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	September 12, 2023
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Court File No. T-1295-20	
Shaun Nelson	
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FEDERAL COURT

BETWEEN:

RONSCO INC.

Plaintiff/Moving Party

and

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

Defendants/Respondents

RESPONDENTS' MOTION RECORD
(opposing motion for substitution of Defendants' representative)

September 12, 2023

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Civil Litigation Section
50 O'Connor Street
Ottawa, Ontario K1A 0H8
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Per: Adrian Johnston

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Christian Halt

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Counsel for the Defendants/Respondents

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Per: **Colin Baxter**
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Sean Grassie

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[ctrivisonno@conwaylitigation.ca](mailto:cctrivisonno@conwaylitigation.ca)
sgrassie@conwaylitigation.ca

Counsel for the Plaintiff

AND TO: **The Federal Court**
Thomas D'Arcy McGee Building
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Ottawa, Ontario
K1A 0H9

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Fax: 613-952-3653

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FEDERAL COURT

BETWEEN:

RONSCO INC.

Plaintiff/Moving Party

and

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

Defendants/Respondents

AFFIDAVIT OF SHELBY MURPHY

I, **SHELBY MURPHY**, of the City of Ottawa, in the Province of Ontario, AFFIRM THAT:

1. I am a Paralegal working in the Civil Litigation Section of the Department of Justice. I work with Adrian Johnston, counsel who has carriage of this matter on behalf of the Defendants. As such, I have knowledge of the matters herein, except where I have stated that my knowledge is on information and belief, in which case I have identified the source of my information and believe it to be true.
2. In this matter, the Crown representative for the purposes of discovery is Kelly Bartlett. In order to confirm Kelly Bartlett's present role, I reviewed the GC Directory, the Government of Canada employee database, and confirmed her role as Acting Manager of the Trade Appeals, Processing and Policy Unit, within the Recourse Directorate, under the Finance and Corporate Management Branch of the Canada Border Services Agency ("CBSA"). A copy of Kelly Bartlett's GC Directory profile is attached hereto as **Exhibit "A"**.
3. The Plaintiff made reference to Natasha Alimohamed at paragraph 23 and elsewhere in the written representations of the Moving Party. After searching the GC Directory, I confirmed

Natasha Alimohamed's present role as Director General of the Recourse Directorate, under the Finance and Corporate Management Branch of the CBSA. A copy of Natasha Alimohamed's GC Directory profile is attached hereto as **Exhibit "B"**.

4. The Plaintiff made reference to Doug Band throughout the written representations of the Moving Party. After searching the GC Directory, I confirmed Doug Band's present role as Director General of the Trade and Anti-Dumping Programs Directorate, under the Commercial and Trade Branch of the CBSA. A copy of Doug Band's GC Directory profile is attached hereto as **Exhibit "C"**. A copy of CBSA's organizational charts from GC Directory is attached hereto as **Exhibit "D"**.
5. Through my work on this file, I am familiar with the parties' Affidavits of Documents. The Plaintiff's Affidavit of Documents includes 189 tabs totaling 2066 pages. The Defendants' Affidavit of Documents includes 210 tabs totaling 1469 pages. Among these documents are the following:
 - a. An email chain including an email from Kelly Bartlett on June 19, 2018, attached hereto as **Exhibit "E"**.
 - b. An email chain including an email from Lauren Nault on June 27, 2018, attached hereto as **Exhibit "F"**.
 - c. An email chain including an email from Kelly Bartlett on June 27, 2018, attached hereto as **Exhibit "G"**.
 - d. An email chain including an email from Yannick Mondy on August 8, 2018, attached hereto as **Exhibit "H"**.
 - e. An email chain including an email from Yannick Mondy on August 13, 2018, attached hereto as **Exhibit "I"**.
 - f. An email chain including an email from Beatrice Dion on August 17, 2018, attached hereto as **Exhibit "J"**.
 - g. An email chain including an email from Kelly Bartlett on August 17, 2018, attached hereto as **Exhibit "K"**.
 - h. An email chain including an email from Kelly Bartlett on August 20, 2018, attached hereto as **Exhibit "L"**.

- i. An email chain including an email from Kelly Bartlett on October 9, 2018, attached hereto as **Exhibit “M”**.
 - j. A copy of the Notice of Penalty Assessment issued to Ronsco Inc. on October 3, 2019, attached hereto as **Exhibit “N”**.
 - k. A copy of the Ministerial Decision made pursuant to section 131 of the *Customs Act* issued to Ronsco Inc. on September 15, 2020, attached hereto as **Exhibit “O”**.
6. On May 3, 2023, the Plaintiff examined the Defendants’ representative, Kelly Bartlett.
7. On May 5, 2023, the Defendants communicated that they would be providing the Plaintiff with a table of the Defendants’ position on all requests that were taken under advisement, upon receipt of the discovery transcript. A copy of this correspondence is attached hereto as **Exhibit “P”**.
8. On May 24, 2023, the Defendants received the discovery transcript. A copy of this transcript was included within the Moving Party’s Motion Record at Tab 4.
9. On May 29, 2023, the Defendants communicated their position on requests that the Defendants had taken under advisement during the examination of May 3, 2023. The Defendants provided a chart outlining their position on each of the Plaintiff’s requests. A copy of this correspondence was provided as Exhibit “P” in the Affidavit of Susan Gutteridge within the Moving Party’s Motion Record.
10. Between June and August 2023, I attended six meetings with Kelly Bartlett that were scheduled to obtain information from other individuals in order to answer the Defendants’ undertakings. The six meetings were with Doug Band, Kurtis Clifford, Lucie Gagné, Yannick Mondy, Nejib Smida, and Grant Tebbutt. I was informed by Mr. Johnston, and verily believe, of two further meetings which Kelly Bartlett attended to obtain the information necessary to answer the Defendants’ undertakings. Those two additional meetings were with Doug Band and Beatrice Dion. I am advised by Ms. Bartlett, and verily believe, that she also made inquiries with Adrian Anger and Sean Whitehouse for the purpose of answering undertakings.

11. On September 12, 2023, Mr. Johnston sent a letter attaching a chart of answers to undertakings, as well as a chart of corrections in respect to the examination of Ms. Bartlett on May 3, 2023, to the Plaintiff. A copy of this correspondence, chart of answered undertakings, and chart of corrections are attached hereto as **Exhibits "Q", "R", and "S"**, respectively.

12. I make this Affidavit in support of the Defendants' response to the Plaintiff's motion to change the Defendants' representative for Discoveries, and for no improper purpose.

Affirmed before me at the City of Ottawa,)
in the Province of Ontario, this 12th day of)
September, 2023)
)
)
)
)
)
)
A Commissioner for Taking Affidavits)
)



SHELBY MURPHY

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.

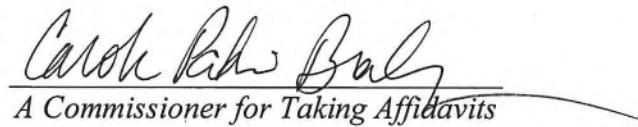
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

This is **Exhibit “A”** referred
to in the Affidavit of

SHELBY MURPHY

Affirmed before me this
12th day of September, 2023.


Caroline Patricia Thelma Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

[Print page](#)[Previous page](#)

Kelly Bartlett - A/Manager

Telephone : 613-277-1120

Email : Kelly.Bartlett@cbsa-asfc.gc.ca

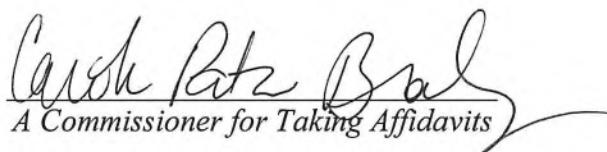
333 North River Road, Tower A, 11th Floor
Ottawa, Ontario K1A 0L8
Canada

Organizations

- [Canada](#)
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 - [Finance and Corporate Management Branch](#)
 - [Recourse Directorate](#)
 - [Trade Appeals and Litigation Division](#)
 - [Trade Appeals, Processing and Policy Unit](#)

This is **Exhibit “B”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



A handwritten signature in black ink, appearing to read "Caroline Patricia Thelma Bradley". Below the signature, the text "A Commissioner for Taking Affidavits" is printed in a smaller, sans-serif font, followed by a checkmark symbol.

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

[Print page](#)[Previous page](#)

Natasha Alimohamed - Director General

Telephone : 613-797-7863

Email : Natasha.Alimohamed@cbsa-asfc.gc.ca

333 North River Road, Tower A, 11th Floor
Ottawa, Ontario K1A 0L8
Canada

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This is **Exhibit “C”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



A handwritten signature in black ink, appearing to read "Caroline Patricia Bradley". Below the signature, the text "A Commissioner for Taking Affidavits" is printed in a smaller, italicized font.

Caroline Patricia Thelma Bradley, a Commissioner, etc.,

Province of Ontario for the Government of Canada,

Department of Justice.

Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du

Canada, ministère de la Justice.

Date d'expiration : le 10 mars, 2025.



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Person Information

Doug Band - Director General



Telephone : 613-295-5992

Email : Doug.Band@cbsa-asfc.gc.ca

300 Laurier Avenue West, 21st Floor
Ottawa, Ontario K1A 0L8
Canada

Organizations

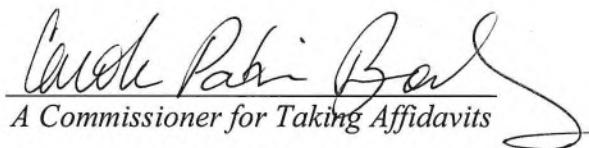
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Date modified:

2020-10-10

This is **Exhibit “D”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Thelma Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
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Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.



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(1) Smith (2) Smith, John (3) John Smith (4) 613-999-0101 (5) "Da Vinci" (6) minister

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LTravellers Branch**Date modified:**

2020-10-10



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Search in : Commercial and Trade Branch

Enter value to search for :

Examples

(1) Smith (2) Smith, John (3) John Smith (4) 613-999-0101 (5) "Da Vinci" (6) minister

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[CBSA Assessment and Revenue Management](#)

[Commercial Program Directorate](#)

[Trade and Anti-dumping Programs Directorate](#)

[Transformation, Planning and Projects](#)

Commercial and Trade Branch

People

1. Khan, Wasif; 343-543-3128; Senior Program Advisor;

Date modified:

2020-10-10



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Search in : Trade and Anti-dumping Programs Directorate

Enter value to search for :

Examples

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[Anti-dumping & Countervailing Investigations](#)

[Policy Integration, Planning and Performance](#)

[Regulatory and Trade Programs](#)

[Trade Compliance Division](#)

[Trade Policy Division](#)

Date modified:

2020-10-10



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Search in : Finance and Corporate Management Branch

Enter value to search for :

Examples

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[Transformation and Border Infrastructure Renewal](#)

| Transformation and Innovation Directorate
| Transformation and Oversight Directorate

Date modified:

2020-10-10



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Search in : Recourse Directorate

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Examples

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[Public Complaints and External Review Division](#)

[Trade Appeals and Litigation Division](#)

Date modified:

2020-10-10

This is **Exhibit “E”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



Caroline Patricia Thelma Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

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

AGCA0022_0002

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

AGCA0022_0003

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 “F”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



A handwritten signature in black ink, appearing to read "Caroline Patricia Bradley". Below the signature, the text "A Commissioner for Taking Affidavits" is printed in a smaller, italicized font.

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

FW: Meeting on CBSA tariff application

From: "Nault, Lauren" <lauren.nault@cbsa-asfc.gc.ca>
To: "Bartlett, Kelly" <kelly.bartlett@cbsa-asfc.gc.ca>
Cc: "Mondy, Yannick" <yannick.mondy@cbsa-asfc.gc.ca>, "Burnett, Calixte" <calixte.burnett@cbsa-asfc.gc.ca>, "Johnston, Genevieve" <genevieve.johnston@cbsa-asfc.gc.ca>
Date: Wed, 27 Jun 2018 16:44:05 +0000
Attachments: VP Notes on Issue Sheet.pdf (39.29 kB)

Hey Kelly,

Yannick asked me to send this your way since she is headed to the 4 corners debrief. I realize the meeting already took place yesterday but I guess they are expecting the issue sheet to still have the edits they are asking for.

Lauren

From: Blanchard, NathalieX
Sent: June 27, 2018 12:30 PM
To: Nault, Lauren ; CBSA-ASFC-DIST-HQ_PRG_VPO_AVPO_STAFF
Cc: Johnston, Genevieve ; Burnett, Calixte ; Carruthers, Tanya
Subject: RE: Meeting on CBSA tariff application
Please make the changes and send us a new version by 1:30
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 26, 2018 3:48 PM
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>; Burnett, Calixte <Calixte.Burnett@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Subject: RE: Meeting on CBSA tariff application
Hello,
Please find attached the updated issue sheet. Please let us know if you require anything further.

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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>

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 services 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

AGCA0014_0003

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 “G”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



Caroline Patricia Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

RE: Meeting on CBSA tariff application

From: "Bartlett, Kelly" <kelly.bartlett@cbsa-asfc.gc.ca>
To: "Nault, Lauren" <lauren.nault@cbsa-asfc.gc.ca>, "Band, Doug" <doug.band@cbsa-asfc.gc.ca>, "Mondy, Yannick" <yannick.mondy@cbsa-asfc.gc.ca>
Cc: "Johnston, Genevieve" <genevieve.johnston@cbsa-asfc.gc.ca>, "Burnett, Calixte" <calixte.burnett@cbsa-asfc.gc.ca>
Date: Wed, 27 Jun 2018 19:32:41 +0000
Attachments: Final Issue Sheet Sumitomo Canada Ltd. railway wheel blanks (002).doc (119.81 kB); VP Notes on Issue Sheet.pdf (39.29 kB)

Good Afternoon

Please find attached the updated Issue sheet with changes requested, I have included the PDF from VPO for reference.

I confirmed with Regional manager that the interim report was sent on June 26th and was received today, June 27th.

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*

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From: Nault, Lauren
Sent: June 27, 2018 1:52 PM
To: Band, Doug ; Mondy, Yannick
Cc: Bartlett, Kelly ; Johnston, Genevieve ; Burnett, Calixte
Subject: FW: Meeting on CBSA tariff application

Hey, VPO is asking if we are making the changes to the issue sheet for yesterday's meeting.
Please let me know what you guys decided. Thanks!

Lauren

From: Chaudhari, Saher
Sent: June 27, 2018 1:51 PM
To: Blanchard, NathalieX <NathalieX.Blanchard@cbsa-asfc.gc.ca>; 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: Burnett, Calixte <Calixte.Burnett@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Subject: RE: Meeting on CBSA tariff application

Hello,
Can you please provide VPO with your ETA?

Thanks
Saher

From: Blanchard, NathalieX
Sent: June 27, 2018 12:30 PM
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>; Burnett, Calixte <Calixte.Burnett@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
Subject: RE: Meeting on CBSA tariff application
Please make the changes and send us a new version by 1:30
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Agence des services frontaliers du Canada
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Cc: Johnston, Genevieve <Genevieve.Johnston@cbsa-asfc.gc.ca>; Burnett, Calixte <Calixte.Burnett@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>
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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>
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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>

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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

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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

AGCA0017_0003

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>

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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

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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 Ronesco Inc, which is Canada's largest supplier of products and services to the rail, mining and transit industries in Canada. Ronesco has over 100 employees and is planning an expansion into Western Canada in 2019 for a potential 100 new jobs.

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

AGCA0017_0004

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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AGCA0017_0005

This is **Exhibit “H”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



Caroline Patricia Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

Rosco

From: "Mondy, Yannick" <yannick.mondy@cbsa-asfc.gc.ca>
To: "Carruthers, Tanya" <tanya.carruthers@cbsa-asfc.gc.ca>
Date: Wed, 08 Aug 2018 20:40:25 +0000

Tanya,

Using the e-mail chain to make it easier for you to fill the blanks:

On June/May, TAPD DGO received a request to participate in a meeting with representatives of Rosco Inc. to discuss concerns regarding recent notification from the CBSA that tariffs classification for their imports of rough wheels was subject to a 9.5% tariff. The company noted in its meeting request that this tariff put them at a disadvantage with U.S. competitors who access offshore imports for this same good duty free. A request for briefing material was subsequently sent to the Trade Policy Division for this meeting.

The tasking was assigned to Kelly Bartlett in the Tariffs Classification Unit. Kelly consulted with XX in the compliance division on this note. Given ongoing verification of Sumitomo Canada Inc. relating to rough wheels, the note was drafted on the basis of this other ongoing case by mistake. The note was reviewed by colleagues in the compliance division, her manager, director, DGO and discussed with the DG; however while the note was reviewed based on comments from the director and DG and updates on verification provided by the Compliance Unit, the discrepancy between the file and the company seeking the meeting appears to have been missed.

The key difference between Rosco and Sumitomo is that the later company held an Advanced Ruling from 2005, which provided Sumitomo a binding interpretation that the rough wheels it imported were classified as duty free; however the ongoing verification process had determined that the imports were not properly classified and a process was underway to change the classification of Sumitomo Canada's imports. Rosco did not rely on any Advance Ruling and as such, under normal circumstances would be expected to pay tariffs owed...to be completed by compliance group

At the meeting, and based on the advice developed on the basis of the Sumitomo Canada verification case, the company was informed that the CBSA would only apply the tariff classification on a go forward basis. To be completed by Doug

From: Mondy, Yannick
Sent: August 7, 2018 2:02 PM
To: Bartlett, Kelly ; Tebbutt, Grant
Cc: Carruthers, Tanya

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

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

FW: Draft BN - Ronsco for EVP.docx - comments due by 9 am - Friday August 10

From: "Mondy, Yannick" <yannick.mondy@cbsa-asfc.gc.ca>
To: "Bartlett, Kelly" <kelly.bartlett@cbsa-asfc.gc.ca>
Cc: "Tebbutt, Grant" <grant.tebbutt@cbsa-asfc.gc.ca>
Date: Mon, 13 Aug 2018 17:50:44 +0000

Just keeping you looped in.

From: Fryer, Stephen
Sent: August 13, 2018 12:32 PM
To: Trudel, Eric
Cc: Tebbutt, Grant ; Mondy, Yannick ; Hickey, Sandra ; Brousseau-Pouliot, Gabriel
Subject: RE: Draft BN - Ronsco for EVP.docx - comments due by 9 am - Friday August 10
HI Eric.

I just read 59 (1) (b) as a legislative authority to make the changes. I think the issue again is that it refers to re-determining the tariff class, value, origin or marking of the goods and that's not in dispute here.

Looks like this is a question of policy and whether you want to make the changes to bring the audit into compliance with the policy.

Stephen Fryer
Director of Trade Appeals and Litigation, Corporate Affairs Branch
Canada Border Services Agency / Government of Canada
stephen.fryer@cbsa-asfc.gc.ca / Tel: 343-291-7198 / TTY: 866-335-3237
Directeur des appels commerciaux et litiges, Direction générale des services intégrés
Agence des services frontaliers du Canada / Gouvernement du Canada
stephen.fryer@cbsa-asfc.gc.ca / Tél. : 343-291-7198 / ATS : 866-335-3237

From: Fryer, Stephen
Sent: August 13, 2018 11:26 AM
To: Trudel, Eric <Eric.Trudel@cbsa-asfc.gc.ca>
Cc: Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>; Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>; Hickey, Sandra <Sandra.Hickey@cbsa-asfc.gc.ca>; Brousseau-Pouliot, Gabriel <Gabriel.Brousseau-Pouliot@cbsa-asfc.gc.ca>
Subject: RE: Draft BN - Ronsco for EVP.docx - comments due by 9 am - Friday August 10
HI Eric.

Section 60 only allows the President (RD) to re-determine the tariff class, value, origin or marking of the goods. There are no provisions in legislation to review the assessment period established by your policy. As a result, our Trade Appeals Officers should not be entertaining arguments at all related to the length of the assessment period.

Stephen Fryer
Director of Trade Appeals and Litigation, Corporate Affairs Branch
Canada Border Services Agency / Government of Canada
stephen.fryer@cbsa-asfc.gc.ca / Tel: 343-291-7198 / TTY: 866-335-3237
Directeur des appels commerciaux et litiges, Direction générale des services intégrés
Agence des services frontaliers du Canada / Gouvernement du Canada
stephen.fryer@cbsa-asfc.gc.ca / Tél. : 343-291-7198 / ATS : 866-335-3237

From: Trudel, Eric
Sent: August 13, 2018 10:43 AM
To: Fryer, Stephen <Stephen.Fryer@cbsa-asfc.gc.ca>
Cc: Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>; Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>; Hickey, Sandra <Sandra.Hickey@cbsa-asfc.gc.ca>; Brousseau-Pouliot, Gabriel

<Gabriel.Brousseau-Pouliot@cbsa-asfc.gc.ca>

Subject: RE: Draft BN - Ronsco for EVP.docx - comments due by 9 am - Friday August 10

Hi Stephen,

The Ronsco inc. saga seemingly never ends. We have one (hopefully the last) thing to run by legal before formulating our final recommendation to address this case. On Friday, as we were assessing the impact of our conclusion that Ronsco did not have reason to believe (RTB) for the tariff classification errors noted as part of the verification, and we noted that the reassessment period was still quite lengthy (going back to January 1st 2015) covering about 3 ½ 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 verification are as follows:

The verification period, in most instances, will be the client's last completed business fiscal year for Verification Priority Cases. There may be instances, due to the nature of the goods, or the threat to safety and/or security, when the client's previous business fiscal year will be selected as the verification period. Discussion with the Manager – Verification Unit of the Trade and Anti-dumping Programs Directorate at Headquarters (HQ) is required if a previous business fiscal is being considered. For Random Tariff Classification verification cases the verification period will be an identified calendar year.

Essentially, Ronsco's reassessment period (without RTB) is quite long because the officer did not select the appropriate verification period. In July 2017, the importer's last completed business fiscal year would have been January-December 2016, and not 2015 as established for the audit.

We are asking how Recourse would consider this fact (that the verification period may not have been set as per our guidelines) when addressing a subsequent appeal by the importer.

