

CANADIAN INTERNATIONAL TRADE TRIBUNAL

B E T W E E N:

RONSCO INC.

Appellant

and

CANADA BORDER SERVICES AGENCY

Respondent

REPLY SUBMISSIONS

November 19, 2019

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I. OVERVIEW

1. Ronsco Inc. (“Ronsco”) will address the following key points in reply to the additional written submissions of the Canada Border Services Agency (“CBSA”):

(a) The CBSA mischaracterizes the goods at issue (the “Wheel Bodies”) as finished wheels at the time of importation;

(b) The CBSA mischaracterizes the work done to the Wheel Bodies after importation; and

(c) The CBSA misconstrues the “essential features” of a finished wheel.

2. Given the above, Ronsco submits that the Wheel Bodies must be classified under tariff item 8607.19.30.

II. LAW AND ARGUMENT

A. The CBSA mischaracterizes the Wheel Bodies as finished wheels at the time of importation

3. The CBSA argues that the Wheel Bodies are finished wheels at the time of importation.¹ This is despite the fact that industry participants refer to the goods by multiple names which indicate the unfinished nature of the goods,² and that three of the five customs coding forms for the goods specifically refer to them as being unfinished.³ Neither of the two witnesses who gave evidence at the hearing, including one expert with over 50 years of experience in the industry, indicated that the goods could be considered finished wheels.

¹ CBSA Additional Submissions dated November 12, 2019 at para 2.

² The names for the goods include “wheel plates” and “wheel blanks”: Appellant’s Brief of Ronsco Inc. dated June 14, 2019 at para 38.

³ *Ibid* at para 38 and Tab 19.

4. The CBSA compares the Wheel Bodies to “wedding dresses” that are finished upon importation, but which require further tailoring. The analogy with wedding dresses is fundamentally flawed. First, a wedding dress can still be considered a “dress” upon importation (prior to tailoring). This is evident from the ordinary meanings of “dress”⁴ and “wedding dress”⁵, below:

dress

NOUN

1 A one-piece garment for a woman or girl that covers the body and extends down over the legs.

wedding dress

NOUN

A dress worn by a bride at her wedding, typically long and white.

These definitions make no reference to tailoring as a requirement for a dress to be “properly worn”⁶, or to be considered a dress at all. The definition of a wheel, however, necessarily refers to the good’s ability to be attached to an axle at its centre.⁷ Clearly finished wedding dresses (yet to be tailored or fitted) can be distinguished from Wheel Bodies (yet to undergo the wheel boring and finishing process).

5. Second, the Wheel Bodies must meet the extremely precise technical specifications set by the Association of American Railroads (“AAR”). These standards apply to the entire wheel manufacturing process – both the forging process, and the wheel boring and finishing process.⁸

⁴ Oxford Dictionary, “Dress”, Noun, online: Lexico <<https://www.lexico.com/en/definition/dress>>, Appellant’s Reply Submissions [“ARS”], Tab 1.

⁵ Oxford Dictionary, “Wedding Dress”, Noun, online: Lexico <https://www.lexico.com/en/definition/wedding_dress>, ARS, Tab 2.

⁶ CBSA Additional Submissions dated November 12, 2019 at para 6.

⁷ Shorter Oxford English Dictionary, 6th ed, Vol II (N-Z) at “Wheel” (noun), Definition #2, Appellant’s Supplementary Written Submissions dated November 12, 2019 (“ASWS”) at para 21 and Tab 4.

⁸ Expert Report of Peter (Pietro) Lepore dated September 24, 2019 at paras 28-29.

Wedding dresses, however, do not have to meet a set of extremely precise technical specifications established and enforced by an association in the dressmaking industry in order to be considered a dress. They come in a variety of shapes and styles and do not need to meet any of the same types of standards as do train wheels. Considering the definitions cited above, a wedding dress does not lack any of the essential features of a wedding dress simply because it has not yet been tailored.

6. This is not the case for Wheel Bodies, which, when imported, have bore holes that cannot be fitted with axles and that are not even centred. As a result, Wheel Bodies cannot be considered equivalent to finished wheels.

B. The CBSA mischaracterizes the work done to the Wheel Bodies after importation

7. The CBSA claims that the further manufacturing performed on the Wheel Bodies after importation is “not substantial”,⁹ yet discounts the type of work performed and the value added by the wheel boring and finishing process.

8. First, the CBSA misconstrues the factors to be considered in determining whether an article has the essential character of a finished good. One such factor is “whether the value that is added to the goods in issue after importation is of such a considerable proportion as to render absurd the claim that those goods as imported have the essential character of the finished or complete goods [emphasis added].”¹⁰ The CBSA argues that it is “the type of work” rather than its exact cost or duration that is relevant to the classification exercise,¹¹ but then claims that the “value added to

⁹ CBSA Additional Submissions dated November 12, 2019 at para 24.

