their representative to be examined for discovery; and
- (b) Requiring the Defendants to pay Ronsco's costs thrown away in preparing for and attending the examination for discovery of Kelly Bartlett in the amount of \$13,272.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 15th day of August, 2023.



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SCHEDULE A - LIST OF AUTHORITIES

1. *Abdelrazik v Canada*, [2019 FC 769](#)
2. *Benisti Import-Export Inc. v. Modes TXT Carbon Inc.*, [2004 FC 539](#)
3. *Eli Lilly Canada Inc v Apotex Inc*, [2015 FC 1165](#)
4. *Liebmann v. Canada (Minister of National Defence)*, [1996 CarswellNat 527](#)
5. *Nike International Ltd. v. Rebellion Inc.*, [2009 CF 785](#)
6. *Packers Plus Energy Services Inc v Essential Energy Services Ltd*, [2021 FC 986](#)
7. *Pfizer Canada Inc. v. Teva Canada Limited*, [2016 FCA 161](#)
8. *Ronsco Inc. v. Canada*, [2022 FC 1029](#)
9. *Teva Canada Limited v. Eli Lilly Canada Inc.*, [2016 FC 1131](#)
10. *United Terminals Ltd. v. Minister of National Revenue*, [1992 CanLII 14789](#)