If you require further clarifications, please feel free to reach out to me.

Thanks,

Eric

From: Fryer, Stephen

Sent: August 9, 2018 6:21 PM

To: Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>

Cc: Arès, Sébastien <Sebastien.Ares@cbsa-asfc.gc.ca>; Watkinson, Julie <Julie.Watkinson@cbsa-asfc.gc.ca>; Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>; Band, Doug <Doug.Band@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>; Lalande, Martin <Martin.Lalande@cbsa-asfc.gc.ca>; Trudel, Eric <Eric.Trudel@cbsa-asfc.gc.ca>; Alimohamed, Natasha <Natasha.Alimohamed@cbsa-asfc.gc.ca>

Subject: FW: Draft BN - Ronsco for EVP.docx - comments due by 9 am - Friday August 10

Importance: High

(1) Solicitor- Client Privilege



(1) Solicitor- Client Privilege



Feel free to give me a call should you wish to discuss directly.

Stephen Fryer

Director of Trade Appeals and Litigation, Corporate Affairs Branch

Canada Border Services Agency / Government of Canada

stephen.fryer@cbsa-asfc.gc.ca / Tel: 343-291-7198 / TTY: 866-335-3237

Directeur des appels commerciaux et litiges, Direction générale des services intégrés

Agence des services frontaliers du Canada / Gouvernement du Canada

stephen.fryer@cbsa-asfc.gc.ca / Tél. : 343-291-7198 / ATS : 866-335-3237

From: Mondy, Yannick

Sent: August 9, 2018 4:47 PM

To: Fryer, Stephen <Stephen.Fryer@cbsa-asfc.gc.ca>; Arès, Sébastien <Sebastien.Ares@cbsa-asfc.gc.ca>; Watkinson, Julie <Julie.Watkinson@cbsa-asfc.gc.ca>

Cc: Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>; Band, Doug <Doug.Band@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>; Lalande, Martin <Martin.Lalande@cbsa-asfc.gc.ca>; Trudel, Eric <Eric.Trudel@cbsa-asfc.gc.ca>

Subject: Draft BN - Ronsco for EVP.docx - comments due by 9 am - Friday August 10

Importance: High

(1) Solicitor- Client Privilege



Thanks in advance

Yannick Mondy

Director / Directrice

Trade Policy Division / Division de la politique commerciale

Trade 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

Yannick.Mondy@cbsa-asfc.gc.ca

Tel: (613) 941-4459 Cell: (613) 617-3606

This is **Exhibit “J”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

FW: Ronso Inc. - Case No. C-2016-011118

From: dion, Béatrice <beatrice.dion@cbsa-asfc.gc.ca>
To: "Bartlett, Kelly" <kelly.bartlett@cbsa-asfc.gc.ca>, "Brousseau-Pouliot, Gabriel"
<gabriel.brousseau-pouliot@cbsa-asfc.gc.ca>
Cc: "Mondy, Yannick" <yannick.mondy@cbsa-asfc.gc.ca>
Date: Fri, 17 Aug 2018 15:25:50 +0000
Attachments: Unnamed Attachment (68 bytes); Letter from P Clark to CBSA dated 25 May 2018 (no attach) -incl index.pdf (2.29 MB)

Hello Kelly,

I am sending this directly to you in Yannick's absence.

Doug is currently dealing with the Ronsco file and would like to provide them a final response on Tuesday. He received the attached letter from the representative that had been provided to the verification officer following the issuance of the interim report. I also attached the follow-up summary with the officer's rationale for taking the representations into consideration or not. Can you please advise whether there are valid elements that were not taken into consideration by the officer that may have changed the tariff class or reason to believe?

Also, there is a reference to CITT decisions. Doug would like to have some insight on what those decisions refer to and if they are in fact valid arguments in this context.

Gabriel – please take a look from the verification process perspective.

A response by EOD Monday, **August 20** would be much appreciated.

Thanks!

Béatrice Dion

From: Dion, Béatrice
Sent: August 16, 2018 3:32 PM
To: Band, Doug
Subject: RE: Ronso Inc. - Case No. C-2016-011118

Thanks Doug,

Attached is the representation summary prepared by the officer which explains the rationale for taking the company's representations into account or not. Below is the excerpt from the final report:

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.

Béatrice Dion

From: Band, Doug
Sent: August 16, 2018 3:17 PM
To: Dion, Béatrice <Beatrice.Dion@cbsa-asfc.gc.ca>
Subject: FW: Ronso Inc. - Case No. C-2016-011118

Pls review the letter and when we get them the supporting docs...I will be doing the same!

From: Peter Clark [jpclark@greyclark.com]
Sent: August 16, 2018 3:08 PM
To: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>

Cc: Richard Mahoney <richard.mahoney@mcmillan.ca>; Don Regan <dgregan@ronsco.com>
Subject: Ronso Inc. - Case No. C-2016-011118

Dear Mr. Band,

Attached is an electronic version of Ronsco's submission in Case # C-2016-011118. The electronic version of supporting documents is enroute by courier.

Please note we argued that the goods at issue were parts of wheels or, in the alternative, parts of bogies. Our analysis was based in part on the Supreme Court decision in *Canada (AG) v Igloo Vikski Inc.*, 2016 SCC 38.

Our arguments were not addressed in the CBSA's Final report of July 24, 2018.

Please let me know if you need any clarifications.

Yours truly,

Peter Clark

Peter Clark

Grey, Clark, Shih and Associates, Limited

571 Blair Road

Ottawa, ON K1J 7M3

Tel: 613.238.7743

Cell: 613.799.7745

Fax: 613.238.0368

jpclark@greyclark.com

www.greyclark.com

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

Sent: May 25, 2018 2:59 PM

To: Lucie Gagné (lucie.gagne@cbsa-asfc.gc.ca)

Subject: Response from Ronso Inc. - Case No. C-2016-011118

CONFIDENTIAL

Dear Mme Gagné,

As discussed, attached is the cover letter of Ronsco Inc.'s response to CBSA's interim report.

For your convenience, the hard copy you will receive by courier on Monday will include a USB containing what we tried to send to you by e-mail/WeTransfer link.

Please note, there is also a USB included as/at Tab F in the response.

Best regards,

Peter Clark

Peter Clark

Grey, Clark, Shih and Associates, Limited

571 Blair Road

Ottawa, ON K1J 7M3

Tel: 613.238.7743

Cell: 613.799.7745

Fax: 613.238.0368

jpclark@greyclark.com

www.greyclark.com

From: WeTransfer [<mailto:noreply@wetransfer.com>]

Sent: May 25, 2018 1:39 PM

To: jpclark@greyclark.com

Subject: Your files were sent successfully to lucie.gagne@cbsa-asfc.gc.ca

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This is **Exhibit “K”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Thelma Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

FW: Ronso Inc. - Case No. C-2016-011118

From: "Bartlett, Kelly" <kelly.bartlett@cbsa-asfc.gc.ca>
To: "Pundyk, Sara" <sara.pundyk@cbsa-asfc.gc.ca>, "Barrios, Emerson" <emerson.barrios@cbsa-asfc.gc.ca>
Date: Fri, 17 Aug 2018 15:32:42 +0000
Attachments: A 040 - Sommaire des representations_329,928_104621065RM0001_F.docx (20.94 kB); Letter from P Clark to CBSA dated 25 May 2018 (no attach) -incl index.pdf (2.29 MB)

Good Morning ;)

Busy day for you two! This is the wheel blanks situation. Can you please review the attached and see below from Béatrice regarding how Igloo Viski possibly applies.

Another one for Monday morning please.

Thank you.

Kelly Bartlett

Acting Manager| Gestionnaire intérimaire

Tariff Policy Unit "A" | Unité de Politique tarifaire "A"

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: Dion, Béatrice

Sent: August 17, 2018 11:26 AM

To: Bartlett, Kelly ; Brousseau-Pouliot, Gabriel

Cc: Mondy, Yannick

Subject: FW: Ronso Inc. - Case No. C-2016-011118

Hello Kelly,

I am sending this directly to you in Yannick's absence.

Doug is currently dealing with the Ronso file and would like to provide them a final response on Tuesday. He received the attached letter from the representative that had been provided to the verification officer following the issuance of the interim report. I also attached the follow-up summary with the officer's rationale for taking the representations into consideration or not. Can you please advise whether there are valid elements that were not taken into consideration by the officer that may have changed the tariff class or reason to believe?

Also, there is a reference to CITT decisions. Doug would like to have some insight on what those decisions refer to and if they are in fact valid arguments in this context.

Gabriel – please take a look from the verification process perspective.

A response by EOD Monday, **August 20** would be much appreciated.

Thanks!

Béatrice Dion

From: Dion, Béatrice

Sent: August 16, 2018 3:32 PM

To: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>

Subject: RE: Ronso Inc. - Case No. C-2016-011118

Thanks Doug,

Attached is the representation summary prepared by the officer which explains the rationale for taking the company's representations into account or not. Below is the excerpt from the final report:

This report reflects the comments received from Ronso 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.

Béatrice Dion

From: Band, Doug

Sent: August 16, 2018 3:17 PM

To: Dion, Béatrice <Beatrice.Dion@cbsa-asfc.gc.ca>

Subject: FW: Ronso Inc. - Case No. C-2016-011118

Pls review the letter and when we get them the supporting docs...I will be doing the same!

From: Peter Clark [jpclark@greyclark.com]

Sent: August 16, 2018 3:08 PM

To: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>

Cc: Richard Mahoney <richard.mahoney@mcmillan.ca>; Don Regan <dgregan@ronesco.com>

Subject: Ronso Inc. - Case No. C-2016-011118

Dear Mr. Band,

Attached is an electronic version of Ronso's submission in Case # C-2016-011118. The electronic version of supporting documents is enroute by courier.

Please note we argued that the goods at issue were parts of wheels or, in the alternative, parts of bogies. Our analysis was based in part on the Supreme Court decision in *Canada (AG) v Igloo Vikski Inc.*, 2016 SCC 38.

Our arguments were not addressed in the CBSA's Final report of July 24, 2018.

Please let me know if you need any clarifications.

Yours truly,

Peter Clark

Peter Clark

Grey, Clark, Shih and Associates, Limited

571 Blair Road

Ottawa, ON K1J 7M3

Tel: 613.238.7743

Cell: 613.799.7745

Fax: 613.238.0368

jpclark@greyclark.com

www.greyclark.com

From: Peter Clark [jpclark@greyclark.com]

Sent: May 25, 2018 2:59 PM

To: Lucie Gagné (lucie.gagne@cbsa-asfc.gc.ca)

Subject: Response from Ronso Inc. - Case No. C-2016-011118

CONFIDENTIAL

Dear Mme Gagné,

As discussed, attached is the cover letter of Ronso Inc.'s response to CBSA's interim report.

AGCA0069_0002

For your convenience, the hard copy you will receive by courier on Monday will include a USB containing what we tried to send to you by e-mail/WeTransfer link.

Please note, there is also a USB included as/at Tab F in the response.

Best regards,

Peter Clark

Peter Clark

Grey, Clark, Shih and Associates, Limited

571 Blair Road

Ottawa, ON K1J 7M3

Tel: 613.238.7743

Cell: 613.799.7745

Fax: 613.238.0368

jpclark@greyclark.com

www.greyclark.com

From: WeTransfer [mailto:noreply@wetransfer.com]

Sent: May 25, 2018 1:39 PM

To: jpclark@greyclark.com

Subject: Your files were sent successfully to lucie.gagne@cbsa-asfc.gc.ca

Files sent to

lucie.gagne@cbsa-asfc.gc.ca

1 file, 105 MB in total • Will be deleted on 1 June, 2018

Thanks for using WeTransfer. We'll email you a confirmation as soon as your files have been downloaded.

Recipients

lucie.gagne@cbsa-asfc.gc.ca

Download link

<https://we.tl/WnJqyW6pQI>

1 file

Response of Ronsco Inc to CBSA dated 25 May 2018-.pdf

Message

Dear Ms. Gagne,

Attached is Ronsco's response to your interim report in Case No. C-2016-011118. It is password protected. We will send you the password on a separate e-mail.

We will be sending you a hard copy by courier which should arrive by Monday.

Please confirm receipt of the submission.

Best regards,

Peter Clark
Grey, Clark, Shih and Associates, Limited
(613-238-7743)
jpc Clark@greyclark.com

To make sure our emails arrive, please add noreply@wetransfer.com to [your contacts](#).

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[About WeTransfer](#) · [Help](#) · [Legal](#) · [Report this transfer as spam](#)

AGCA0069_0004

This is **Exhibit “L”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

FW: Ronso Inc. -

From: "Johnston, Genevieve" <genevieve.johnston@cbsa-asfc.gc.ca>
To: "Doucette, Katherine" <katherine.doucette@cbsa-asfc.gc.ca>
Date: Tue, 19 Jan 2021 14:35:14 +0000
Attachments: image003.jpg (823 bytes)

From: Band, Doug
Sent: October 26, 2020 10:59 AM
To: Laflamme, Edith
Cc: Doucette, Katherine ; Johnston, Genevieve
Subject: FW: Ronso Inc. -
Further info ..

From: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>
Sent: August 21, 2018 12:34 PM
To: Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>; Dion, Béatrice <Beatrice.Dion@cbsa-asfc.gc.ca>; Clifford, Kurtis <Kurtis.Clifford@cbsa-asfc.gc.ca>; Tebbutt, Grant <Grant.Tebbutt@cbsa-asfc.gc.ca>; Trudel, Eric <Eric.Trudel@cbsa-asfc.gc.ca>
Cc: Kalynuik, Karlie <Karlie.Kalynuik@cbsa-asfc.gc.ca>; Eves, David <David.Eves@cbsa-asfc.gc.ca>; Carruthers, Tanya <Tanya.Carruthers@cbsa-asfc.gc.ca>; Johnston, Genevieve <Genevieve.Johnston@cbsa-asfc.gc.ca>
Subject: FW: Ronso Inc. -

Hello everyone. Firstly, thank you all for your expertise and professionalism in helping me to follow up with concerns raised by the company in relation to the recently concluded verification of Ronsco Inc - Case No. C-2016-011118.

For your files, please note that I have concluded my own review of the material submitted last week by the company (information that was also provided to the SOTC during the course of the audit) and am satisfied that the classification decision reached and reflected in the final audit report is the appropriate one.

The wording of the final audit report issued will not be adjusted.

Kurtis – the DAS can be issued tomorrow. I will notify the company's representative (Mr. Mahoney) today.

Again, thanks everyone for your efforts in this matter.

Doug Band

From: Bartlett, Kelly <Kelly.Bartlett@cbsa-asfc.gc.ca>
Sent: Monday, August 20, 2018 3:43 PM
To: Dion, Béatrice; Brousseau-Pouliot, Gabriel
Cc: Mondy, Yannick; Lalande, Martin
Subject: RE: Ronso Inc. - Case No. C-2016-011118

Good Afternoon Béatrice;

I had the Senior Program Advisor responsible for CH. 86 review the documentation provided. This is the response:

I read the lawyer's submission and I reviewed the information that was sent by the client / lawyer to the SOTC after receiving the interim letter.

I believe that the SOTC was correct in maintaining her position, classifying the wheels (not blanks) under 8607.19.29.00 as Wheels, whether or not fitted with axles: Other.

Heading 86.07 provides for "parts of railway or tramway locomotives or rolling-stock."

The Igloo Vikski Supreme Court Case was referenced citing from the case that the GIR 2 is not applicable where a heading "specifically describes the unfinished good or composite goods as such" as "the heading specifically contemplates the incomplete or composite nature of

the good in question". Following this rationale, the lawyer accepts that the wheels at issue cannot be considered wheel blanks of 8607.19.21 in accordance with GIR 2(a).

As a result, the following argument for an alternative classification appears in the letter...

So, FYI information on the alternative arguments presented in the client's letter:

1) Client determination that the correct tariff item classification is under 8607.19.30 as "Parts of axles or wheels":

The lawyer is now arguing that the wheels are not finished wheels but parts of wheels due to the fact that after they are imported and still have to slightly increase the bore size depending on the type of axle that is requested by a client. As such, this makes the good a part of a wheel and not a finished wheel. In this regard, the wheel cannot perform the normal function of a wheel.

Again, because the wheel isn't quite capable of being fitted to an axle due to minor precision machining, to adjust the bore hole, the argument is for classification under 8607.19.30 in accordance with GIR 1.

We still maintain that the wheel is not a part, having the complete characteristic of the finished good at the time of importation and is appropriately classified under 8607.19.29.00. The legal note 2(a) to Chapter 86 provides examples of what is considered to be parts of wheels:

2.- Heading 86.07 applies, inter alia, to:

(a) Axles, wheels, wheel sets (running gear), **metal tyres, hoops and hubs and other parts of wheels; (emphasis added)**

Item (3) in the EN to heading 86.07 lists wheels and parts of wheels:

(3) Wheels and parts thereof (**wheel centres, metal tyres, etc.**).

Kelly Bartlett

Acting Manager | Gestionnaire intérimaire

Tariff Policy Unit "A" | Unité de Politique tarifaire "A"

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

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From: Dion, Béatrice

Sent: August 17, 2018 11:26 AM

To: Bartlett, Kelly <Kelly.Bartlett@cbsa-asfc.gc.ca>; Brousseau-Pouliot, Gabriel <Gabriel.Brousseau-Pouliot@cbsa-asfc.gc.ca>

Cc: Mondy, Yannick <Yannick.Mondy@cbsa-asfc.gc.ca>

Subject: FW: Ronso Inc. - Case No. C-2016-011118

Hello Kelly,

I am sending this directly to you in Yannick's absence.

Doug is currently dealing with the Ronso file and would like to provide them a final response on Tuesday. He received the attached letter from the representative that had been provided to the verification officer following the issuance of the interim report. I also attached the follow-up summary with the officer's rationale for taking the representations into consideration or not. Can you please advise whether there are valid elements that were not

taken into consideration by the officer that may have changed the tariff class or reason to believe?

Also, there is a reference to CITT decisions. Doug would like to have some insight on what those decisions refer to and if they are in fact valid arguments in this context.

Gabriel – please take a look from the verification process perspective.

A response by EOD Monday, **August 20** would be much appreciated.

Thanks!

Béatrice Dion

From: Dion, Béatrice

Sent: August 16, 2018 3:32 PM

To: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>

Subject: RE: Ronso Inc. - Case No. C-2016-011118

Thanks Doug,

Attached is the representation summary prepared by the officer which explains the rationale for taking the company's representations into account or not. Below is the excerpt from the final report:

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.

Béatrice Dion

From: Band, Doug

Sent: August 16, 2018 3:17 PM

To: Dion, Béatrice <Beatrice.Dion@cbsa-asfc.gc.ca>

Subject: FW: Ronso Inc. - Case No. C-2016-011118

Pls review the letter and when we get them the supporting docs...I will be doing the same!

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

Sent: August 16, 2018 3:08 PM

To: Band, Doug <Doug.Band@cbsa-asfc.gc.ca>

Cc: Richard Mahoney <richard.mahoney@mcmillan.ca>; Don Regan <dgregan@ronesco.com>

Subject: Ronso Inc. - Case No. C-2016-011118

Dear Mr. Band,

Attached is an electronic version of Ronsco's submission in Case # C-2016-011118. The electronic version of supporting documents is enroute by courier.

Please note we argued that the goods at issue were parts of wheels or, in the alternative, parts of bogies. Our analysis was based in part on the Supreme Court decision in *Canada (AG) v Igloo Vikski Inc.*, 2016 SCC 38.

Our arguments were not addressed in the CBSA's Final report of July 24, 2018.

Please let me know if you need any clarifications.

Yours truly,

Peter Clark

Peter Clark

Grey, Clark, Shih and Associates, Limited

571 Blair Road

Ottawa, ON K1J 7M3

Tel: 613.238.7743

Cell: 613.799.7745

Fax: 613.238.0368

jpclark@greyclark.com

www.greyclark.com

From: Peter Clark [<mailto:jpclark@greyclark.com>]
Sent: May 25, 2018 2:59 PM
To: Lucie Gagné (lucie.gagne@cbsa-asfc.gc.ca)
Subject: Response from Ronso Inc. - Case No. C-2016-011118

CONFIDENTIAL

Dear Mme Gagné,

As discussed, attached is the cover letter of Ronsco Inc.'s response to CBSA's interim report. For your convenience, the hard copy you will receive by courier on Monday will include a USB containing what we tried to send to you by e-mail/WeTransfer link.

Please note, there is also a USB included as/at Tab F in the response.

Best regards,

Peter Clark

Peter Clark

Grey, Clark, Shih and Associates, Limited

571 Blair Road

Ottawa, ON K1J 7M3

Tel: 613.238.7743

Cell: 613.799.7745

Fax: 613.238.0368

jpclark@greyclark.com

www.greyclark.com

From: WeTransfer [<mailto:noreply@wetransfer.com>]

Sent: May 25, 2018 1:39 PM

To: jpclark@greyclark.com

Subject: Your files were sent successfully to lucie.gagne@cbsa-asfc.gc.ca

...

Files sent to
lucie.gagne@cbsa-asfc.gc.ca

1 file, 105 MB in total • Will be deleted on 1 June, 2018

Thanks for using WeTransfer. We'll email you a confirmation as soon as your files have been downloaded.

AGCA0185_0004

Recipients

lucie.gagne@cbsa-asfc.gc.ca

Download link

<https://we.tl/WnJqyW6pQI>

1 file

Response of Ronsco Inc to CBSA dated 25 May 2018-.pdf

Message

Dear Ms. Gagne,

Attached is Ronsco's response to your interim report in Case No. C-2016-011118. It is password protected. We will send you the password on a separate e-mail.

We will be sending you a hard copy by courier which should arrive by Monday.

Please confirm receipt of the submission.

Best regards,

Peter Clark
Grey, Clark, Shih and Associates, Limited
(613-238-7743)
jpclark@greyclark.com

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AGCA0185_0005

This is **Exhibit "M"** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

RE: Ronsco Inc. - Case No. C-2016-011118

From: "Bartlett, Kelly" <kelly.bartlett@cbsa-asfc.gc.ca>
To: "Hickey, Sandra" <sandra.hickey2@cra-arc.gc.ca>
Cc: "Pezoulas, Dino" <dino.pezoulas@cbsa-asfc.gc.ca>
Date: Tue, 09 Oct 2018 20:04:36 +0000

Hi Sandra

We would likely approve the request as long as there is a detailed rational as to why the extension should be granted.

Thanks.

Kelly Bartlett

*Acting Manager| Gestionnaire intérimaire
Tariff Policy Unit "A" | Unité de Politique tarifaire "A"
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*

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From: Hickey, Sandra
Sent: October 9, 2018 2:01 PM
To: Bartlett, Kelly
Subject: RE: Ronsco Inc. - Case No. C-2016-011118

Hi Kelly,

We just wanted to make sure that an extension will be allowed to the 90-day period to submit corrections even if passed 45 days as stated in the dmemo as the final report was issued end of July. Can you please let me know if you have any concerns or if you feels that it will not be possible.

Thanks!

Sandra

From: Bartlett, Kelly
Sent: October 3, 2018 3:38 PM
To: Hickey, Sandra <Sandra.Hickey@cbsa-asfc.gc.ca>
Subject: FW: Ronsco Inc. - Case No. C-2016-011118

Hi Sandra

See attached. We just fine-tuned the paragraph.

Kelly Bartlett

*Acting Manager| Gestionnaire intérimaire
Tariff Policy Unit "A" | Unité de Politique tarifaire "A"
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: Hickey, Sandra
Sent: October 3, 2018 2:34 PM
To: Bartlett, Kelly <Kelly.Bartlett@cbsa-asfc.gc.ca>; Jablonski, Bradley <Bradley.Jablonski@cbsa-asfc.gc.ca>
Subject: RE: Ronsco Inc. - Case No. C-2016-011118

Hello,

Please see the revised letter for your comments.

Kelly – Beatrice mentioned that you would be providing more information for the conditional relief portion.

Thanks!

Sandra Hickey, CPA
Senior Auditor, Programs Branch
Canada Border Services Agency / Government of Canada
Sandra.Hickey@cbsa-asfc.gc.ca / NEW Tel: 613-952-5272 / TTY: 866-335-3237
Vérificatrice principale, Direction générale des programmes
Agence des services frontaliers du Canada / Gouvernement du Canada
Sandra.Hickey@cbsa-asfc.gc.ca / NOUVEAU Tél: 613-952-5272 / ATS : 866-335-3237

From: Dion, Béatrice
Sent: October 3, 2018 12:53 PM
To: Clifford, Kurtis <Kurtis.Clifford@cbsa-asfc.gc.ca>
Cc: Flamand, Genevieve <Genevieve.Flamand@cbsa-asfc.gc.ca>; Hickey, Sandra <Sandra.Hickey@cbsa-asfc.gc.ca>; Bartlett, Kelly <Kelly.Bartlett@cbsa-asfc.gc.ca>; Jablonski, Bradley <Bradley.Jablonski@cbsa-asfc.gc.ca>
Subject: FW: Ronsco Inc. - Case No. C-2016-011118

Hello Kurtis and Geneviève,

I just had a discussion with Doug on this file and he suggested a few additions. Sandra will make the modifications and consult with TC Policy and TIU to confirm the input for their respective programs. I will advise as soon as it is approved.

Thanks !

Béatrice Dion

From: Clifford, Kurtis
Sent: September 27, 2018 12:11 PM
To: Dion, Béatrice <Beatrice.Dion@cbsa-asfc.gc.ca>
Cc: Flamand, Genevieve <Genevieve.Flamand@cbsa-asfc.gc.ca>
Subject: TR: Ronsco Inc. - Case No. C-2016-011118
Hello Béatrice,
I will let you stick handle this one. Do you know if Doug had a chance to reconnect with Ronsco folks?
Let us know if you have any issues with this response.
Thanks,
Kurtis

De : Flamand, Genevieve
Envoyé : September 26, 2018 2:14 PM
À : Clifford, Kurtis <Kurtis.Clifford@cbsa-asfc.gc.ca>; Dion, Béatrice <Beatrice.Dion@cbsa-asfc.gc.ca>; Trudel, Eric <Eric.Trudel@cbsa-asfc.gc.ca>

Cc : Gagné, Lucie <Lucie.Gagne@cbsa-asfc.gc.ca>

Objet : TR: Ronso Inc. - Case No. C-2016-011118

Bonjour,

Le 20 septembre dernier, Me Clark transmettait par courriel la lettre ci-jointe.

Étant donné que ce dossier de vérification de la conformité comporte des enjeux monétaires importants et que la haute direction a été interpellée, nous aimerions connaître votre avis sur l'ébauche de la réponse rédigée par Lucie Gagné. Nous voulons attirer votre attention sur quelques points :

- Demande de prolongation pour la présentation des corrections;
- Étendue des corrections à effectuer puisque que l'importateur voudrait corriger des importations de marchandises similaires. Compte tenu des enjeux, nous avons indiqué que les corrections doivent visées la classification tarifaire déterminée par la vérification de la conformité;
- Type de documents à présenter pour le traitement des droits d'importation sur des marchandises qui seront réexportées.

Nous vous remercions à l'avance pour votre appui. Bonne journée!

Geneviève Flamand

Gestionnaire, Division des opérations liées aux échanges commerciaux

Agence des services frontaliers du Canada / Gouvernement du Canada

genevieve.flamand@cbsa-asfc.gc.ca / Tél. : 418-648-3401 poste 2423 / ATS : 866-335-3237

Manager, Trade Operations Division

Canada Border Services Agency / Government of Canada

genevieve.flamand@cbsa-asfc.gc.ca / Tel: 418-648-3401 ext. 2423 / TTY: 866-335-3237

De : Gagné, Lucie

Envoyé : 26 septembre, 2018 13:04

À : Flamand, Genevieve <Genevieve.Flamand@cbsa-asfc.gc.ca>

Objet : TR: Ronso Inc. - Case No. C-2016-011118

Bonjour Geneviève,

Comme convenu lors de notre rencontre, voici un premier jet de lettre en réponse à la correspondance de M. Peter Clark. Je n'ai pas commenté la procédure à suivre lors du suivi de vérif lorsqu'une demande de drawback est fait en simultané puisque je ne connais pas la réponse. Il est peut-être possible de suspendre le traitement des B2 jusqu'au traitement de la demande de drawback mais je ne suis pas sûr, il faudrait valider.

Merci

Lucie

De : Peter Clark [<mailto:jpclark@greyclark.com>]

Envoyé : 20 septembre, 2018 6:08

À : Gagné, Lucie <Lucie.Gagne@cbsa-asfc.gc.ca>

Objet : Ronso Inc. - Case No. C-2016-011118

Dear Mme. Gagné,

Please see the attached confidential correspondence.

Best regards,

Peter Clark

Peter Clark

Grey, Clark, Shih and Associates, Limited

571 Blair Road

Ottawa, ON K1J 7M3

Tel: 613.238.7743

Cell: 613.799.7745

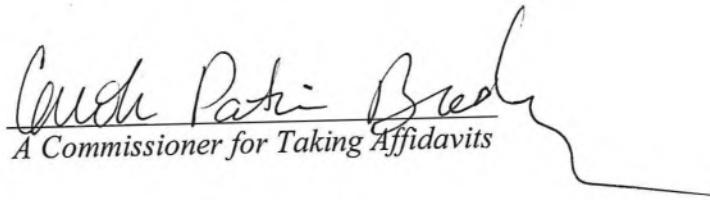
Fax: 613.238.0368

jpclark@greyclark.com

www.greyclark.com

This is **Exhibit “N”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.

NOTICE OF PENALTY ASSESSMENT

PROTECTED B when completed

Notice Date	Penalty Assessment Number	Penalty Amount	Office Code
2019-10-03	209442	\$1,000.00	0312

Client Customs Account Name/ Address
 RONSCO INC.
 75 RUE INDUSTRIELLE
 COTEAU-DU-LAC QC J0P 1B0

Legal Name
 RONSCO INC.

Client Identifier
 104621065RM0001

Penalty Amount
 \$1,000.00

Line Object Code
 49875

Reason for Penalty Assessment

Verification: C-2016-011118

Verification period: January 1, 2015 to December 31, 2015

The final letter sent on July 24, 2018

Reason to believe - Customs D-Memoranda D11-6-6, paragraph 1a). In regards to the provision of section 32.2 of the Customs Act, specific information regarding the tariff classification of the imported goods that gives an importer reason to believe that a declaration is incorrect can be found in legislative provisions that are *prima facie* (at first sight), evident (obvious, apparent) and transparent (clear, self-explanatory), such as specific tariff provision.

This Notice of Penalty Assessment (NPA) is calculated on a per issue basis given that the corrections were presented within the extension period. This is in reference to the Master Penalty Document. On 2019-01-02, the importer submitted 122 Self-Adjustments.

ISSUE #1 Classification determined: 8482.20.00.14
 Contravention C082

B3
 13003153110814 (2016-02-02) line #1

The merchandise was declared under classification number: 8607.19.50.30 / Duty Rate 0%
 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».

Based on the information collected the goods are tapered roller bearings.

It should be classified under 8482.20.00.14 / Duty Rate 0 %
 As « Roller bearing; Tapered roller bearings; with cups having an outside diameter exceeding 102 mm »

This is in accordance with the General Rule for the Interpretation 1 of the Harmonized System.

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Canada

Page 1 of 6
ORIGINAL

AGCA0201_0083

NOTICE OF PENALTY ASSESSMENT

PROTECTED B when completed

Notice Date 2019-10-03	Penalty Assessment Number 209442	Penalty Amount \$1,000.00	Office Code 0312
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ISSUE #2 Classification determined: 8607.19.29.00
Contravention C352

B3

13003172664734 (2015-05-15) line #1
13003172665074 (2015-05-25) line #1
13003704306035 (2015-08-26) line #1
13003704475201 (2015-10-23) line #1
13003705530245 (2015-11-23) line #1

The merchandise was declared under classification number: 8607.19.21.00 / Duty Rate 0%

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 : 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».

Based on the information collected the goods are H36 wide flange wheels for railway vehicles, not blanks.

It should be classified under 8607.19.29.00 / Duty Rate 9.5 %
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»

This is in accordance with the General Rules for the Interpretation 1 and 6 of the Harmonized System and Canadian Rule 1.

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Canada

Page 2 of 6
ORIGINAL

AGCA0201_0084

NOTICE OF PENALTY ASSESSMENT

PROTECTED B when completed

Notice Date 2019-10-03	Penalty Assessment Number 209442	Penalty Amount \$1,000.00	Office Code 0312
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1) Contravention C082

Contravention

Authorized person failed to make the required corrections to a declaration of tariff classification within 90 days after having reason to believe that the declaration was incorrect.

Legislative/Regulatory Authority

Customs Act 32.2(2)(a)

Penalty Calculation Information

Number of Issues or Occurrences: 1

Penalty Level: 1

Amount: \$500.00

This is the first assessment of this contravention during the retention period. You have been assessed at \$500 to a maximum of \$5,000 per issue or \$25,000 per occurrence.

Related Information

Primary Officer: Lucie Gagne

Document Type: Other

Document Number: C2016-011118

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Page 3 of 6

ORIGINAL

AGCA0201_0085

NOTICE OF PENALTY ASSESSMENT

PROTECTED BY WHEN COMPLETED

Notice Date 2019-10-03	Penalty Assessment Number 209442	Penalty Amount \$1,000.00	Office Code 0312
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2) Contravention C352

Contravention

Authorized person failed to pay duties as a result of required corrections to a declaration of tariff classification within 90 days after having reason to believe that the declaration was incorrect.

Legislative/Regulatory Authority

Customs Act 32.2(2)(b)

Penalty Calculation Information

Number of Issues or Occurrences:

1

Penalty Level:

1

Amount:

\$500.00

This is the first assessment of this contravention during the retention period. You have been assessed at \$500 to a maximum of \$5,000 per issue or \$25,000 per occurrence.

Related Information

Primary Officer: Lucie Gagne

Document Type: Other

Document Number: C-2018-011118

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Canada

Page 4 of 6

ORIGINAL

AGCA0201_0086

NOTICE OF PENALTY ASSESSMENT

PROTECTED B when completed

Notice Date 2019-10-03	Penalty Assessment Number 209442	Penalty Amount \$1,000.00	Office Code 0312
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Payment

Please remit the amount of \$1,000.00 Canadian, payable to the Receiver General for Canada. The CBSA will accept remittances in Canadian and/or United States (U.S.) currencies only. No other foreign currency shall be accepted.

The CBSA will accept payment in Canadian or U.S. currency in the form of cash, debit card, credit cards (up to a limit of CAN\$5,000), such as Visa, MasterCard and American Express, money orders, travellers cheques, and certified cheques.

Uncertified cheques will be accepted if a client has posted a security bond for "Acceptance of Uncertified Cheques" and in addition, if they are written in U.S. currency, CBSA will accept them in payment only if they are drawn on a Canadian financial institution and are printed and stamped with the notation "U.S. Dollar Account".

Your payment may be made by mail at the issuing office listed on the last page of this Notice of Penalty Assessment (NPA) or at any CBSA office, or in person at locations where a CBSA office is open to the public. A copy of this notice must accompany your payment. When the NPA is issued to a Business Number with RM account number, the payment can be made via online banking subject to the transaction limitations of your financial institution. Please note penalty payments must be applied to the account number to which the NPA was issued.

If you use the services of a customs broker, please ensure only one payment is made.

CSA Clients: Your payment may be made on the BSF645, CSA Remittance Voucher to a financial institution named in section 3.5 of the *Customs Act* and amounts must be included for transmission on the Revenue Summary Form. A copy of this notice must be retained for your records.

All clients have an obligation under section 109.4 of the *Customs Act* to pay in full the penalty assessment served upon them. If payment is not received within 30 days from the date of this notice, the amount will be subject to interest at the prescribed rate beginning the date following the date of this notice. For more information on the applicable rates of interest and the calculation of such interest, please refer to CBSA's website at:

<http://www.cbsa-asfc.gc.ca/tools-outils/cicp-pcid/menu-eng.html> Calculation of Interest Program and <http://www.cbsa-asfc.gc.ca/media/irt-tti-eng.html> Interest Rate Tables

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Canada

Page 5 of 6

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AGCA0201_0087

NOTICE OF PENALTY ASSESSMENT

PROTECTED B when completed

Notice Date 2019-10-03	Penalty Assessment Number 209442	Penalty Amount \$1,000.00	Office Code 0312
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Review of Enforcement Action
Correction

If you believe that the action taken was incorrect you may contact the issuing Canada Border Services Agency office within 90 days from the date on this notice (see below for address). Errors must be evident to both parties and would include, but are not limited to, errors in calculation, contravention type or amount of penalty. For more information on how to file a request for Correction, please refer to CBSA's website at:

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

Redress

The *Customs Act* provides an avenue of appeal to dispute an enforcement action taken. If you believe the penalty assessment has been applied inappropriately, you may request a decision of the Minister. The request must be submitted directly to the Recourse Directorate, Place Vanier Tower A, 333 North River Rd., 11th floor, Ottawa ON K1A0L8, within 90 days from the date of this Notice of Penalty Assessment. You can also request a review of a CBSA decision on line. Just go to E-Appeals for the electronic form relating to enforcement actions. For more information on how to file a request for Review or for an Appeal, please refer to CBSA's website at:

<http://www.cbsa-asfc.gc.ca/recourse-recours/howto-commentfaire-2-eng.html>

Penalty Reinvestment Agreement (PRA)

If you can demonstrate that the penalty assessment was the result of a systematic problem affecting your commercial information system or related processes and you are prepared to invest in corrective measures to remedy the problem, you may be eligible for a PRA. The request for a PRA must be submitted in writing to the Canada Border Services Agency (CBSA) Recourse Directorate, Place Vanier Tower A, 333 North River Rd., 11th floor, Ottawa ON K1A0L8, within 90 days from the date of this Notice of Penalty Assessment. An agreement to reinvest a full or partial penalty amount will only be granted under certain conditions and after the CBSA has verified that the corrective measures are effective in achieving compliance.

Issuing Office/ Address	Issuing Officer
1165-Compliance Verification - Quebec City 130 Dalhousie Quebec Quebec, Canada, G1K4C4 Phone: 418-6483401 Fax: 418-6483040	25367

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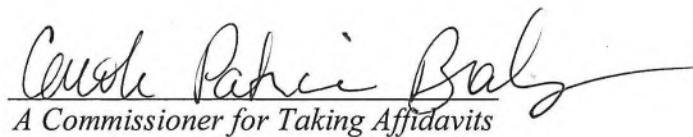
Page 6 of 6

ORIGINAL

AGCA0201_0088

This is **Exhibit "O"** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



A handwritten signature in black ink, appearing to read "Caroline Patricia Bradley". Below the signature, the text "A Commissioner for Taking Affidavits" is printed in a smaller, sans-serif font.

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.



Recourse Directorate
333 North River Rd, Tower A, 11th Floor
Ottawa, ON, K1A 0L8, Canada

REGISTERED

Ronsco Inc.
75 Industrielle St.
Coteau-du-Lac, QC
J0P 1B0
Attention: Donald G. Regan

September 15, 2020

Subject: Request for a Ministerial Decision - 20-00108

I am writing to inform you of the ministerial decision on the above-noted appeal.

I have reviewed the enforcement action, the evidence and the law as it applies to your case.

I have fully considered the information you provided as well as the reports from the issuing office.

Decision

After considering all of the circumstances, I have decided, under the provisions of section 131 of the *Customs Act*, there has been a contravention of the *Customs Act* or the Regulations with respect to the Notice served under section 109.3;

Under the provisions of section 133 of the *Customs Act*, the amount of **\$1,000.00** received shall be held as forfeit.

Reasons

Under section 109.1 (1) of the *Customs Act*, every person who fails to comply with any provision of the *Act* or a regulation designated by the regulations made under section (3) is liable to a penalty of not more than twenty-five thousand dollars, as the Minister may direct.

The issuance of the Notice of Penalty Assessment was justified as there been a violation under

C082 - Authorized person failed to make the required corrections to a declaration of tariff classification within 90 days after having reason to believe that the declaration was incorrect.

And

Canada

C352 - Authorized person failed to pay duties as a result of required corrections to a declaration of tariff classification within 90 days after having reason to believe that the declaration was incorrect.

You argue that there was no “reason to believe” that the declaration of the goods in issue¹ were incorrect as the legislative provisions regarding their tariff classification are *not prima facie*, evident and transparent. You provided arguments and documents to substantiate your position.

Infraction C082

The **Roller Bearings** were classified at the time of importation under tariff item 8607.19.50 as *Parts of railway or tramway locomotives or rolling-stock; Bogies, bissel-bogies (truck assemblies), axles and wheels, and parts thereof; Other including parts; Parts of bogies or bissel-bogies (truck assemblies)*.

The legislatives provisions in the *Customs Tariff* clearly demonstrate that these type of articles, in accordance with Note 2 (e) to Section XVII, are covered under heading 84.82 as *Ball or roller bearings*.

Infraction C352

The **H36 Wide Flange Wheels for Railway Vehicles** are train wheels imported with a rough-cut bore for use in freight cars. At the time of importation, your declared them under tariff item 8607.19.21 as:

Wheels, whether or not fitted with axles:

- *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.*

However, as these wheels are for use in freight cars, they are not provided under this tariff item as this provision evidently covers wheels that are use for a specific type of railway vehicle which does not include freight cars.

Our review concludes that there was “reason to believe” that the declared tariff classification of the goods at issue was incorrect as the legislatives provisions for the *Roller Bearings* and *H36 Wide Flange Wheels for Railway Vehicles* at issue are *prima facie*, evident and transparent.

Accordingly, the original amount as assessed is in accordance with Agency guidelines for infractions of this nature.

To appeal the decision made pursuant to section 131, you may file an action in the Federal Court, in accordance with section 135 of the *Customs Act*. You must file your action within **90 days** of the date of the mailing of this decision.

¹ *Roller Bearings and H36 Wide Flange Wheels for Railway Vehicles.*

To appeal the decision made pursuant to section 133, you may appeal this decision by way of an application for judicial review under section 18.1(1) of the *Federal Courts Act*. An application to the Court must normally be filed within **30 days** of the date of the mailing of this decision.

I trust that this letter satisfactorily explains the ministerial decision in this matter. If you have any questions, please contact the adjudicator, Cecilia Bonilla, at (514) 286-7879 ext. 5224.

Yours truly,



Tina Scatozza
Manager of Trade Appeals and Litigation Division

For

For the Minister of Public Safety
TS/ml

Attachment

c.c. Conway Baxter Wilson LLP/s.r.l.
400 - 411 Roosevelt Avenue
Ottawa, ON
K2A 3X9
Attn: David P. Taylor

AGCA0168_0003

INTERNAL COMMUNICATION ONLY

c.c. **Lucie Gagné**
Senior Officer Trade Compliance
Vérification de l'observation - Quebec city (1165)
130 Dalhousie Street
Quebec, Quebec G1K 4C4Trade Operations Division – Quebec

P.S. Please find attached a copy of the ministerial decision in the above-mentioned dispute. This action has been maintained.

Thank you for your assistance in this matter.

c.c. **Regional AMPS Committee**
Montreal Trade Operations Division

c.c. **File**

This is **Exhibit “P”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.



A handwritten signature in black ink, appearing to read "Caroline Patricia Bradley". Below the signature, the text "A Commissioner for Taking Affidavits" is printed in a smaller, sans-serif font.

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.



**Department of Justice
Canada**

**Ministère de la Justice
Canada**

National Litigation Sector
Civil Litigation Section
50 O'Connor Street, Room 539
Ottawa, Ontario
K1A 0H8

Telephone: (438) 871-7101
Fax: (613) 954-1920
Email: Charles.Maher@justice.gc.ca

May 5, 2023

Our File Number: LEX-500033945

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

Dear Mr. Trivisonno:

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

During examination for discovery of the Crown Representative on Wednesday May 3, 2023, Counsel for the Attorney General of Canada (AGC) took a number of requests for undertakings under advisement.

Upon receipt of the discovery transcript, we will promptly prepare and send you a table of all requests that were taken under advisement, and will indicate whether the Defendant undertakes to answer the request or refuses the request.

We would appreciate if you would similarly clarify your position with respect to questions which you took under advisement during the examination of the Plaintiff's Representative on Tuesday May 2, 2023 and Wednesday May 3, 2023.

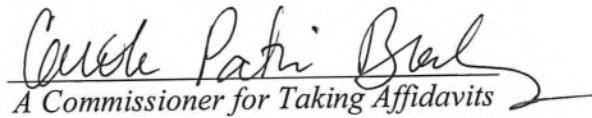
Yours truly,

Charles Maher
Counsel
/mr

Canada

This is **Exhibit “Q”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,
Department of Justice.
Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.
Date d'expiration : le 10 mars, 2025.



**Department of Justice
Canada**

National Litigation Sector |
NCR
50 O'Connor Street, Suite 500
Ottawa K1A 0E4

**Ministère de la Justice
Canada**

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

September 12, 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**

Further to the Examinations for Discovery of the Crown Representative, Kelly Bartlett, on May 3, 2023, please find the enclosed answers to undertakings. The enclosed chart provides 83 answers. There are additional undertakings on the chart which remain in progress, and we will provide you answers to those questions as soon as possible.

Several of the undertakings required AGC counsel to review the basis for certain privilege redactions. Some redactions have been revised. The documents from the Defendants' Affidavit of Documents, Schedule A, with revised redactions are: Tab 32 (AGCA0029); Tab 34 (AGCA0031); Tab 49 (AGCA0046); Tab 54 (AGCA0051); and Tab 206 (AGCA0204). We will send you copies of the revised versions of these documents by TitanFile transfer today. They will be formally produced in a further Affidavit of Documents at a later date.

Some of the undertakings that remain in progress involve requests for the production of documents. We are still in the process of searching for and collecting responsive documents. These documents will be reviewed and produced in a further Affidavit of Documents.

Several documents that were not previously produced are referred to in the narrative responses contained in the attached chart. Where possible, those documents will be sent to you by TitanFile today, and formally produced in a further Affidavit of Documents at a later date.

I am also attaching a chart setting out nine corrections to answers given by the Crown Representative during her examination on May 3, 2023, pursuant to subsection 245(1) of the *Federal Courts Rules*.

Yours sincerely,



Adrian Johnston
Counsel
Civil Litigation Section

Encls.

cc: Colin Baxter, Sean Grassie

This is **Exhibit “R”** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


Caroline Patricia Thelma Bradley
A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,

Department of Justice.

Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du

Canada, ministère de la Justice.

Date d'expiration : le 10 mars, 2025.

Ronsco Inc. v. HMTK, et al.
Undertakings Chart of Kelly Bartlett - Answers to Undertakings
Examination 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.	Martin Bolduc was the VP and Peter Hill was the Associate VP.
2.	26	103	To advise whose handwriting is found on the Exception Report found at p. 712 of the Defendants' Compendium.	This is the handwriting of Sean Whitehouse, Border Services Officer.
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.	<p>Sean Whitehouse, Border Services Officer, received and reviewed the exceptions report.</p> <p>Mr. Whitehouse was part of a pilot project whereby Border Services Officers were using an internal system to identify possible issues. The system is able to find transactions where the declaration in ACROSS is different from the accounting in CCS. Border Services Officers receive exceptions reports in ACROSS and identify discrepancies. In this particular case, Ronsco's transactions raised a potential red flag because the classification in ACROSS used for the purposes of getting the goods released into Canada carried a duty rate of 9.5%, whereas the classification in CCS used to account for the goods (calculate the duties and taxes owing) was duty-free.</p> <p>Mr. Whitehouse then filled out a report to flag the discrepancy. This was reviewed by a manager, Ali Mohammed.</p> <p>The report was then sent to Adrian Anger, the ICECAP officer, on August 30, 2016. Mr. Anger then created a risk</p>

No	Pg	QQ	Undertaking	Response
				<p>assessment, deeming that the issue warranted further analysis. He referred the matter to the Risk Management Unit (RMU) on August 31, 2016.</p> <p>On November 3, 2016, the RMU prepared the risking and created verification case C-2016-011118.</p>
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 Defendants' Compendium.	The word in the heading is "Originator"
5.	32	120	<p>To confirm if it was Sean Whitehouse and Ali Mohammed who reviewed the HS exceptions report, identified the discrepancy, and then took further actions.</p> <p>To advise who wrote the handwritten note which says 'Reviewed -- (illegible) -- August 30, 2016'.</p>	<p>Sean Whitehouse reviewed the HS Exceptions report. On the basis of the exceptions report, he created a report to flag the discrepancy. This was reviewed by a manager, Ali Mohammed.</p> <p>The handwritten note was written by Sean Whitehouse.</p>
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.	Sean Whitehouse spoke with Adrian Anger on August 30, 2016. Neither specifically recall the conversation. Based on their roles of the time, they believe that the call was to provide notice that this issue concerning Ronesco was being referred to ICECAP.
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.	Section B100 of the Verification File (see Defendants' Affidavit of Documents, Schedule A, Tab 204, AGCA0201, pages 135-204) contains the documentation prepared by the Border Services Officer, ICECAP Officer, and Risk Management Unit that was provided to the verification officer.

No	Pg	QQ	Undertaking	Response
				<p>The Trade Referral Form and supporting documentation submitted by Sean Whitehouse to ICECAP on August 30, 2016 are found at Defendants' Affidavit of Documents, Schedule A, Tab 204, AGCA0201, pages 153-199.</p> <p>The ICECAP officer's notes and analysis are found at Defendants' Affidavit of Documents, Schedule A, Tab 204, AGCA0201, pages 200-202.</p> <p>On August 31, 2016, the ICECAP office submitted a Risk Management Unit Referral Sheet to the Risk Management Unit. It enclosed the Trade Referral Form and supporting documentation referred to above, the ICECAP officer's notes and analysis referred to above, and an Excel spreadsheet from the FIRM database, which shows import data for Ronsco for 2015. As noted above, the Trade Referral Form and supporting documentation and ICECAP officer's notes and analysis are part of the verification file and have already been produced. The Risk Management Unit Referral Sheet and the Excel spreadsheet referred to above are not in the verification file. They will be produced in a further Affidavit of Documents.</p>
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.	Ronsco was not informed of the particulars of the reason for verification. It is not part of the verification process to advise what was the specific reason for a verification. Importers are advised that verifications are conducted to ensure compliance with the <i>Customs Act</i> .

No	Pg	QQ	Undertaking	Response
9.	35	125	To advise if Ronsco was ever given the opportunity to explain the discrepancy noted in the ICECAP workup to the CBSA.	No. Identifying or responding to the specific reason that a verification is initiated is not part of the verification process.
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.	In progress.
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.	Yes, Lucie Gagné reviewed this document in preparing her verification report. During the verification process, verifications officers check CBSA electronic databases to see if other decisions have been made with respect to the same importer or with respect to similar goods. She identified this functional guidance document for goods that appeared to be similar to the goods at issue in the Ronsco verification.
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.	In progress.
13.	46	151	To advise if Ms. Gagné was aware of the Sumitomo advance ruling when she was conducting the verification audit of Ronsco.	Yes, Lucie Gagné was aware of the Sumitomo advance ruling when she was conducting the verification of Ronsco.
14.	47	151	To advise if Ms. Ogilvie was aware of the Sumitomo advance ruling when she was conducting the reassessment for Ronsco.	In progress.

No	Pg	QQ	Undertaking	Response
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.	In progress.
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).	In progress.
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.	See the email from Tanya Carruthers to Grant Tebbutt and Kelly Bartlett sent on June 18, 2018 at 8:00 AM (Defendants' Affidavit of Documents, Schedule A, Tab 25, AGCA0022). Ms. Bartlett was unable to locate any other e-mails that referred to her being tasked with the drafting of the Issue Sheet.
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)	Doug Band knew that he was meeting with Ronsco at the time of his email of June 25, 2018 at 4:38 PM. At all times he thought that the meeting was with Ronsco and at no time did he think that the meeting was with Sumitomo. However, the briefing material prepared for the meeting incorrectly indicated that the meeting was with Sumitomo and contained information about Sumitomo. In addition, Ms. Bartlett recalls that she orally briefed Mr. Band on June 25, 2018, but this was also on the basis of the information about Sumitomo, as reflected in the issue sheet. Mr. Band recalls that he had asked for a briefing on Ronsco and was given a briefing on the wrong company, Sumitomo. As such, Mr. Band incorrectly attributed the information about Sumitomo to Ronsco.
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	The redactions in this document contain business and commercial information about Sumitomo. It is redacted on the basis of s. 107 of the <i>Customs Act</i> .

No	Pg	QQ	Undertaking	Response
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.	In addition to these attendees, Robin Quinn (CBSA – Operations), Peter Clark and Richard Mahoney were also in attendance.
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.	Doug Band knew that he was meeting with Ronsco immediately before he went into the meeting on June 26, 2018. At all times he thought that the meeting was with Ronsco and at no time did he think that the meeting was with Sumitomo. However, the briefing material prepared for the meeting incorrectly indicated that the meeting was with Sumitomo and contained information about Sumitomo. In addition, Ms. Bartlett recalls that she orally briefed Mr. Band on June 25, 2018, but this was also on the basis of the information about Sumitomo, as reflected in the issue sheet. As such, Mr. Band incorrectly attributed the information about Sumitomo to Ronsco.
22.	77	239	To produce all documents that Mr. Band brought with him to the June 26, 2018 meeting.	To the best of his recollection, the only documents that Mr. Band brought with him to the June 26, 2018 meeting were the Issue Sheet which contained information regarding Sumitomo and likely the 2017 Auditor General's report and a copy of a draft presentation on the Trade Compliance Strategy. These documents, if available, will be produced in a further Affidavit of Documents.
23.	77	239	To produce all documents that the other government attendees brought to the meeting.	To be completed.

No	Pg	QQ	Undertaking	Response
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.	There is no applicable CBSA policy or directive requiring CBSA employees to take notes during meetings when they are speaking to importers.
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.	Yes, Doug Band made a statement to this effect. He did so under the mistaken belief that Ronsco had the benefit of an applicable advance ruling.
26.	95	289	To advise if there were any communications between Ronsco and CBSA between June 26 and July 24.	The Defendant is not aware of any such communications during this period. Doug Band recalls that he called Mr. Mahoney within 48 hours of learning of the mix-up between Sumitomo and Ronsco. However, it is not clear whether he learned of the mix-up before or after July 24, 2018. The first email correspondence within the CBSA regarding the mix-up occurs on August 7, 2018 (Defendants' Affidavit of Documents, Schedule A, Tab 23, AGCA0020).
27.	103-104	316-317	To provide Mr. Tebbutt's best and latest contact information.	30 Havenhurst Cres, Ottawa ON, K1T 3E8 (613) 736-9354
28	104	316	To advise how long the June 26 th meeting between CBSA and Ronsco lasted.	The meeting lasted approximately 45 minutes to an hour.
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'.	The version of the memo at Tab 206 was created on August 10, 2018 12:25 PM and last modified at 2:34 PM that day. This memo was never finalized, nor approved at any level. The original version of the memo was created on August 9, 2018 (Defendants' Affidavit of Documents, Schedule A, Tab 32, AGCA0029). The redactions made to the original version of the

No	Pg	QQ	Undertaking	Response
				<p>memo at Tab 32 have been reviewed and revised. A new version of the document, with revised redactions is being sent to counsel for Ronsco simultaneous with delivery of these answers. This updated version will be formally produced in an updated Affidavit of Documents at a later date (AGCA0029_RR). Some redactions have been removed on the basis that the asserted privilege does not apply to the information that was redacted. There is no waiver of privilege. In addition, some information that was previously redacted on the basis of litigation privilege should have instead been redacted on the basis of solicitor-client privilege. This change has been made in the revised redactions.</p>
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.	<p>Doug Band recalls that the meeting was with Richard Mahoney and Peter Clark, representing Ronsco. Mr. Band was the only government representative. In advance of that meeting, Mr. Band had decided that, despite the mix-up during the June 26, 2018 meeting, the final verification report would not be amended. The Ronsco representatives asked Mr. Band to take another look at the conclusions reached in the final report and reconsider the issue. He agreed to do so. Mr. Band does not recall any further particulars of the meeting.</p> <p>On August 16, 2018 Mr. Clark subsequently emailed Mr. Band the submissions that Ronsco had made in response to the interim verification report and sent the supporting documentation by courier.</p>

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.	<p>Doug Band is referring to the material submitted by the Ronsco representatives following the August 16, 2018 meeting. Mr. Band personally conducted a cursory review of this material and sent it to subject matter experts within his team for detailed review prior to reaching a conclusion. His aim was to ascertain whether it was likely that the verification officer had rendered the wrong decision. His initial assessment was that the matter was complex and highly technical, but he did not see anything that indicated to him the officer had made an egregious error. However, not being a classification expert, he decided that he would wait for the results of his team's review. Mr. Band directed that his team review the conclusions in the final verification report in light of the material submitted by Ronsco. This review was delegated to Sara Pundyk, the Senior Advisor responsible for Chapter 86 of the Schedule to the Customs Tariff, and Emerson Barrios, the Senior Program Officer responsible for Chapter 86 of the Schedule to the Customs Tariff. At the conclusion of that review, Mr. Band's team assessed that the verification officer's decision was correct. Their analysis was sent to Mr. Band by Kelly Bartlett on August 20, 2018 at 3:43 PM (Defendants' Affidavit of Documents, Schedule A, Tab 189, AGCA0185).</p> <p>Based on his personal reading of the material and the analysis provided by his team, referred to above, Mr. Band was satisfied that the classification decision reached in the final verification report was appropriate and that the wording of the final verification report would not be adjusted.</p>

No	Pg	QQ	Undertaking	Response
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.	<p>This response includes Doug Band's understanding of how the decision regarding whether the final verification report would be amended, including the issue of reason to believe, was made leading up to August 16, 2018. The response also includes the recollections of other individuals and references documentary evidence that provides context and situates the timeline of events. The portions of the response that reflect Mr. Band's personal recollections indicate as such.</p> <p>The response to this undertaking is also responsive to Advisement 65.</p> <p>Mr. Band considered the issue of whether the final verification report should be amended from August 7, 2018 (at the latest) to August 16, 2018, when he met with Ronsco representatives, and again after that meeting until August 21, 2018.</p> <p>In the days leading up to the August 16, 2018 meeting with Ronsco, Mr. Band was considering the issue of whether Ronsco would be required to pay duties going back four years. He was considering this issue following discovery of the mix-up that had occurred at the June 26, 2018 meeting with Ronsco. At that meeting, Mr. Band made an incorrect representation that he had flexibility to not require Ronsco to pay duties going back four years, under the mistaken belief that Ronsco had an applicable advance ruling. However, that information related to a different company, and was not applicable to Ronsco.</p> <p>Mr. Band's recollection is that he was concerned that he had mistakenly advised Ronsco at the June 26, 2018 meeting that the company would not be required to pay duties going back four years. He wanted to explore whether there was a basis on</p>

No	Pg	QQ	Undertaking	Response
				<p>which the CBSA could honour the representation he made at the June 26, 2018 meeting. Having made a representation that the company would not have to pay the duties, Mr. Band wanted to deliver on that representation if there was a way to do so.</p> <p>Mr. Band recalls that he was challenging his own team as to whether there was anything that he could do to make this easier for the company, because if there was something that he could do, he wanted to do so. He recalls pulling his team together and asking whether the CBSA could do something for this company. In particular, he recalls challenging his team as to whether they, in headquarters, were of the view that reason to believe had been established.</p> <p>Mr. Band recalls that over the course of this decision making process, he never reached a final conclusion that the final verification report would be amended. Rather, he explored and considered different options for addressing the situation. He was looking for flexibility that would enable the CBSA to honour the representations that he had mistakenly made at the June 26, 2018 meeting. As different options were considered, they were circulated to his team for their feedback and comment.</p> <p>By at least August 7, 2018, emails indicate that Mr. Band was aware of the mix-up and was meeting and communicating with his team to determine the way forward (Defendants' Affidavit of Documents, Schedule A, Tab 23, AGCA0020). Mr. Band does not recall the specifics of these exchanges or how his thinking on this issue evolved over the following days.</p>

No	Pg	QQ	Undertaking	Response
				<p>Grant Tebbutt, a manager in the Trade Policy Division, also has no specific recollection, but generally recalls from around this time (in particular around the week of August 7, 2018) that there were a lot of different options on the table, and that the consensus regarding what course of action to take could change from day to day. He does not recall why there was a change in direction from what is reflected in the draft briefing note of August 10, 2018, which indicated that the final verification report would be amended to find that Ronsco did not have reason to believe (Defendants' Affidavit of Documents, Schedule A, Tab 34, AGCA0031, Tab 206, AGCA0204).</p> <p>Emails indicate that by August 7 or August 8, the direction being explored was that Ronsco would not be required to pay duties going back four years (Defendants' Affidavit of Documents, Schedule A, Tab 24, AGCA0021).</p> <p>Beatrice Dion, a manager in the Trade Compliance Division, recalls that Mr. Band was canvassing different ideas to identify whether there was flexibility to do something for Ronsco, including looking at the "reason to believe" policy. Ms. Dion provided information to Mr. Band about putting the DAS on hold to provide his team with more time to consider options and also provided information about the length of time that Ronsco was required to go back to correct.</p> <p>Ms. Dion recalls having discussions about the final verification report with Nejib Smida, an Acting Manager in the Quebec regional office in which the verification was conducted, and Kurtis Clifford, the Director of the Quebec regional office. Ms. Dion's verification team was consulted by Mr. Band about</p>

No	Pg	QQ	Undertaking	Response
				<p>whether the final report should be amended. However, she did not provide any policy advice on the issue of “reason to believe.”</p> <p>Ms. Dion recalls communicating around this period that it was important for Headquarters not to unduly interfere with the officer’s decision on tariff classification.</p> <p>Mr. Smida recalls that on August 8, 2018 the Quebec regional office was directed to put the issuance of the DAS on hold. He recalls this was done because of the confusion that had arisen between Ronsco and Sumitomo, which raised a concern with Ronsco being required to pay duties going back four years. The DAS was placed on hold so that the confusion could be sorted out and a determination could be made how far back Ronsco would have to pay duties.</p> <p>By August 9, 2018, a draft briefing note was being prepared. This briefing note did not contain a recommendation on whether to require Ronsco to pay duties going back four years (Defendants’ Affidavit of Documents, Schedule A, Tab 32, AGCA0029, Revised Redactions at AGCA0029_RR). Rather, it set out two options. The first was to not issue a DAS and amend the verification report to reflect the exceptional circumstances. The second was to enforce the finding in the final verification report and issue the DAS. There was no discussion of reason to believe in this draft of the briefing note. Yannick Mondy, Director of the Trade Policy Division, recalls that the briefing note was being drafted “for information” not “for decision”.</p>

No	Pg	QQ	Undertaking	Response
				<p>On August 9, 2018 at 6:21 PM, Stephen Fryer, Director of Trade Appeals and Litigation, sent an email suggesting that whether the importer actually had reason to believe should be examined more closely (Defendants' Affidavit of Documents, Schedule A, Tab 49, AGCA0046, Revised Redactions at AGCA0046_RR).</p> <p>On August 10, 2018 at 8:24 AM, Mr. Band convened a meeting for 9:15 AM to discuss the grounds to establish reason to believe (Defendants' Affidavit of Documents, Schedule A, Tab 37, AGCA0034). He does not recall the specific details of the meeting. He does not recall the attendees, but emails indicate that he invited Yannick Mondy, Grant Tebbutt, Stephen Fryer, and Eric Trudel. It is also possible that Kurtis Clifford participated by telephone.</p> <p>Mr. Band's general recollection from around this time is that he was challenging his staff on whether reason to believe had been established. He recalls that he was "test-driving" different options for addressing the situation arising from the mix-up at the June 26, 2018 meeting, advancing ideas and getting feedback and input from his team. He recalls needing to be educated by his team on the nature of the reason to believe standard.</p> <p>One option Mr. Band was "test-driving" was whether the tariff classification was indeed "clear and evident," and he began conducting his own due diligence and considering the meaning of wheel blanks. He recalls thinking that interpreting the terms of the tariff item would not be obvious for a layperson. He was looking for confirmation that the verification decision on reason to believe was rock solid, and whether there was any</p>

No	Pg	QQ	Undertaking	Response
				<p>flexibility to reach a different conclusion. He recalls calling the manager and saying “I’m not sure you guys got this right.” He recalls calling Grant Tebbutt and asking whether the CBSA had this right, and how someone would know the correct tariff classification as identified in the verification. He recalls that at this time the classification wasn’t evident on the surface to him based on his own understanding and Mr. Tebbutt’s responses.</p> <p>Based on these discussions, the view developing at headquarters was that the tariff classification was not clear and evident, but the view set out in the verification officer’s decision, was that it <i>was</i> clear and evident. Mr. Band recalls that he was conscious of the fact that his team at headquarters was not actually involved in the verification.</p> <p>Email correspondence indicates that after the August 10th 9:15 AM meeting, at 11:27 AM, Kurtis Clifford emailed Mr. Band information that Mr. Band had requested in terms of how the verification officer in the Quebec regional office came to her reason to believe conclusion (Defendants’ Affidavit of Documents, Schedule A, Tab 48, AGCA0045). Mr. Clifford recalls that this information indicated, in part, that the decision was based on the material and submissions provided by the importer.</p> <p>The information in Mr. Clifford’s 11:27 AM email was provided by Nejib Smida, who an acting Manager in the Quebec regional office. He recalls that headquarters wanted information about the file and how the decision was reached. In response, he pulled the physical file for the Ronsco verification and went through the decisions of Lucie Gagné, the verification officer.</p>

No	Pg	QQ	Undertaking	Response
				<p>He informed headquarters that there had been questions regarding reason to believe during the verification. Ms. Gagne had asked for proof of the use of the goods, and was not comfortable with the proof that was provided.</p> <p>At 11:35 AM, Grant Tebbutt emailed Yannick Mondy and Martin Lalande, stating that the comments provided by the Quebec office didn't really address why it was decided that there was reason to believe. He further stated that "ultimately we are responsible for RTB policy and the final decision would be ours." (Defendants' Affidavit of Documents, Schedule A, Tab 48, AGCA0045).</p> <p>At 11:51 AM, Yannick Mondy replied to Grant Tebbutt copying Martin Lalande, Eric Trudel, and Doug Band asking that Grant write back to Kurtis Clifford and Nejib Smida in the Quebec regional office to say that while the classification is correct, reason to believe is not established. (Defendants' Affidavit of Documents, Schedule A, Tab 48, AGCA0045).</p> <p>Ms. Mondy recalls that whether there is reason to believe is a decision that is usually made at the regional office level, and not at headquarters. However, headquarters does have the ability to intervene if necessary.</p> <p>Ms. Mondy further recalls that in the context of a live verification, the Trade Policy Division at headquarters is not the lead. The Trade Policy Division is involved in the policy aspects of reason to believe, and provides advice on reason to believe. However, the regional office actually administers the verification. So, this wasn't just a Trade Policy Division file. Ms. Mondy recalls that there was greater involvement of the Trade</p>

No	Pg	QQ	Undertaking	Response
				<p>Policy Division in this case because the mix-up between Ronsco and Sumitomo occurred due to an error originating in the Trade Policy Division.</p> <p>At 12:27 PM, Ms. Mondy circulated a revised version of the briefing note, indicating that she had revised the considerations reworked by Mr. Tebbutt (Defendants' Affidavit of Documents, Schedule A, Tab 33, AGCA0030, and Tab 34, AGCA0031, Revised Redactions at AGCA0031_RR). The reworked considerations section of the note, as drafted by Mr. Tebbutt, indicated that "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."</p> <p>Further changes were made to the briefing note later that afternoon (Defendants' Affidavit of Documents, Schedule A, Tab 206, AGCA0204, Revised Redactions at AGCA0204_RR). This version of the briefing note was last modified on August 10, 2018 at 2:34 PM.</p> <p>At 12:45 PM, Doug Band replied to the 11:51 AM email noted above and asked Grant Tebbutt to "send this now" to Kurtis Clifford so that the Quebec office has time to put forward their views before the note is finalized. (Defendants' Affidavit of Documents, Schedule A, Tab 48, AGCA0045).</p> <p>At 1:27 PM, Grant Tebbutt emailed Doug Band, Martin Lalande, Yannick Mondy, Eric Trudel, and Beatrice Dion indicating that he had spoken with Nejib Smida and that they</p>

No	Pg	QQ	Undertaking	Response
				<p>are fine with changing the Final Report to reflect that there was no reason to believe. At 1:28 PM, Doug Band replied "OK super. Thanks. We will see if Peter and the EVP [Executive Vice President] agrees." (Defendants' Affidavit of Documents, Schedule A, Tab 45, AGCA0042).</p> <p>Mr. Smida recalls the call from Mr. Tebbutt referred to in Mr. Tebbutt's email of 1:27 PM. He recalls that Mr. Tebbutt wasn't sure about the reason to believe finding because it wasn't clear that the importer should have used that classification. Mr. Smida recalls that Mr. Tebbutt did not ask for any further details about the verification report decision beyond those details that Mr. Smida had provided to headquarters by email (Mr. Clifford's email of 11:27 AM on August 10, 2018). Mr. Smida recalls that he personally agreed with Mr. Tebbutt that the appropriate tariff classification number wasn't clear. However, he asked if it would be possible to wait for the return of the verification officer, Lucie Gagné, who was away, before revisiting her conclusion on reason to believe.</p> <p>At 1:35 PM, Tanya Carruthers emailed Yannick Mondy, Eric Trudel, Grant Tebbutt, Calixte Burnett, and Lauren Nault indicating that Doug would like everyone to meet on the 9th floor to discuss this issue (the email chain was in connection with Ronsco). Mr. Band recalls that this was a pre-brief to prepare for a meeting with senior management the same afternoon. He recalls that Yannick Mondy and Grant Tebbutt were present at the pre-brief. He has no further recollection of the pre-brief. He does not recall if the senior management briefing ultimately occurred. He has no further recollection of that briefing.</p>

No	Pg	QQ	Undertaking	Response
				<p>At 1:38 PM, Kurtis Clifford emailed Doug Band and stated that he was not fully comfortable with the draft briefing note. They arranged to speak and had a call that afternoon. (Defendants' Affidavit of Documents, Schedule A, Tab 44, AGCA0041).</p> <p>Mr. Band recalls the telephone conversation with Mr. Clifford, but not what Mr. Clifford's concerns were. Mr. Band recalls communicating to him that he didn't want Mr. Clifford to feel pressured into amending the final verification report. He recalls that the actual verification officer was away and not involved in the discussion, which gave him pause about interfering with the verification officer's decision unless there was a solid basis to do so.</p> <p>Mr. Clifford recalls expressing the concern that headquarters was second guessing the determination of the verification officer. In Mr. Clifford's view, the verification officer did their job and probably did it right. He recalls that the verification officer was away at the time. He recalls that someone thought that the verification officer came to the wrong conclusion based on the advance ruling. But in Mr. Clifford's view, it had nothing to do with the advance ruling and it was based on the product itself and the material and submissions provided by the company. Mr. Clifford questioned why the CBSA would be changing the verification officer's determination.</p> <p>Mr. Clifford does not recall whether he ultimately indicated that he or the Quebec office were comfortable with finding that there was no reason to believe. His view was that in the end, if headquarters said that the regional office had to change the verification report conclusion on reason to believe because it is not clear and evident, he would say "OK so be it."</p>

No	Pg	QQ	Undertaking	Response
				<p>However, he recalls that he was probably telling Mr. Band that he didn't understand why we are shifting this conclusion.</p> <p>At 5:44 PM, Mr. Band emailed Kurtis Clifford, Yannick Mondy, Eric Trudel, and Grant Tebbutt stating "Just wanted you to know I have reached no decision on the path forward. So no need to change anything at this point. Going to ask a few more questions Monday and postpone the call with the company." (Defendants' Affidavit of Documents, Schedule A, Tab 50, AGCA0047).</p> <p>Mr. Band recalls that the draft briefing note which was being prepared on the Ronsco verification was never finalized, approved by him, or sent to the office of the Vice-President or the office of the President.</p> <p>The following Monday, August 13, 2018, Mr. Band recalls that he still had made no final decision.</p> <p>On August 13, 2018 at 9:03 AM Mr. Clifford emailed Doug Band stating "My understanding now is that given the complexity of the Tariff Classification for this product, Ronsco did not have prior reason to believe. AS [sic] such HQ suggests we amend the final report and not issue a DAS. As a result, we wouldn't necessarily have to go back to Ronsco. Is this your read as well." (Defendants' Affidavit of Documents, Schedule A, Tab 50, AGCA0047).</p> <p>Mr. Clifford recalls that his intention in sending the 9:03 AM email was that he wanted to get something in writing on whether headquarters wanted the final report to be amended so that he could action whatever tasks were required.</p>

No	Pg	QQ	Undertaking	Response
				<p>There was no responding email from Mr. Band, and neither Mr. Band nor Mr. Clifford recall whether they had further conversations on the issue following this email.</p> <p>Ms. Mondy does not know how the final decision was made on whether or not Ronsco had reason to believe. Her recollection is that it was up to Mr. Band, and the issue was whether they would go with what the regional office decided or not.</p> <p>On August 13, 2018 and the following days, Mr. Band recalls that Grant Tebbutt was assisting him in getting information that he wanted regarding the Ronsco verification. Mr. Band does not recall specific analysis, inquiries, or meetings that he had between August 13, 2018 and August 16, 2018 in the course of reaching a decision on whether the final verification report should be amended.</p> <p>However, Mr. Band recalls considering several factors in his decision-making process. One was the merits of the tariff classification decision. For Mr. Band to overturn the decision of a verification officer, there had to be a compelling reason or evidence to do so. Another was the legal framework within which he was operating. Another was the institutional impact of headquarters interfering with the decision of a verification officer, and in particular what impact that might have on the integrity of the compliance program generally and on the morale of the regional office in particular. While regional managers appeared willing to stand down on the reason to believe issue, Mr. Band was concerned with them feeling pressured into doing so. The verification officer who was</p>

No	Pg	QQ	Undertaking	Response
				<p>responsible for the decision was not involved in the discussion as she was away.</p> <p>On August 14, 2018, at 2:16 PM, Mr. Tebbutt emailed Mr. Band photos of wheel blanks and wheels. (Defendants' Affidavit of Documents, Schedule A, Tab 59, AGCA0056). Mr. Tebbutt recalls that Mr. Band wanted to understand the meaning of the essential character of the finished product. Mr. Band recalls that he wanted the photos so that he would be able to explain the nature of the goods when he briefed senior management.</p> <p>Around this time, Ms. Bartlett recalls receiving a call from Mr. Band. He said that he had a number of pictures of wheels in front of him, and asked Ms. Bartlett to walk him through what the pictures meant in terms of the processing of wheel blanks. Ms. Bartlett was familiar with the images that had been sent to Mr. Band by Grant Tebbutt (Defendants' Affidavit of Documents, Schedule A, Tab 59, AGCA0056). She explained that the images reflected different stages of processing a wheel blank into a finished wheel, and that these different stages impact the tariff classification as the goods are transformed from being a blank through further processing.</p> <p>Ms. Bartlett does not specifically recall when she received that phone call from Mr. Band, but believes that it was likely during the week of August 13, 2018.</p> <p>Mr. Band briefed senior management on the Ronsco issue on or around August 15, 2018. He does not recall the briefing or what was discussed.</p>

No	Pg	QQ	Undertaking	Response
				<p>In advance of the August 16, 2018 meeting with Ronsco representatives, Mr. Band concluded that there was no compelling reason for headquarters to overturn the verification officer's decision. Mr. Band does not recall specifically when, in advance of the August 16, 2018 meeting with representatives for Ronsco, he reached the conclusion that the verification officer's conclusion on reason to believe and the conclusions of the final verification report would not be amended.</p> <p>At the meeting with Ronsco representatives on August 16, 2018, Mr. Band recalls that the representatives asked that Mr. Band reconsider the matter, and he agreed to do so.</p> <p>Following the meeting, the Ronsco representatives provided Mr. Band with voluminous material for consideration. Mr. Band recalls that he did a cursory personal review of this material, and also sent it to subject matter experts within his team for analysis. Mr. Band reviewed the material submitted by Ronsco in light of the audit report to determine if there were any grounds or reason to suspect that the officer had rendered the wrong decision. From his reading, his takeaway was that the subject-matter was complicated, but he didn't see anything that indicated that the officer had made any egregious error.</p> <p>Mr. Band directed his team to review the material submitted by Ronsco and to assess the conclusions reached in the final verification report in light of these submissions. This review was delegated to Sara Pundyk, the Senior Advisor responsible for Chapter 86 of the Schedule to the Customs Tariff, and Emerson Barrios, the Senior Program Officer responsible for</p>

No	Pg	QQ	Undertaking	Response
				<p>Chapter 86 of the Schedule to the Customs Tariff. At the conclusion of that review, Mr. Band's team assessed that the Officer's decision was correct. This was communicated to Mr. Band by Kelly Bartlett in an email on August 20, 2018 (Defendants' Affidavit of Documents, Schedule A, Tab 189, AGCA0185).</p> <p>On August 21, 2018, Mr. Band concluded his review and was satisfied that the classification decision reached in the final verification report was the appropriate one, and that the wording of the final verification report would not be adjusted (Defendants' Affidavit of Documents, Schedule A, Tab 189, AGCA0185). Mr. Band recalls that in his view, there was no compelling reason for headquarters to overturn the audit decision. In his view, there wasn't enough for him to overturn the decision of the verification officer, who has expertise with verifications of this nature.</p> <p>Mr. Band recalls that, although he was considering whether reason to believe was established and testing assumptions that reason to believe had been established, at no point throughout this period had he made a final decision that Ronsco did not have reason to believe or that the final report should be amended.</p>
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.	The redactions in this document have been reviewed and revised. A new version of the document, with revised redactions is being sent to counsel for Ronsco simultaneous with delivery of these answers. This updated version will be formally produced in a further Affidavit of Documents at a

No	Pg	QQ	Undertaking	Response
				<p>later date. Some redactions have been removed on the basis that solicitor-client privilege does not apply to the redacted information. There is no waiver of privilege. No new redactions have been added.</p> <p>The remaining redactions are on the basis of solicitor-client privilege. These communications entail the seeking or giving of legal advice.</p>
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.	In progress.
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.	<p>Grant Tebbutt does not recall what meetings he was referring to in this email. He recalls that reason to believe had to be explained to Mr. Band, but does not recall when the meeting occurred, who was in the room, the specifics of the discussion, or the outcome of the meeting.</p> <p>The documentary evidence indicates that Mr. Band convened a meeting to discuss reason to believe on August 10, 2018 at 9:15 AM (Defendants' Affidavit of Documents, Schedule A, Tab 37, AGCA0034). Invitees included Doug Band, Yannick Mondy, Grant Tebbutt, Stephen Fryer, and Eric Trudel. It is possible that Mr. Clifford participated in the meeting by telephone, though he does not have an independent recollection of this.</p>
36.	169	488	To advise why it was determined that Ronsco 'had no reason to believe' at the meeting described above at undertaking #35.	Doug Band's recollection is that he never made a final decision that Ronsco had no reason to believe.

No	Pg	QQ	Undertaking	Response
				<p>The documentary evidence indicates that there was at least one meeting on whether the reason to believe finding was justified on August 10, 2018 (Defendants' Affidavit of Documents, Schedule A, Tab 37, AGCA0034). Invitees included Doug Band, Yannick Mondy, Grant Tebbutt, Stephen Fryer, and Eric Trudel. It is possible that Mr. Clifford participated in the meeting by telephone, though he does not have an independent recollection of this.</p> <p>Mr. Band does not specifically recall the meeting, what was discussed, or the outcome.</p> <p>More generally, Mr. Band recalls that around this time he was “test-driving” different options for addressing the situation, advancing ideas, and getting feedback and input from his team. In particular, he recalls challenging his team on whether the reason to believe finding by the verification officer was justified. He recalls requiring briefing from his team on the nature of the reason to believe standard. He recalls being in a meeting where he challenged his team to prove to him that the tariff classification was clear and evident.</p> <p>Mr. Band’s mindset was not that he was reaching a decision on reason to believe in those meetings. Rather, he was still in the process of “test-driving” options, seeking feedback on those options, and considering the appropriate course of action. He never reached a final decision that there was no reason to believe, and ultimately decided not to interfere with the verification officer’s decision on reason to believe.</p> <p>Grant Tebbutt does not recall this meeting described at undertaking #35 specifically. He has a general recollection</p>

No	Pg	QQ	Undertaking	Response
				<p>from around this time that the discussion was more around whether duties should be retroactive or not, and that moving away from retroactive duties would be a way to address the situation arising from the mix-up with Sumitomo, in which Mr. Band was mistakenly under the impression that Ronsco was protected from the issuance of retroactive duties due to an applicable advance ruling.</p> <p>Yannick Mondy has no recollection of this meeting.</p> <p>It is not clear whether Kurtis Clifford participated in this call. He has no independent recollection of it. However, he recalls generally from around this time that headquarters raised an issue that they thought that the tariff item was complex.</p>

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.	Yes.
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.	Refusal. <i>Federal Courts Rules</i> paragraph 242(1)(b), and <i>Customs Act</i> , section 107.

No	Pg	QQ	Advisement	Response
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.	As previously disclosed in this proceeding in connection with the mix-up between Ronsco and Sumitomo (see Defendants' Affidavit of Documents, Tab 18, AGCA0018), Sumitomo was also subject to such a verification. The Defendant cannot disclose whether or how many other companies were subject to such a verification, as this is customs information protected from disclosure under section 107 of the <i>Customs Act</i> .
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.	Refusal. <i>Federal Courts Rules</i> paragraph 242(1)(b), and <i>Customs Act</i> , section 107.
5.	49	156	To provide all drafts of the interim report and all communications related to the drafting of the interim report.	Lucie Gagné advises that the only draft of the interim report is an unsigned version of the copy of the interim report found in section A.100.1.1 of the verification file and that there are no other differences in content (Defendants' Affidavit of Documents, Schedule A, Tab 204, AGCA0201, pages 14-19).
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 Ronsco. This list should include everyone within CBSA and anyone else in government outside of CBSA.	In progress.
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.	Doug Band meant that it was good news for Ronsco. Mr. Band was describing what he planned to tell Ronsco at the meeting planned for the next day. He was communicating to the Executive Vice President's office that the information that he planned to share at the meeting (that the CBSA would not be applying "an increased duty rate of 9.5 percent retroactively for 4 years") would be received as good news by the company, as the company would otherwise face the financial expense of these duties.

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.	Doug Band thought that the information would be received as good news because it would mean that the company would not face the financial implication of paying the 9.5 percent duty rate retroactively for 4 years. The fact that the company was Canadian had no bearing on whether this would be good news for the 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.	Refusal with respect to these individuals, in light of the answer given with respect to Doug Band. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c) and (d).
10.	72	234	To advise of the basis for this belief for each individual: Doug Band, Charles Slowey, David Hurl and Laura Labelle.	Doug Band knew at all times that he was meeting with Ronsco. He does not recall the specific basis for this belief. The original incoming correspondence from MacMillan requesting a meeting, which was forwarded to Mr. Band, identified the company requesting a meeting as Ronsco (Defendants' Affidavit of Documents, Schedule A, Tab 25, AGCA0022). Mr. Band believes that this was likely the basis for his understanding he was meeting with Ronsco. Refusal with respect to the other individuals listed, in light of the answer given with respect to Mr. Band. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c) and (d).

No	Pg	QQ	Advisement	Response
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.	In progress.
12.	73	238	Same undertaking as above for Charles Slowey, David Hurl and Laura Labelle.	Refusal. <i>Federal Courts Rules</i> , paragraphs 242(1)(b), (c), and (d), in light of the undertaking given with respect to Mr. Band.
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:				
				With respect to the italicized questions referred to above, on May 29, 2023, the Defendant gave undertakings to make best efforts to answer the questions but specified that no undertaking was given as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. Federal Courts Rules paragraphs 242(1)(c) and (d). That qualification applies to the answers provided here.
13.	75	238	<i>Did the Ronsco representatives introduce themselves as being from Ronsco?</i>	Yes.
14.	75	238	<i>Did Ronsco present a detailed presentation about its business, making clear that it was a Canadian business?</i>	Yes. In particular, the representatives for Ronsco made clear that they were a Canadian business, and that investments and Canadian jobs were at stake.
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>	Yes. The representatives from Ronsco communicated that the company did not have the ability to absorb this kind of a bill, and that this expense would put in jeopardy recent or upcoming investments.

No	Pg	QQ	Advisement	Response
16.	75	238	<i>Did Ronsco make clear that this was particularly so in a small industry?</i>	Yes.
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>	Yes. Doug Band expressed gratitude.
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>	Yes. Doug Band did so.
19.	76	238	<i>Did Mr. Band refer to Sumitomo at all during the meeting?</i>	No.
20.	76	238	<i>Did anyone else at the meeting ever refer to Sumitomo?</i>	No.
21.	76	238	<i>Did Mr. Band refer to Ronsco in the meeting?</i>	Doug Band does not recall whether he specifically referenced the company by name. He understood that he was meeting with Ronsco. The introduction of company representatives, brief overview of the company and of the impacts of the audit on the company provided from Ronsco representatives underscored this understanding.
22.	76	238	<i>Did anyone else from the government side refer to Ronsco during the meeting?</i>	Doug Band does not recall.
23.	76	238	<i>Did Mr. Band bring a copy of the issue sheet that was drafted for him to the meeting?</i>	Yes.
24.	77	239	<i>Did Mr. Band refer at all to an advance ruling for tariff classification during the meeting?</i>	No. Doug Band did not refer to advance rulings specifically. He communicated that he had been informed under policy that he had the option to only apply the new classification going forward rather than going back four years. This was because of his mistaken belief that Ronsco had an applicable advance

No	Pg	QQ	Advisement	Response
				ruling. However, he did not refer to advance rulings in his explanation.
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>	At all times, Doug Band understood that the meeting was with Ronsco, not Sumitomo.
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>	At all times, Doug Band understood that the meeting was with Ronsco, not Sumitomo.
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>	Doug Band does not recall referring to this information.
28.	79	239	<i>Did anyone from CBSA or the minister's office take notes during the meeting? To produce those notes.</i>	In progress.
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>	Doug Band does not recall referring to this information.
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.	Doug Band meant going forward from the date of the final verification report.
31.	83	247	To produce the document called "The Delegation of Authorities"	The relevant Delegation instrument applicable and in force in 2018 is Presidential authorities [effective November 14, 2017] (available at: https://www.cbsa-asfc.gc.ca/agency-agence/actreg-loireg/delegation/custom_douane2017-11-14-eng.html).

No	Pg	QQ	Advisement	Response
				A copy of this document will be formally produced in an updated Affidavit of Documents at a later date.
32.	83	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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(c). The question seeks a legal conclusion.
33.	84	248	<i>Did Mr. Band discuss the wording of Tariff 21 during the June 26th meeting.</i>	Doug Band does not recall speaking specifically about the language of Tariff 21 at the meeting. He recalls that he commented that the <i>Customs Tariff</i> as a whole is very technical and can be confusing, particularly for non-experts.
34.	84	248	<i>Did Mr. Band say anything to the effect that the wording was confusing or outdated?</i>	Doug Band does not recall speaking specifically about the language of Tariff 21 at the meeting. He recalls that he commented that the <i>Customs Tariff</i> as a whole is very technical and can be confusing particularly for non-experts. He might have used the terminology “confusing or outdated” with reference to the <i>Customs Tariff</i> generally. He was aware that the World Customs Organization and Finance Canada were considering reviewing the <i>Customs Tariff</i> to update it in order to make it more user friendly and may have referenced this.
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>	Doug Band recalls referring to the Auditor General’s 2017 Report, but not in this way. He recalls saying that in light of this report, the CBSA has no alternative but to strengthen its compliance regime, because significant weaknesses of the regime had been identified in the report and were the basis of Parliamentary criticism.
36.	85	251	I would like an undertaking to produce Doug Band as a witness for examination.	Refusal. <i>Federal Courts Rules</i> , subsection 237(2).

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>	<p>Doug Band recalls that he was welcomed to the anteroom with just government officials present. They then proceeded into the meeting room. The attendees at the meeting were Kent Montgomery, Mimma Francescangeli, Doug Band, Charles Slowey, David Hurl, Laura Labelle, Robin Quinn (CBSA – Operations), Peter Clark and Richard Mahoney. There was no representative from CBSA Legal Services.</p> <p>The floor was given to the representatives for Ronsco, Mr. Mahoney and Mr. Clark, to speak. It was largely Mr. Mahoney who spoke. He communicated their desire to see this matter resolved and described the economic impact that the final verification report would have on the company. He said that they were hopeful that a positive resolution could be reached. Then an executive from Ronsco spoke about the fact that they had engaged Mr. Clark, an expert in the field. He also explained that from a company standpoint they were compliant in terms of tariff classification. He explained that because of the conclusions in the final report, the company would be unable to compete in the North American market. He believed that the financial impact of the final verification report would stop expansion and would be a long-term disadvantage to the company in terms of continued profitability. There was a question of whether there was anything that the CBSA could do that would assist the company given their financial circumstances.</p> <p>Next, Mr. Slowey spoke from the government side with pleasantries. Then Mr. Band spoke. He thanked the Ronsco representatives for the overview. He emphasized that the CBSA's objective was to ensure compliance. He noted that he was unable to speak about the detailed findings in the</p>

No	Pg	QQ	Advisement	Response
				<p>verification report. However, he communicated that his understanding was that under policy he had the option to apply the new tariff classification on a go-forward basis from the issuance of the final verification report, rather than going back 4 years, and that this was his intention. Mr. Band was happy to share that good news. However, this wasn't correct information. Mr. Band had made this representation on the mistaken belief that there was an applicable advance ruling. This mistake occurred because information about another company importing similar goods which did have an advance ruling (Sumitomo) was mistakenly included in Mr. Band's briefing materials for the meeting. Mr. Band was given the wrong briefing information, based on the circumstances of a similar company. Because of this mix-up, Mr. Band was under the mistaken belief that Ronsco had an advance ruling in its favour, which he understood meant that the new tariff classification could be applied on a go-forward basis.</p> <p>Mr. Band did not specifically refer to the existence of an advance ruling at the meeting.</p> <p>After Mr. Band made his representations, the meeting was uneventful. There was some relief on the part of the company.</p> <p>Mr. Band made no specific commitments. However, he gave the company the clear impression that they would ultimately not be assessed duties going back four years.</p> <p>Mr. Band also recalls the particulars of the meeting confirmed in other answers to undertakings.</p>

No	Pg	QQ	Advisement	Response
38.	87	258	To advise why Doug Band did not want to create a new note following the meeting on June 26 th .	<p>Doug Band does not have a specific recollection of why he did not want to create a new note. From his review of the email at Tab 12 of the Defendants' Affidavit of Documents, Schedule A (AGCA0012), it appears that whatever changes are being referred to were editorial and stylistic, and that he indicated that he did not think that it warranted making revisions before sending it up.</p> <p>In reviewing the email, it appears to Kelly Bartlett and Yannick Mondy that the nature of the request for a new note was to rearrange information and to make it more succinct.</p>
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.	No. It appears that the changes being discussed in this email at Tab 12 of the Defendants' Affidavit of Documents, Schedule A (AGCA0012) do not relate to the Sumitomo information mistakenly included in the Ronsco briefing materials. Rather, it appears that they were editorial and stylistic changes.
40.	100	306	To ask Mr. Tebbutt why he provided the advice that the tariff 21 was not clear and evident.	<p>Grant Tebbutt does not have an independent recollection of whether he provided advice that Tariff 21 was not clear and evident, and if so on what basis he did so.</p> <p>The documentary evidence indicates that on August 10, 2018 at 12:55 PM, Grant Tebbutt emailed Kurtis Clifford, Martin Lalande, Eric Trudel, Doug Band, Yannick Mondy, Nejib Smida, Genevieve Flamand, and Kelly Bartlett, stating that "we have determined that 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 ..." (Defendants' Affidavit of Documents, Schedule A, Tab 98, AGCA0095).</p>

No	Pg	QQ	Advisement	Response
				<p>In a further email to the same group on August 10, 2018 at 3:16 PM he wrote that “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.” (Defendants’ Affidavit of Documents, Schedule A, Tab 98).</p> <p>Mr. Tebbutt recalls that his analysis around that time of whether the tariff item was clear and evident focused on the meaning of blanks in the language of the tariff item, as opposed to any end use requirement in the tariff item.</p>
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>	The meeting lasted approximately 45 minutes to an hour. The meeting lasted longer than 30 minutes due to the time required for questions and answers.
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.	<p>Doug Band, Yannick Mondy, Grant Tebbutt, and Kelly Bartlett do not recall specifically how or when the mix-up was discovered.</p> <p>Ms. Mondy does not recall when the mix-up was discovered. In her recollection, it may have been within a few days or months of the June 26, 2018 meeting with Ronsco. She recalled that Kelly Bartlett pointed it out to her. She then</p>

No	Pg	QQ	Advisement	Response
				<p>recalled that Doug Band was verbally advised that the mix-up had occurred.</p> <p>Ms. Bartlett recalls that it was Ms. Mondy who first flagged the mix-up to her. She recalls Ms. Mondy saying that it had been found out that there was an error and to work on fixing it. She does not recall when the mix-up was discovered.</p> <p>Mr. Tebbutt does not recall when or how the mix-up was discovered. Mr. Tebbutt recalls sitting in Doug's office having a discussion about how the two files got mixed up, but he has no specific recollection of when that occurred. He recalls that he and Yannick Mondy were called up to explain, and that he was trying to get Doug to understand how the mix-up happened.</p> <p>Mr. Band cannot recall when he became aware of the mix-up. He recalls that either Grant Tebbutt or Kelly Bartlett (or both) came to tell him about the error. Mr. Band recalls that shortly after learning of the mix-up, he called Richard Mahoney, a representative for Ronsco, to make him aware of the situation. There is no record of this call taking place, but Mr. Band recalls making the call. It was a cold-call, not scheduled in advance. He recalls that he made the call in the morning, around 10 AM. He was at his office.</p> <p>Mr. Band recalls that on the call, he apologized for having misinformed Mr. Mahoney at the June 26, 2018 meeting. He explained that the position that he put forward about what he could do was with respect to a different company and not Ronsco. He explained that he could not do the same for Ronsco in the circumstances. He explained that he could not go into further details. Mr. Mahoney's response was</p>

No	Pg	QQ	Advisement	Response
				<p>professional. He said something to the effect that he appreciated Mr. Band telling him, but that he was shocked. He indicated that he was disappointed, and that this was a serious concern. He restated what was at stake for the company, and that he would share it with the CEO. He indicated that he would need to go back and reflect on next steps. The call ended. It was a very short, professional conversation.</p> <p>Beatrice Dion (a manager in the Trade Compliance Division) recalls that the first that she heard about the mix-up was around August 7, 2018. She attended a meeting with Doug Band, Brad Loynachan and Yannick Mondy on August 7 and believes that she was informed of the mix-up during this meeting.</p> <p>The first emails noting the mix-up are dated August 7, 2018. (Defendants' Affidavit of Documents, Schedule A, Tab 23, AGCA0020)</p>
43.	111-112	340	To ask Ms. Mondy, Mr. Band, Ms. Dion, and Mr. Loynachan what was 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.	<p>None of the current CBSA employees apparently in attendance at this meeting (Yannick Mondy, Doug Band, or Beatrice Dion) have a recollection of it. Brad Loynachan has retired from the CBSA and was not consulted.</p> <p>Ms. Mondy recalls that because this meeting occurred in the context of a live verification, the main actors would have been the managers for verification (i.e., Beatrice Dion's group). Trade Policy would provide advice in that context but would not be "driving the bus."</p>

No	Pg	QQ	Advisement	Response
				<p>Ms. Dion does not remember the specifics of this meeting but recalls that she played a role in communicating with the Quebec office about the mix-up. She recalls communicating around this period that it was important for Headquarters not to unduly interfere with the officer's decision on tariff classification.</p> <p>Based on an email sent by Ms. Dion to Mr. Band, Ms. Mondy, among others, on August 8, 2018 at 11:05 AM, it appears that the way forward discussed was to put the issuance of the DAS on hold and to amend the final report to change the applicable assessment period for Ronsco so that duties would not be charged for the entire four year period (Defendants' Affidavit of Documents, Schedule A, Tab 24, AGCA0021).</p> <p>Mr. Band recalls that generally around this time, he was searching to see whether there were any options for flexibility that would enable the CBSA to give effect to the representations that he had made at the June 26, 2018 meeting (i.e., in the circumstances, could Ronsco not be required to pay duties going back four years). This issue was explored from at least August 7, 2018 to August 16, 2018, when Mr. Band met with Ronsco representatives, and again after that meeting until August 21, 2018.</p>
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	Doug Band confirms the accuracy of this paragraph of the memo, with the exception that he cannot confirm the capacity in which the Minister's office attended the meeting. He also does not recall Steven Scott (President's Office) being in attendance at the meeting.

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	Doug Band understood at all times that the company that he was meeting with was Ronsco.
46.	123	381	To provide a native version, in Word format, 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.
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.	The redactions in this document have been reviewed and revised. A new version of the document, with revised redactions is being sent to counsel for Ronsco simultaneously with delivery of these answers. This updated version will be formally produced in an updated Affidavit of Documents at a later date. Upon review, some redactions for solicitor-client privilege have been removed on the basis that solicitor-client privilege does not apply to the redacted information. There is no waiver of privilege. In addition, some information was mistakenly redacted only on the basis of litigation privilege but is also subject to solicitor-client privilege. A redaction for solicitor-client privilege has been added to that information. The same

No	Pg	QQ	Advisement	Response
				<p>information was properly redacted for solicitor-client privilege in the version of the memo at Tab 206 (AGCA0204).</p> <p>All of the information redacted for solicitor-client privilege discloses communications that entail the seeking or giving of legal advice.</p>
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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
49.	130	395	To advise if it is the CBSA'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.	<p>The redactions in this document have been reviewed and revised.</p> <p>A new version of the document, with revised redactions is being sent to counsel for Ronsco simultaneously with delivery of these answers. This updated version will be formally produced in an updated Affidavit of Documents at a later date.</p> <p>Upon review, some redactions for litigation privilege have been removed on the basis that litigation privilege does not apply to the redacted information. There is no waiver of privilege. No new redactions for litigation privilege have been added.</p> <p>The remaining redactions for litigation privilege are on the basis of the contemplated appeals process under the <i>Customs Act</i>, including appeals before the Canadian International Trade Tribunal.</p>

No	Pg	QQ	Advisement	Response
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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
51.	131	396	To provide the unredacted native of the memo at Tab 34 of 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.
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.	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
53.	132	396	To provide Brad Loynachan's last-known contact information.	45 Crosspointe Ave, Nepean ON, K2G 6N4 (613) 216-2588 / (613) 688-9489
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.	To the best of the Defendants' knowledge, Tab 206 (AGCA0204) is the most recent version of the memo. It was created on August 10, 2018 12:25 PM and last modified at 2:34 PM that day. However, the memo was never finalized, nor approved at any level.

No	Pg	QQ	Advisement	Response
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.	<p>The redactions in this document have been reviewed and revised.</p> <p>A new version of the document, with revised redactions is being sent to counsel for Ronsco simultaneously with delivery of these answers. This updated version will be formally produced in an updated Affidavit of Documents at a later date.</p> <p>There are no changes to the redactions for solicitor-client privilege.</p> <p>Upon review, some redactions for litigation privilege have been removed on the basis that litigation privilege does not apply to the redacted information. There is no waiver of privilege. No new redactions for litigation privilege have been added.</p> <p>The remaining redactions for litigation privilege are on the basis of the contemplated appeals process under the <i>Customs Act</i>, including appeals before the Canadian International Trade Tribunal.</p> <p>All of the information redacted for solicitor-client privilege discloses communications that entail the seeking or giving of legal advice.</p>
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.)	Yannick Mondy has no recollection of the meeting.

No	Pg	QQ	Advisement	Response
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.	The meeting was cancelled because Doug Band was still considering the issue of whether there should be an amendment to the final verification report, and wanted to have fully considered this issue before meeting with representatives for Ronsco. The meeting with Ronsco representatives initially scheduled for August 13, 2018 was moved to August 16, 2018.
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.	See response to Advisement 57
59.	146-147	440	To advise if Mr. Band approved of the memo at Tab 206 of the Defendants' Affidavit of Documents.	The memo was never finalized, nor approved by Doug Band. Mr. Band recalls that in developing the memo, he wanted to explore different options for addressing the situation arising from the mix-up at the June 26, 2018 meeting. He then consulted his team on different potential directions to obtain their comments and reactions. At no time did Mr. Band reach a final decision that there was no reason to believe or that the final verification report would be amended.
60.	146	440	To advise if the Vice President was provided the memo at Tab 206 of the Defendants' Affidavit of Documents.	The memo was never sent to the Vice President.
61.	146	440	To advise if the Vice President approved the memo at Tab 206 of Defendants' Affidavit of Documents.	The memo was never approved by the Vice President.
62.	146	440	To advise if the President was provided the memo at Tab 206 of Defendants' Affidavit of Documents.	The President was never provided the memo.

No	Pg	QQ	Advisement	Response
63.	146	440	To advise if the President approved the memo at Tab 206 of Defendants' Affidavit of Documents.	The President never approved the memo.
64.	146	440	To provide a copy of the signed and approved version of the memo at Tab 206 of Defendants' Affidavit of Documents.	The memo was never finalized, nor approved at any level.
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.	See response to Undertaking 32.
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.	<p>The redactions in this document have been reviewed and revised. A new version of the document, with revised redactions is being sent to counsel for Ronsco simultaneously with delivery of these answers. This updated version will be formally produced in an updated Affidavit of Documents at a later date.</p> <p>Upon review, some redactions for solicitor-client privilege were removed on the basis that solicitor-client privilege did not apply. There is no waiver of privilege.</p> <p>Some information previously redacted for solicitor-client privilege should have been redacted for litigation privilege. This redaction has been updated accordingly.</p> <p>The redactions on the basis of solicitor-client privilege disclose communications that entail the seeking or giving of legal advice.</p>

No	Pg	QQ	Advisement	Response
				The redactions for litigation privilege are on the basis of the contemplated appeals process under the <i>Customs Act</i> , including appeals before the Canadian International Trade Tribunal, and litigation in the Federal Court.
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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
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.	<p>The redactions in this document have been reviewed and revised.</p> <p>The first redaction applied on page 1 of this document was redacted for litigation privilege but should also have been redacted for solicitor-client privilege. An updated version of the document showing the updated basis for the redaction will be formally produced in an updated Affidavit of Documents at a later date.</p> <p>The redactions in this document on the basis of solicitor-client privilege disclose communications that entail the seeking or giving of legal advice.</p>
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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).

No	Pg	QQ	Advisement	Response
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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
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.	Refusal. <i>Federal Courts Rules</i> , paragraph 242(1)(a).
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.	<p>On May 29, 2023, the Defendant gave an undertaking to make best efforts to provide particulars of the meeting. No undertaking was given as to the particular process to be followed or the particular source(s) to be consulted to obtain this information. The Defendant relies upon <i>Federal Courts Rules</i> paragraphs 242(1)(c) and (d).</p> <p>Grant Tebbutt does not recall what meetings are referred to in this email chain (Defendants' Affidavit of Documents, Schedule A, Tab 98, AGCA0095). He recalls that reason to believe had to be explained to Mr. Band, but does not recall when the meeting occurred, who was in the room, the specifics of the discussion, or the outcome of the meeting.</p> <p>Mr. Tebbutt has only a general recollection from around this time that the discussion was more around whether duties should be retroactive or not, and that moving away from retroactive duties would be a way to address the situation arising from the mix-up with Sumitomo, in which Doug Band was mistakenly under the impression that Ronsco was protected from retroactive duties due to an applicable advance ruling.</p>

No	Pg	QQ	Advisement	Response
				<p>The documentary evidence indicates that Doug Band convened a meeting to discuss reason to believe on August 10, 2018 at 9:15 AM (Defendants' Affidavit of Documents, Schedule A, Tab 37, AGCA0034). Invitees included Doug Band, Yannick Mondy, Grant Tebbutt, Stephen Fryer, and Eric Trudel. It is possible that Kurtis Clifford participated in the meeting by telephone, though he does not have an independent recollection of this.</p> <p>Mr. Band does not specifically recall the meeting, what was discussed, or the outcome.</p> <p>More generally, Mr. Band recalls that around this time he was “test-driving” different options for addressing the situation, advancing ideas, and getting feedback and input from his team. In particular, he recalls challenging his team on whether the reason to believe finding was justified. He recalls requiring briefing from his team on the nature of the reason to believe standard. He recalls being in a meeting where he challenged his team to prove to him that the tariff classification was clear and evident.</p> <p>Mr. Band’s mindset was not that he was reaching a decision on reason to believe in those meetings. Rather, he was still in the process of “test-driving” options, seeking feedback on those options, and considering the appropriate course of action. He never reached a final decision that there was no reason to believe, and ultimately decided not to interfere with the verification officer’s decision on reason to believe.</p> <p>Yannick Mondy has no recollection of this meeting.</p>

No	Pg	QQ	Advisement	Response
				<p>It is not clear whether Mr. Clifford participated in this call. He has no independent recollection of it. However, he recalls generally from around this time that headquarters raised an issue that they thought that the tariff item was complex.</p> <p>If any further particulars of the meeting can be obtained, they will be provided.</p>

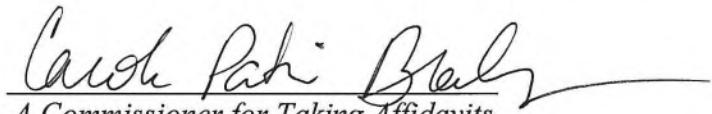
No	Pg	QQ	Refusals	Response
1.	19	87	Between 2005 and 2017, how many other importers were importing rough bore wheels — (opposing counsel interrupts with objection)?	
2.	20	88.	Between 2005 and 2017, how many other importers were importing rough bore wheels or substantially similar goods?	
3.	21	88	To 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)	

No	Pg	QQ	Refusals	Response
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.	
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.	

No	Pg	QQ	Refusals	Response
13.	137	411	To advise what legislative provisions prevented CBSA from honouring Doug Band's representations made at the June 26, 2018 meeting.	

This is **Exhibit "S"** referred
to in the Affidavit of

SHELBY MURPHY
Affirmed before me this
12th day of September, 2023.


A Commissioner for Taking Affidavits

Caroline Patricia Thelma Bradley, a Commissioner, etc.,
Province of Ontario for the Government of Canada,

Department of Justice.

Expires March 10, 2025.

Caroline Patricia Thelma Bradley, commissaire, etc.,
province de l'Ontario, au service du gouvernement du
Canada, ministère de la Justice.

Date d'expiration : le 10 mars, 2025.

Ronsco Inc. v. HMTK, et al.
Corrections to Answers of Kelly Bartlett
Examination Held May 3, 2023

No	Pg	QQ	Question	Response Given at Examination	Corrected Response
1	65	221	Q. The other thing I want to understand is, at the time that Mr. Band writes this email, does he know that he is meeting with Ronsco, or does he believe that he is meeting with Sumitomo?	A. Based on the information that we sent up, he probably thinks he is meeting with Sumitomo.	Although the briefing material provided to Doug Band referred to Sumitomo, Mr. Band has confirmed he knew at all times that he was meeting with Ronsco.
2	97	293	Q. Okay. And we will get to that in a moment, because I believe there is a memo that was authored and there are some references to those discussions [on the reassessment policy on the Ronsco case]. I think that might be, actually, after the final report was issued, but do you think those discussions started happening before the final report was issued?	A. My memory seems to think that it happened before the final report was issued.	The discussions referred to in the question did not occur until after the Ronsco final verification report was issued. The exact timing of the start of these discussions is unclear. The discussions started no later than the week of August 7, 2018.
3	99	299	Q. Right, and what was the determination [on whether or not the tariff was clear and evident]?	A. I am trying to remember, at the end of the day, what -- I think Grant's advice was that it was potentially not, before speaking with the officer.	Grant Tebbutt did not speak to the verification officer Lucie Gagne, who was away, but rather to Nejib Smida, an Acting Manager in the Quebec regional office, on August 10, 2018. Mr. Tebbutt also expressed this view on August 10, 2018 after speaking with Mr. Smida (Defendants' Affidavit of Documents, Schedule A, Tab 96).

No	Pg	QQ	Question	Response Given at Examination	Corrected Response
4	101	309	Q. And then we have Mr. Tebbutt, right before the final report, who is saying that it's not clear and evident. Correct?	A. Correct.	Grant Tebbutt did not express this view prior to the issuance of the Final Report. He expressed this view on or around August 10, 2018, as reflected in documentary evidence from that date (Defendants' Affidavit of Documents, Schedule A, Tabs 34, 96).
5	101	310	Q. And then we have the final report, which determines that it is clear and evident.	A. Correct. Sorry; I just want to clarify. In my statement earlier, I did say before Grant spoke with Lucie. I said before there were any conversations with the officer. Like, there were discussions with the officer on how they felt about it after Grant made that advice internally.	Grant Tebbutt did not speak to the verification officer Ms. Gagne, who was away, but rather to Nejib Smida, an Acting Manager in the Quebec regional office.
6	101	311	Q. Okay. Just to understand then; so, Mr. Tebbutt went and spoke to Ms. Gagné, considered her opinion and still provided the advice that the tariff was not clear and evident.	A. I don't believe -- I think it's the reverse. He suggested that the tariff was not clear and evident prior to speaking to Ms. Gagné.	Grant Tebbutt did not speak to the verification officer Ms. Gagne, who was away, but rather to Nejib Smida, an Acting Manager in the Quebec regional office, on August 10, 2018. Mr. Tebbutt also expressed this view on August 10, 2018 after speaking with Mr. Smida (Defendants' Affidavit of Documents, Schedule A, Tab 96).

No	Pg	QQ	Question	Response Given at Examination	Corrected Response
7	128	393	Q. Did you receive legal advice in the drafting of this memo [Defendants' Affidavit of Documents, Schedule A, Tab 34, AGCA0031]?	A. Not that I recall.	No. However, an earlier version of this memo was sent to counsel in CBSA Legal Services by Yannick Mondy on August 9, 2018 at 4:47 PM (Defendant's Affidavit of Documents, Schedule A, Tab 31, AGCA0028, Tab 32, AGCA0029). Any legal advice provided is subject to solicitor-client privilege. Solicitor-client privilege is expressly not waived.
8	135	405	Q. To the best of your recollection, did anyone else in Trade Policy send this to Legal [the version of the memo at Defendants' Affidavit of Documents, Schedule A, Tab 34, AGCA0031]?	A. No.	No. However, an earlier version of this memo was sent to counsel in CBSA Legal Services by Yannick Mondy on August 9, 2018 at 4:47 PM (Defendant's Affidavit of Documents, Schedule A, Tab 31, AGCA0028, Tab 32, AGCA0029). Any legal advice provided is subject to solicitor-client privilege. Solicitor-client privilege is expressly not waived.
9	146	439	Q. And did it go to the VP [the memo at Tab 206 of the Defendants' Affidavit of Documents, Schedule A]?	A. I can't confirm that. I think it did.	The memo was not sent to the Vice President.

FEDERAL COURT

BETWEEN:

RONSCO INC.

Plaintiff/Moving Party

and

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

Defendants/Respondents

**WRITTEN REPRESENTATIONS OF THE RESPONDENTS
(opposing motion for substitution of Defendants' representative)**

I. OVERVIEW

1. During examinations for discovery of the Defendants' representative, Ms. Kelly Bartlett, the Plaintiff raised certain objections to her appropriateness as the Defendants' selected representative. However, the Crown is entitled to select its own representative for the purposes of discovery and this selection should not be interfered with lightly.
2. Ms. Bartlett is an appropriate representative and provided extensive substantive evidence during her examination on May 3, 2023. She was involved in several of the events that are central to the Plaintiff's claim. She has also made efforts to inform herself of events that she was not personally involved with. During examination, Ms. Bartlett was able to provide detailed answers on numerous topics and has subsequently better informed herself in order to provide further answers by way of 83 answers to undertakings. The Plaintiff's request to substitute Mr. Doug Band for Ms. Bartlett amounts to a request to cross-examine Mr. Band, which is not the purpose of examinations for discovery.

II. STATEMENT OF FACTS

A. *The Plaintiff's Action*

3. The main action in this proceeding concerns the Canada Border Service Agency (“CBSA”)’s finding that the Plaintiff had “reason to believe” that its customs declarations for certain imported rail wheels were incorrect.
4. In 2018, a CBSA verification officer conducted a trade compliance verification and found that the Plaintiff had improperly self-declared these rail wheels under a tariff provision attracting a 0% duty rate whereas the verification process concluded that the rail wheels were properly classified under a tariff provision attracting a 9.5% duty rate.¹ The verification audit also concluded that the Plaintiff had “reason to believe” that its customs declarations were incorrect on the basis that it is clear, *prima facie*, evident and transparent that the rail wheels were not “wheel blanks” and were not used for passenger coaches as required by the claimed tariff item.² As a result of this finding in the verification report, the Plaintiff was required to file corrections and pay retroactive duties going back four years. Additionally, in 2019, an Administrative Monetary Penalty was assessed against the Plaintiff for this contravention of the *Customs Act*.³
5. In this action, the Plaintiff challenges the 2020 decision of the Minister of Public Safety and Emergency Preparedness under section 131 of the *Customs Act*⁴ to uphold the Administrative Monetary Penalty imposed by the CBSA.⁵ The Plaintiff also advances a claim for breach of public law duties. The claim for breach of public law duties is based on

¹ The rail wheels were classified under item 8607.19.21 of the *Customs Tariff* as “blanks for use in the manufacture of wheel and axle combinations for railway and tramway (including subway cars) passenger coaches”, while the verification audit concluded that the rail wheels properly fell under item 8607.19.29 as “other wheels, with or without axles”. See Moving Party’s Motion Record (“MR”), Tab 3, Affidavit of James Peter Clark, Exhibit “B”, CBSA Final Report, at pp. 170-171.

² MR, Tab 3, Affidavit of James Peter Clark, Exhibit “B”, CBSA Final Report, at p. 171.

³ Respondents’ Motion Record (“RR”), Tab 1, Affidavit of Shelby Murphy, Exhibit “N”, Notice of Penalty Assessment, at pp. 69-75; MR, Tab 3, Affidavit of James Peter Clark, Exhibit “B”, CBSA Final Report, at p. 172.

⁴ *Customs Act*, [RSC 1985, c 1 \(2nd Supp\)](#), section [131](#), Respondents’ Book of Authorities (“RBOA”), Tab 1, p. 2.

⁵ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit “O”, Ministerial Decision, at pp. 76-80.

a wide range of allegations, including: that the CBSA treated Ronsco differently from other similarly situated importers by conducting a trade compliance verification and by imposing retroactive duties; that imposing retroactive duties contravened CBSA policy and representations made by Doug Band at a June 26, 2018 meeting with Ronsco; and that the CBSA caused Ronsco to initiate a multiplicity of legal proceedings and incur unnecessary legal costs by making inconsistent representations on the appropriate forum for Ronsco to bring a legal challenge.⁶

6. The Plaintiff's claim involves CBSA policy, processes, and administrative actions from 2016 to 2020. The verification audit process engaged numerous levels and components of CBSA, including: a Border Services Officer,⁷ an ICECAP officer,⁸ the Risk Management Unit,⁹ the Trade Operations Division of the Quebec Regional Office,¹⁰ the Trade and Anti-

⁶ MR, Tab 2, Affidavit of Susan Gutteridge, Exhibit "A", Fresh as Amended Statement of Claim (T-1295-20), at pp. 24-27 (paras. 46-60).

⁷ Sean Whitehouse received and reviewed the Plaintiff's exceptions report and flagged transactions. See RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R", Answers to Undertakings Chart, at pp. 87-88 (UT 3); MR, Tab 4, Transcript of Discovery of Kelly Bartlett at p. 191 (question 75).

⁸ Adrian Anger reviewed the flagged transactions, created a risk assessment, and referred the file to the Risk Management Unit for further risk analysis. See RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R", Answers to Undertakings Chart, at pp. 87-88 (UT 3); MR, Tab 4, Transcript of Discovery of Kelly Bartlett at pp. 191-193, 207 (questions 76-79, 121).

⁹ This Unit completed the risk analysis and created a case file for verification. See RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R", Answers to Undertakings Chart, at pp. 87-88 (UT 3).

¹⁰ This office completed and issued the Interim Verification Report on April 20, 2018 and the Final Verification Report on July 24, 2018, both authored by Lucie Gagné. See MR, Tab 3, Affidavit of James Peter Clark, Exhibits "A" and "B", at pp. 160-174. This office also issued the Notice of Penalty Assessment on October 3, 2019. See RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "N", Notice of Penalty Assessment, at pp. 69-75.

dumping Programs Directorate at CBSA Headquarters,¹¹ and the Recourse Directorate at CBSA's Toronto Area Regional Office and at CBSA Headquarters.¹²

7. During discoveries, the Plaintiff has pursued information about: the initiation of the audit in 2017,¹³ the content and issuance of the Interim and Final Verification Reports in 2018,¹⁴ the representations made at the June 26, 2018 meeting that the Plaintiff would not be required to pay retroactive duties due to a policy exception,¹⁵ and the decision not to amend the Final Verification Report in August 2018 despite the June 26 representations.¹⁶ The Plaintiff has also indicated an interest in the representations made in 2018 and 2020 regarding the Plaintiff's appeal and recourse options.¹⁷

B. Examination of the Defendants' Representative

8. The Defendants selected Ms. Bartlett as their chosen representative for examinations for discovery. Ms. Bartlett is currently the Acting Manager for Trade Appeals Processing and Policy with the CBSA.¹⁸ From 2015 to 2018 she worked as a senior Policy Advisor in

¹¹ Officials in this Directorate made representations that the Plaintiff would not have to pay retroactive duties at a meeting on June 26, 2018, discovered this representation was based on an Issue Sheet relating to another company with different circumstances (Sumitomo), assessed whether there was nevertheless a basis to amend the Final Verification Report, and made the decision not to amend the Final Verification Report on August 21, 2018. See RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R", Answers to Undertakings Chart, at pp. 96-110, 111-113 (UT 32, 36).

¹² Officials in this Directorate made representations about the appeal routes that the Plaintiff could pursue in November 2018 and August 2020. MR, Tab 9, Written Representations, at pp. 623-624 (paras. 20, 23). Officials in this directorate were also responsible for issuing the Ministerial Decision pursuant to section 131 of the *Customs Act*, on September 15, 2020. See RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "O", Ministerial Decision, at pp. 76-80.

¹³ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 190-193, 199-210 (questions 71-83, 95-125).

¹⁴ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 211-214, 217-225 (questions 127-134, 135-159).

¹⁵ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 225-241, 245-272, 279 (questions 160-221, 228-292, 317).

¹⁶ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 272-279, 280-303, 307-322, 325-327, 330-337, 340-344 (questions 293-316, 318-392, 397-442, 443-446, 455-480, 482-489).

¹⁷ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 347-348 (questions 502-507).

¹⁸ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 178-149 (questions 4, 11); RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "A", Kelly Bartlett GC Directory Profile, at p. 5-6.

CBSA's Trade Policy Division.¹⁹ In September 2018 she became the Acting Manager for the Trade Policy Division.²⁰ Prior to this time, she was also fulfilling the Acting Manager's role for the Trade Policy Division intermittently between June and August 2018.²¹ The Trade Policy Division provides policy advice, including on tariff classification, reassessment, and the issue of "reason to believe."²²

9. During the events at issue in the main action, Ms. Bartlett was involved in the file in her roles as a senior Policy Advisor and Acting Manager in the Trade Policy Division. In both capacities, Ms. Bartlett was the primary drafter of the Issue Sheet that was provided to CBSA personnel in advance of the meeting with Ronsco representatives on June 26, 2018,²³ provided a verbal briefing to Mr. Band and others on June 25, 2018,²⁴ was responsible for edits to the Issue Sheet following the June 26 meeting,²⁵ and was involved in the internal discussions in August 2018, discussing the mix-up between Ronsco and Sumitomo, whether Ronsco had "reason to believe", and the decision not to amend the Final Verification Report.²⁶

¹⁹ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at p. 179 (question 12), RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "E" Email from Kelly Bartlett on June 19, 2018, at pp. 23-27.

²⁰ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "M", Email from Kelly Bartlett on October 9, 2018, at pp. 65-68.

²¹ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at p. 229-230 (question 184); RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "K", Email from Kelly Bartlett on August 17, 2018, at pp. 54-58.

²² MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at p. 181 (questions 23-24).

²³ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at p. 229-230 (question 184); RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "F", Email from Lauren Nault on June 27, 2018, at pp. 28-32; Exhibit "G", Email from Kelly Bartlett on June 27, 2018, at pp. 33-38; Exhibit "H", Email from Yannick Mondy on August 8, 2018, at pp. 39-43.

²⁴ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R", Answers to Undertakings Chart, at pp. 91-92 (UTs 18, 21).

²⁵ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 266-267 (questions 273-279); RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "F", Email from Lauren Nault on June 27, 2018, at p. 29; Exhibit "G", Email from Kelly Bartlett on June 27, 2018, at p. 34.

²⁶ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 287-293 (questions 342-352, 355-357, 360, 368-369); RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "H", Email from Yannick Mondy on August 8, 2018, at p. 40; Exhibit "I", Email from Yannick Mondy on August 13, 2018, at p. 45; Exhibit "J", Email from Beatrice Dion on August 17, 2018, at p. 49; Exhibit "K", Email from Kelly Bartlett on August 17, 2018, at p. 55; Exhibit "L" Email from Kelly Bartlett on August 20, 2018, at pp. 60-61.

10. More broadly, as a senior Policy Advisor in the Trade Policy Division, Ms. Bartlett was responsible for providing guidance to officers on the application of the “reason to believe” policy and provided informative answers on this topic during discovery.²⁷ In her current capacity, Ms. Bartlett is part of CBSA’s Recourse Directorate, and is thereby familiar with CBSA recourse policy,²⁸ which is one of the central issues identified by the Plaintiff, pertaining to the representations made about available appeal routes.²⁹
11. On May 3, 2023, the Plaintiff examined Ms. Bartlett for approximately 5 hours.³⁰ During that examination, over 500 questions were asked and counsel for the Defendants gave 36 undertakings, took 73 requests under advisement and refused 13.³¹ During the examination, Plaintiff’s counsel raised objections on several occasions with respect to the appropriateness of the Defendants’ chosen representative.³² In particular, the Plaintiff raised this objection shortly after the start of the examination, before asking any substantive questions about the issues in the litigation.³³ Ultimately, examinations were adjourned.³⁴
12. On May 5, 2023, counsel for the Defendants confirmed that the Defendants’ position on the requests taken under advisement would be communicated promptly after receipt of the examination transcript.³⁵ The transcript was received on May 24. The Defendants’ position on those requests taken under advisement was then conveyed to the Plaintiff on May 29.³⁶ A further 38 full undertakings were given, in addition to 21 partial undertakings, and 18

²⁷ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 211-212, 273-278, 291-303, 307-313 (questions 127-131, 296-304, 307-315, 356-392, 397-402, 406-413).

²⁸ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit “A”, Kelly Bartlett GC Directory Profile, at p. 6.

²⁹ MR, Tab 9, Written Representations, at pp. 623-624 (paras. 20-24).

³⁰ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 176, 349.

³¹ MR, Tab 5, Undertakings Chart of Kelly Bartlett, at pp. 350-365.

³² MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 186-187, 323-324, 348, (questions 57, 442, 508).

³³ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 186-187 (question 57).

³⁴ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at p. 348 (question 508).

³⁵ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit “P”, Defendants’ Correspondence to Plaintiff dated May 5, 2023, at p. 82.

³⁶ MR, Tab 2, Affidavit of Susan Gutteridge, Exhibit “P”, Letter from Adrian Johnston dated May 29, 2023, at pp. 113-123.

refusals.³⁷ In sum, taking into account both the May 3, 2023 examination and the letter of May 29, 2023, the Defendants gave 95 undertakings (74 full, 21 partial) and 31 refusals. No requests remain under advisement.

13. Following her examination, Ms. Bartlett continued to inform herself and made efforts to fulfill the undertakings given by the Defendants. She attended eight meetings with: Doug Band (two meetings), Beatrice Dion, Lucie Gagné, Yannick Mondy, Nejib Smida, and Grant Tebbutt. She also made inquiries with Adrian Anger and Sean Whitehouse for the purpose of better informing herself and answering undertakings.³⁸
14. On September 12, 2023, the Defendants provided the Plaintiff with 83 answers to undertakings.³⁹

III. ISSUE

15. Should Mr. Doug Band be substituted for the Defendants' selected representative for examinations, Ms. Kelly Bartlett, pursuant to rule 237(3) of the *Federal Courts Rules*?

IV. SUBMISSIONS

A. *Interference with a Selected Representative is Exceptional*

16. The purpose of discovery is to make trial fairer and more efficient by allowing the parties to inform themselves of the other parties' positions and fully define the issues between them.⁴⁰ The discovery process "... permits a party to discover relevant evidence,

³⁷ *Ibid.* Almost all of the partial undertakings were given where the Defendant undertook to answer the substantive question but not necessarily to consult particular sources specified in the request.

³⁸ RR, Tab 1, Affidavit of Shelby Murphy, p. 3 (para. 10).

³⁹ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R", Answers to Undertakings Chart, at pp. 86-138. The chart used for providing answers to undertakings was the one prepared by the Plaintiff and included in the Plaintiff's Motion Record. MR, Tab 5, Undertakings Chart of Kelly Bartlett. There are some variations in how certain questions are framed in this chart, compared with the chart sent by the Defendants on May 29, 2023 to state its position on questions taken under advisement.

⁴⁰ *Bard Peripheral Vascular, Inc. v W.L. Gore & Associates*, [2015 FC 1176](#), at para. [18](#), RBOA, Tab 7, at p. 82 (para. 17 in RBOA); *Angelcare Canada Inc. v Munchkin Inc.*, [2021 FC 238](#), at para. [56](#), RBOA, Tab 5, at p. 45 [Angelcare].

understand the opposing party's case, and obtain admissions for use at trial.”⁴¹ The scope of discovery is limited by both relevance and proportionality.⁴²

17. When one of the parties is a corporation or the Crown, the *Federal Courts Rules* contemplate examination of only one chosen representative.⁴³ As such, rules 237(1) and (2) oblige corporations and the Crown to select a representative to be examined at discovery.⁴⁴ Examined parties have a *prima facie* right to put forward the representative that they wish.⁴⁵
18. Courts do not lightly interfere with a party's choice of representative.⁴⁶ By making an order for substitution pursuant to rule 237(3), a Court is effectively ordering the affected party to be bound by the answers of a different individual than the one intended.⁴⁷ Therefore, the Courts have provided the Crown and corporations with great latitude in the selection of their representative.⁴⁸

⁴¹ *McCain Foods Limited v J.R. Simplot Company*, [2021 FC 890](#), at para. [21](#), RBOA, Tab 15, at p. 214 [*McCain Foods*].

⁴² *Angelcare* at para. [57](#), ROBA, Tab 5, at pp. 46-47, citing *Hryniak v Mauldin*, [2014 SCC 7](#) at paras. [2](#), [31-33](#), RBOA, Tab 12, at pp. 145, 153-154.

⁴³ *McCain Foods*, at para. [21](#), RBOA, Tab 15, at p. 214.

⁴⁴ *Federal Courts Rules*, [SOR/98-106, r. 237\(1\), \(2\)](#), RBOA, Tab 2, at p. 5.

⁴⁵ *Teva Canada Limited v Eli Lilly Canada Inc.*, [2016 FC 1131](#), at para. [8](#), RBOA, Tab 20, at p. 336 [*Teva Canada*].

⁴⁶ *Westaim Corp. v Royal Canadian Mint*, [1998 CarswellNat 2683](#), [1998] FCJ No. 1929, at para. [18](#), RBOA, Tab 22, at p. 363 [*Westaim*].

⁴⁷ *McCain Foods*, at para. [23](#), RBOA, Tab 15, at p. 215; *Ermineskin v Canada*, [\[1995\] 3 FC 544](#), at pp. [554j-555b](#), RBOA, Tab 10, at pp. 125-126, at para. 19 [*Ermineskin*].

⁴⁸ *McCain Foods*, at paras. [22](#), [24](#), [30](#), RBOA, Tab 15, at pp. 215-216, 218, citing *Lubrizol Corp v Imperial Oil*, [2000 CanLII 15750 \(FC\)](#), RBOA, Tab 14 [*Lubrizol*]; *Westaim*, at paras. [22](#), [25](#), RBOA, Tab 22, at pp. 364-366; *Anangel Splendour (Ship) v Canada (Ship-Source Oil Pollution Fund)*, [2006 FCA 212](#), at paras. [12-13](#), RBOA, Tab 4, at p. 22.

i. The Onus is on the Plaintiff to Demonstrate that the Selected Representative is Unsuitable

19. The party requesting substitution has the onus of showing that the Crown's representative, "is either incapable of giving evidence of his own knowledge or by informing himself or that the second witness is in a much better position to give evidence."⁴⁹
20. Put another way, the Courts are unlikely to intervene unless it is shown that the Crown's representative "is not informed, or capable of being informed of the facts essential to the issues upon which discovery is pursued."⁵⁰ The Plaintiff is correct that the factors set out in *Liebmann v Canada (Minister of National Defence)* are apposite to the outcome of this motion.⁵¹

ii. The Liebmann Factors

21. When considering a motion for substitution pursuant to rule 237(3), the Court will have regard to several factors, namely:

1. The party being examined must put forward a proper and knowledgeable witness;
2. The witness must be able to give broad discovery, including as to supplemental questions;
3. The onus is on the party examining to demonstrate objectively the unsuitability of the witness in an application for a second discovery and indeed the applicant must show that the first witness is either incapable of giving evidence of his own knowledge or by informing himself or that the second witness is in a much better position to give evidence;

⁴⁹ *Liebmann v Canada (Minister of National Defence)*, [1996 CarswellNat 527](#), [1996] F.C.J. No. 536, at para. [31](#), RBOA, Tab 13, at pp. 188-189 [*Liebmann*]; see also *Westaim*, at para. [18](#), RBOA, Tab 22, at pp. 363.

⁵⁰ *Ermineskin*, at p. [553c-h](#), RBOA, Tab 10, at p. 124, at para. 16; see also *Canada (Minister of Citizenship & Immigration) v Dueck*, [1988 CanLII 7659 \(FC\)](#), at para. [7](#), RBOA, Tab 9, at p. 110 [*Dueck*].

⁵¹ *Liebmann*, at para. [31](#), RBOA, Tab 13, at pp. 188-189; See also, *Westaim*, at para. [18](#), RBOA, Tab 22, at pp. 363; MR, Tab 9, Written Representations, at p. 630.

4. 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;

5. The expense of a second witness is a factor;

6. 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 and indeed the discovery of a second or subsequent witness should be restricted where its purpose is predominantly that of a fishing expedition.⁵²

(references omitted)

22. In this case, the Plaintiff has not demonstrated that the Defendants' selected representative is uninformed or incapable of being informed nor that Mr. Band is in a *much* better position to give evidence. Furthermore, any convenience in substitution is outweighed by the inconvenience and expense of preparing a new examinee for discovery. All of the relevant information that the Plaintiff seeks can and is being provided through undertakings or else by further examination of the Defendants' selected representative.

B. *There is no Basis to Interfere with the Defendants' Selected Representative in this Case*

i. The Defendants' Selected Representative is Proper, Knowledgeable and able to give Broad Discovery

23. Although rule 241 obliges examinees, including representatives, to inform themselves, this rule "does not make an encyclopedia out of that representative."⁵³ The Courts have frequently acknowledged that it is unrealistic to expect corporate or Crown representatives to inform themselves of all possible information that might be requested during examinations for discovery.⁵⁴

⁵² *Liebmann*, at para. [31](#), RBOA, Tab 13, at pp. 188-189.

⁵³ *Angelcare*, at para. [63](#), RBOA, Tab 5, at p. 50.

⁵⁴ *Angelcare*, at paras. [63](#), [65](#), RBOA, Tab 4, at pp. 50, 52-53; *Media Tube Corp. v Bell Canada*, [2015 FC 391](#), at para. [12](#), RBOA, Tab 16, at p. 234-235 *Lubrizol*, at paras. [4-5](#), RBOA, Tab 14, at pp. 201-202.

24. The Defendants' selected representative did make efforts to inform herself prior to examination and participated in examination for approximately 5 hours on May 3, 2023.⁵⁵ Ms. Bartlett was already familiar with the context of the file due to her own involvement, and subsequently took care to review the documents in the Plaintiff's and Defendants' productions.⁵⁶ Both parties' productions were voluminous, the Plaintiff's comprising 189 tabs totaling 2066 pages and the Defendants' comprising 210 tabs totalling 1451 pages.⁵⁷
25. Ms. Bartlett was able to give detailed answers on numerous topics, including: how the trade compliance verification of Ronsco was initiated,⁵⁸ the development of the Issue Sheet for the June 26, 2018 meeting with Ronsco that referred to Sumitomo's Advance Ruling,⁵⁹ the debrief meeting after the June 26, 2018 meeting with Ronsco,⁶⁰ how the mix-up with Sumitomo arose,⁶¹ the operation of "reason to believe" in this case,⁶² the potential amendment of the final verification report on Ronsco, including the conclusion on "reason to believe",⁶³ the length of the verification period,⁶⁴ the decision not to amend the final verification report,⁶⁵ and the preparation of media lines.⁶⁶ There is no suggestion that Ms. Bartlett was an uncooperative or difficult witness. To the contrary, counsel for the Plaintiff acknowledged during the examination that the witness had tried her best to be of assistance.⁶⁷

⁵⁵ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 176, 349.

⁵⁶ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, p. 190 (question 70).

⁵⁷ RR, Tab 1, Affidavit of Shelby Murphy, at p. 2 (para. 5).

⁵⁸ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 190-193, 199-203 (questions 71-83, 95-101, 106-113).

⁵⁹ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 229-234 (questions 183-207).

⁶⁰ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 264-267 (questions 262-279).

⁶¹ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 267-270, 287-290 (questions 280-287, 341-352).

⁶² MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 211-212, 273-278 (questions 127-131, 296-304, 307-315).

⁶³ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 291-303, 307-313 (questions 356-392, 397-402, 406-413).

⁶⁴ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 330-337 (questions 458-480).

⁶⁵ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 340-343 (questions 482-487).

⁶⁶ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 344-346 (questions 490-495).

⁶⁷ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 322-323 (question 442).

26. If a representative cannot answer all questions, the remedy is found in rule 244, which allows a party to give binding undertakings to provide better information.⁶⁸ Representatives are not expected to be fully informed of every aspect of the case, and the giving of undertakings alone, even if numerous, is not evidence that the representative is inadequate.⁶⁹ Indeed, when considering whether to substitute a chosen representative, this Court has considered the ability of said representative to give and answer undertakings as a positive attribute.⁷⁰
27. Furthermore, the ability of a representative to provide answers, either based on their own knowledge or by informing themselves is not something that should be determined prematurely. The ability of a representative to make inquiries and further inform themselves between and *after* examinations for discovery has been identified as a relevant consideration.⁷¹
28. In this case, the Defendants' representative has clearly been able to supplement her knowledge by making inquiries, participating in multiple meetings with others involved in the relevant events,⁷² and by providing answers to 83 undertakings to date.⁷³
29. Even if there is another individual who is potentially more informed on certain issues, this alone is not a basis to interfere with the Crown's chosen representative. In *Ermineskin v Canada*, the Court acknowledged that the chosen representative does not necessarily need to have the most personal involvement or the most knowledge of the relevant issues to still be a competent examinee.⁷⁴ The Court considered both the proposed representative's willingness to participate in discoveries and the Crown's preference, ultimately declining to order substitution.⁷⁵

⁶⁸ *Angelcare*, at para. [63](#), RBOA, Tab 5, at p. 50.

⁶⁹ *Lubrizol*, at paras. [2](#), [7](#), RBOA, Tab 14, at pp. 200-201, 203; *Dueck*, at para. [9](#), RBOA, Tab 9, at p. 111.

⁷⁰ *Lubrizol*, at paras. [5-7](#), RBOA, Tab 14, at pp. 201-203.

⁷¹ *Liebmann*, at para. [32](#), RBOA, Tab 12, at pp. 189-190.

⁷² RR, Tab 1, Affidavit of Shelby Murphy, at p. 3 (para. 10).

⁷³ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R", Answers to Undertakings Chart, at pp. 86-138.

⁷⁴ *Ermineskin*, at pp. [548h-549f](#), RBOA, at pp. 119-120, at paras. 8-9.

⁷⁵ *Ermineskin*, at pp. [555h-556a](#), RBOA, at pp. 126-127, at para. 21.

30. Although the Plaintiff relies on *Benisti*⁷⁶ and *Nike*⁷⁷ for the proposition that continued examination of a witness without first-hand personal knowledge is inefficient, these cases are distinguishable. Neither of the original representatives in these cases had demonstrated continuing efforts to further inform themselves as Ms. Bartlett has. Furthermore, there was no concerns raised in either case about whether the new proposed representatives had personal knowledge of all remaining issues – something the Plaintiff has not demonstrated with respect to Mr. Band. There is no efficiency to be gained if the substituted representative also has to make further inquiries.
31. Examinees at discovery do not necessarily give evidence of their personal knowledge and beliefs, but instead are stating the position of the party they represent. Therefore, the question is not whether the chosen representative would be giving hearsay evidence, but rather whether they can inform themselves adequately to provide answers to relevant and proportionate questions.⁷⁸ The Defendants' chosen representative has already demonstrated that she is capable of precisely this.

ii. The Plaintiff's Request Amounts to a Request to Cross-Examine Doug Band

32. Discovery is not intended to be an opportunity for cross-examination of any or all potential witnesses.⁷⁹ Discovery is a fact-finding exercise, not a memory contest, and examinees are permitted to have access to counsel throughout the process, unlike during cross-examination at trial.⁸⁰ As such, considerations of whether or not information is being provided via undertakings, or whether a particular individual is anticipated to be an important witness at trial are irrelevant.⁸¹ Indeed, the giving of undertakings is the typical

⁷⁶ *Benisti Import-Export Inc. v. Modes TXT Carbon Inc.*, [2004 FC 539](#), Moving Party's Book of Authorities ("MBOA"), Tab 3, at pp. 53-55.

⁷⁷ *Nike International Ltd. v. Rebellion Inc.*, [2009 FC 785](#), MBOA, Tab 4, at pp. 56-70.

⁷⁸ *Liebmann*, at paras. [15-16](#), RBOA, Tab 13, at pp. 183-184.

⁷⁹ *Media Tube*, para. [19](#), RBOA, Tab 16, at p. 237.

⁸⁰ *Media Tube*, at paras. [19](#), [22](#), RBOA, Tab 16, at pp. 237-239.

⁸¹ *Baylis Estate v Canada (Attorney General)*, [2000 CarswellOnt 2283](#), [2000] O.J. No. 2531, at paras. [9-10](#), RBOA, Tab 8, at pp. 102-103 [*Baylis Estate*]; *Dueck*, at paras. [9-10](#), RBOA, Tab 9, at pp. 111-112.

approach to deal with information that was “not reasonably or readily within the knowledge of the witness.”⁸²

33. Mr. Band was not present or involved with every aspect of this file. As noted by the Plaintiff, he was involved in the June 26, 2018 meeting where Ronsco was incorrectly informed it would not be subject to retroactive duties going back 4 years. He also made the decision on August 21, 2018 not to interfere with the Officer’s findings in the Final Verification Report.⁸³

34. However, the Plaintiff has given no indication that Mr. Band would be in a much better position than Ms. Bartlett to provide responses on any other aspect of this case. The Plaintiff lists six key areas that Ms. Bartlett was not involved with, but has failed to show that Mr. Band is in a better position to provide answers on five of those six. There is no indication that Mr. Band would have any personal knowledge or was personally involved with: (1) initiating the audit of Ronsco, (2) issuing the Interim Verification Report, (3) issuing the Final Verification Report, (4) the representations made by Ms. Sue Ogilvie on November 8, 2018, or (5) the representations made by Ms. Natasha Alimohamed on August 17, 2020.⁸⁴

35. Indeed, with respect to representations made by Ms. Ogilvie and Ms. Alimohamed, Ms. Bartlett is better situated than Mr. Band to provide evidence. These representations were made by employees in the Recourse Directorate within CBSA’s Finance and Corporate Management Branch.⁸⁵ This is a different branch of the CBSA than the Commercial and Trade Branch in which Mr. Band’s is employed.⁸⁶ In contrast, Mr. Bartlett has worked in both branches, and is currently employed in the Recourse Directorate.⁸⁷ She is better placed

⁸² *Media Tube*, at paras. [13-14](#), RBOA, Tab 16, at p. 235.

⁸³ MR, Tab 9, Written Representations, at pp. 634, 636 (paras. 60-61, 67-68).

⁸⁴ MR, Tab 9, Written Representations, at pp. 627-628 (para. 41).

⁸⁵ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit “B” Natasha Alimohamed GC Directory Profile, at p. 8; Exhibit “D” CBSA Organizational Charts, at pp. 13, 19-21; MR, Tab 9, Written Representations, at pp. 623-624 (paras. 20, 23).

⁸⁶ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit “C” Doug Band GC Directory Profile, at p. 10.

⁸⁷ RR, Tab 1, Affidavit of Shelby Murphy, Exhibit “A” Kelly Bartlett GC Directory Profile, at p. 6.

than Mr. Band to address this aspect of the case, but the Plaintiff did not ask her any substantive questions about this area of the case during her examination.⁸⁸

36. If the Court were to substitute Mr. Band for Ms. Bartlett, he would have to take steps to inform himself of all the myriad issues falling under the aforementioned five issue areas and then provide the information second-hand to the Plaintiff. To understand the issues and the evidence, he would have to review the parties' voluminous documentary productions, which Ms. Bartlett has already done, and make further inquiries to inform himself. If at examinations Mr. Band did not know the answer to all follow-up questions, he would have to gather more information and then provide answers in subsequent examination or via undertakings. In this sense, he is in the same – or worse – position as Ms. Bartlett to give answers on all of these topics, not a *much better* position. As Ms. Bartlett has already taken steps to inform herself, there is no reason to substitute Mr. Band and require him to duplicate this preparation.
37. Furthermore, Mr. Band's involvement in the decision not to amend the Final Verification Report in August 2018 is not a basis for substitution. *United Terminals* is not instructive in this regard. Although this Court did make an order for the Minister to attend examination for discovery in *United Terminals*, the Minister's office was named in the style of cause, leading the Court to refer to the defendant as the "Minister." The Court's order contemplated circumstances in which "a named official of the Department" could attend on behalf of the Minister. It also contemplated that a named official, not the Minister, would be cross-examined on the affidavit of documents.⁸⁹ In *United Terminals*, the Minister's office had been resisting discovery on the basis that the action was properly an application for judicial review and to provide a representative would undermine the principle of deliberative secrecy for administrative decision-makers.⁹⁰ As such, the principles of this case have no bearing on the motion at issue.

⁸⁸ Ms. Bartlett did provide some information about Recourse policy/process in response to other questions, but was not asked questions about Recourse policy specifically, see for example, MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 302-304, 306, 347-348 (questions 388, 392, 394, 396, 502-507).

⁸⁹ *United Terminals Ltd. v Minister of National Revenue*, [\[1992\] 3 FC 14789](#), [1992] CanLII 14789, at p. 303g-j, RBOA, Tab 21, at p. 354.

⁹⁰ *United Terminals*, at pp. [303j-304b](#), RBOA, Tab 21, at pp. 354-355.

38. During the May 3, 2023 examination, the Plaintiff also made several undertaking requests for information from other individuals as well.⁹¹ The Defendants have already given and answered undertakings with respect to the June 26, 2018 meeting that Mr. Band attended, his own recollections of interactions with Ronsco, and his recollections of the decision not to amend the final verification report in August 2018.⁹²
39. The only possible advantage in substituting Mr. Band for Ms. Bartlett would be assessing his credibility as a witness through cross-examination, which is not the purpose of discovery. The Court is the final arbiter of credibility and makes this assessment at trial, on a full evidentiary record. This is not the function of discovery. Although the Plaintiff relies upon *Pfizer Canada* for the principle that assessing credibility is highly important in our adversarial legal system, the Court was speaking about evidence *at trial*, and specifically the relationship between the hearsay rules and the ability to cross examine witnesses.⁹³ Discovery, particularly discovery with a representative, inevitably involves hearsay.⁹⁴ The purposes of discovery are to “obtain information about the case to be met” and to obtain admissions. The importance of a potential witness for trial is simply not relevant.⁹⁵

iii. It would be Onerous to Require the Crown to Supply a Second Representative

40. The Defendants’ representative has already devoted a significant amount of time to informing herself of the issues of this case, including review of the voluminous documents

⁹¹ MR, Tab 5, Undertakings Chart of Kelly Bartlett, see for example, undertakings 3, 5, 6, 11-14, 35, 40, advisements 42-43, 56 at pp. 350-351, 354, 359, 361.

⁹² RR, Tab 1, Affidavit of Shelby Murphy, Exhibit “R”, Answers to Undertakings Chart, at pp. 91-127, 131, 134 (UTs 18, 21, 25, 30-32, 36, ADs 7-8, 10, 13-27, 29-30, 33-35, 37-39, 42-45, 59, 73).

⁹³ *Pfizer Canada Inc. v Teva Canada Limited*, [2016 FCA 161](#), at paras. [78-103](#), RBOA, Tab 19, at pp. 301-308.

⁹⁴ *Liebmann*, at paras. [15-16](#), RBOA, Tab 13, at pp. 183-184.

⁹⁵ *Baylis Estate*, at para. [9](#), RBOA, Tab 8, at pp. 102-103, recently affirmed in *Gabrialpillai v Co-Operators General Insurance Company*, [2020 ONSC 903](#) at paras. [36-37](#), RBOA, Tab 11, at p. 137.

produced by each party (totaling 3535 pages) and attending examinations for approximately 5 hours.⁹⁶

41. The Plaintiff's request effectively would require the proposed representative to duplicate this preparation, despite the relevant information within his personal knowledge already being conveyed to the Plaintiff by way of undertakings.⁹⁷ As noted above, Mr. Band would have to inform himself of all aspects of the case in which he was not personally involved.
42. Furthermore, the *Rules* clearly do not entitle the Plaintiff to examine multiple representatives. On a complex file such as this one, which unfolded over a number of years and involved numerous decision-makers and officials within the government, no single person will have a precise recollection of all possible issues of interest. Although the Plaintiff raised concerns about the adequacy of the Defendants' representative early on during examinations on May 3, 2023 counsel nevertheless proceeded with the examination.⁹⁸ After several hours of examination, counsel for the Plaintiff again objected to the Defendants' representative, then proceeded with the examination once more. Counsel for the Defendants objected that this approach was effectively an attempt to complete examination of the present representative while also seeking the opportunity to examine a second representative at a later date.⁹⁹ Counsel for the Plaintiff nevertheless proceeded.¹⁰⁰ This approach amounts to an attempt to circumvent the existing rules for Crown and corporate representatives.

C. Less Onerous Remedies are Available

43. Alternatively, even if the Crown's selected representative could have made further efforts to inform herself as required by rule 241 of the *Federal Courts Rules*, this does not automatically necessitate an order for substitution. Indeed, in *Teva Canada*, where the Court did find that a corporate representative had failed to appropriately inform himself,

⁹⁶ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at p. 190 (question 70); RR, Tab 1, Affidavit of Shelby Murphy, at p. 2 (para. 5).

⁹⁷ See for example, RR, Tab 1, Affidavit of Shelby Murphy, Exhibit "R" Answers to Undertakings Chart, at pp. 96-110 (UT 32).

⁹⁸ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at p. 186-188 (question 57).

⁹⁹ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, at pp. 323-324 (question 442).

¹⁰⁰ MR, Tab 4, Transcript of Discovery of Kelly Bartlett, Transcript at p. 324 (question 442).

the Court nonetheless declined to order a substitution, requiring instead that the representative better inform himself for the next round of discoveries.¹⁰¹

44. In the further alternative, if the Court does find that this is an exceptional case where the order for substitution should be granted, it would be disproportionate to require Mr. Band to be examined on topics already canvassed with Ms. Bartlett or which Ms. Bartlett is equally well-placed or better placed to answer. Where two representatives have been put forward, the Crown has been entitled to confine the areas of their discovery to different topics.¹⁰² In this case, it would be appropriate to confine any examination of Mr. Band to factual information within his personal knowledge about his own involvement in the file, leaving Ms. Bartlett to address any other outstanding issue areas.

D. Alternatively, the Plaintiff's Claim for Costs Thrown Away is Disproportionate

45. If the Plaintiff is successful in this motion, the Defendants do not object in principle to a lump sum payment of costs thrown away in preparing for the discovery of Ms. Bartlett. However, contrary to the Plaintiff's suggestion that costs awards have typically been between 30% and 66%, recent case law has identified that typical lump sum awards range from 10% to 50%.¹⁰³ *Abdelrazik*, relied on by the Plaintiff, saw a lump sum of 30% of costs.¹⁰⁴ The award of 66% in *Packers* was recognized as atypical.¹⁰⁵

46. The Defendants did not put Ms. Bartlett forward as a "straw witness" or act in bad faith. As noted above, she was involved in several relevant aspects of the Ronsco matter, and has knowledge both in regards to trade policy and recourse. She has subsequently made efforts to further inform herself. She did provide numerous informative substantive answers during approximately 5 hours of examination. There is no need for the court to make an award at the high end as a deterrent measure.

¹⁰¹ *Teva Canada*, at para. 9, RBOA, Tab 20, at p. 337.

¹⁰² See for example, *Liebmann*, at paras. 18, 36, 43-44, RBOA, Tab 13, at pp. 184-185, 190-191, 193-194.

¹⁰³ *Apotex Inc. v Shire LLC*, [2021 FCA 54](#), at para. 22, RBOA, Tab 6, at p. 71; *Nova Chemicals Corporation v Dow Chemical Company*, [2017 FCA 25](#), at para. 17, RBOA, Tab 17, at p. 253.

¹⁰⁴ *Abdelrazik v Canada*, [2019 FC 769](#), at para. 23, RBOA, Tab 3, at p. 12.

¹⁰⁵ *Packers Plus Energy Services Inc. v Essential Energy Services Ltd.*, [2021 FC 986](#), at paras. 30, 33-34, RBOA, Tab 18, at pp. 269-271.

47. An award of lump sum costs for 25-35% of the Plaintiff's costs in preparing for and attending examinations for discovery would be more appropriate.

V. ORDER SOUGHT

48. The Defendants request that the Plaintiff's motion is dismissed in its entirety, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Ottawa, in the Province of Ontario, this 12th day of September, 2023.



Adrian Johnston / Charles Maher / Christian Halt
Counsel for the Defendants

VI. LIST OF AUTHORITIES

Legislation

Customs Act, [RSC 1985, c 1 \(2nd Supp\)](#)

Federal Courts Rules, [SOR/98-106](#)

Jurisprudence

Abdelrazik v Canada, [2019 FC 769](#)

Anangel Splendour (Ship) v Canada (Ship-Source Oil Pollution Fund), [2006 FCA 212](#)

Angelcare Canada Inc. v Munchkin Inc., [2021 FC 238](#)

Apotex Inc. v Shire LLC, [2021 FCA 54](#)

Bard Peripheral Vascular Inc. v W.L. Gore & Associates, [2015 FC 1176](#)

Baylis Estate v Canada (Attorney General), [2000 CarswellOnt 2283](#), [2000] O.J. No. 2531

Benisti Import-Export Inc. v Modes TXT Carbon Inc., [2004 FC 539](#)

Canada (Minister of Citizenship & Immigration) v Dueck, [1998 CanLII 7659 \(FC\)](#)

Ermineskin v Canada, [\[1995\] 3 FC 544](#)

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Hryniak v Mauldin, [2014 SCC 7](#)

Liebmann v Canada (Minister of National Defence), [1996 CarswellNat 527](#), [1996] F.C.J. No. 536

Lubrizol Corp. v Imperial Oil Ltd., [2000 CanLII 15750 \(FC\)](#)

McCain Foods Limited v J.R. Simplot Company, [2021 FC 890](#)

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Nike International Ltd. v Rebellion Inc., [2009 FC 785](#)

Nova Chemicals Corporation v Dow Chemical Company, [2017 FCA 25](#)

Packers Plus Energy Services Inc. v Essential Energy Services Ltd., [2021 FC 986](#)

Pfizer Canada Inc. v Teva Canada Limited, [2016 FCA 161](#)

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United Terminals Ltd. v Minister of National Revenue, [1992 CanLII 14789](#), [1992] 3 FC

Westaim Corp. v Royal Canadian Mint, [1998 CarswellNat 2683](#), [1998] F.C.J. No. 1929