¹⁰ [*Alliance Mercantile Inc v Canada \(Border Services Agency President\)*](#), [2017] CITT No 107, ASWS, Tab 1 at para 65 [*Alliance Mercantile*].

¹¹ *Ibid* at para 71, cited in CBSA Additional Submissions dated November 12, 2019 at para 25.

the goods following the customized boring process” is “not necessarily [relevant].”¹² This is clearly a misstatement of this factor, and contrary to the specific wording used by the Tribunal.

9. In any event, the type of work performed on Wheel Bodies after importation indicates that they do not have the essential character of finished wheels when imported. The wheel boring and finishing process, described at paragraph 12 of Ronsco’s Appellant’s Brief and paragraphs 41 to 47 of Mr. Lepore’s expert report, is a complex process involving millions of dollars’ worth of equipment, highly trained employees, and detailed technical standards. This is clearly not akin to “tailoring” a dress or to simply adding small parts to a good that is otherwise complete¹³. The wheel boring and finishing process involves further manufacturing,¹⁴ using sophisticated machinery in order to achieve a tolerance level of 0.0005 inches, and is ultimately what gives the finished wheels their value. This level of precision is simply not required when tailoring a dress and, if not achieved, can lead to catastrophic consequences such as derailments.

10. The significance of the wheel boring and finishing process is supported by the AAR standards. The standards for manufacturing wheels are set out in AAR Manuals G and G-II.¹⁵ Section “G” of the Manual establishes requirements for wheel manufacturing up to creation of the rough bore (including forging), whereas Section “G-II” covers the wheel boring and finishing process.¹⁶ Thus, the boring and finishing process is at least as important as forging process.

¹² CBSA Additional Submissions dated November 12, 2019 at para 26.

¹³ See, for example, *Bauer Nike Hockey Inc v Deputy MNR* (14 February 2001), AP-99-092 (CITT), ARS, Tab 3 at para 20 [Bauer]. In *Bauer*, the Tribunal found that the goods at issue had the essential character of skating boots because all that remained to be done to complete them was to add insoles.

¹⁴ This is supported by the ordinary meaning of “manufacturing”: “The making of articles on a large scale using machinery; industrial production”: Oxford Dictionary, “Manufacturing”, Noun, online: Lexico <<https://www.lexico.com/en/definition/manufacturing>>, ARS, Tab 4.

¹⁵ Expert Report of Peter (Pietro) Lepore dated September 24, 2019 at para 27.

¹⁶ *Ibid* at paras 28-29.

11. Furthermore, Mr. Lepore – the only expert witness before the Tribunal – described the wheel boring and finishing process as “the most critical operation” to ensure that the wheels, once finished and mounted, are safe to operate.¹⁷ The AAR clearly recognized the significance of this process when it created a separate “section” of standards specifically for this process, all within its manual of standards for wheel manufacturing. Thus, even ignoring the extremely high cost of the wheel boring and finishing process, the type of work that it involves clearly indicates that this further manufacturing is critical and substantial, and in fact is precisely what gives the finished wheels their value.¹⁸ As both of Ronsco’s witnesses indicated at the hearing, if this process is not performed extremely precisely, then the goods are just “scrapped” or sold as anchors.

C. The CBSA misconstrues the “essential features” of a finished wheel

12. Another factor to be considered is whether the unfinished article has the “essential features” of the finished good.¹⁹ However, the CBSA has misconstrued what the essential features of a finished wheel are.

13. First, the CBSA relies significantly on the fact that the Wheel Bodies have various features common to all forged steel goods (as opposed to cast goods), rather than the essential features of forged wheels. For instance, the CBSA refers extensively to the 18-step forging process that occurs prior to the importation of Wheel Bodies.²⁰ Although this process does result in the Wheel Bodies having the form and shape of finished wheels, this does not mean that the forging process is sufficient for them to have the essential character of finished wheels.²¹ Many of the steps in the

¹⁷ *Ibid* at para 29.

¹⁸ See ASWS at paras 22-23.

¹⁹ *Alliance Mercantile*, *supra* note 10, ASWS, Tab 1 at para 65

²⁰ See, for example, CBSA Additional Submissions dated November 12, 2019 at para 17-18.

²¹ See ASWS at paras 24-26.

forging process that occur prior to importation are steps that would be performed on all forged goods.²² Such steps may be necessary to produce of a forged wheel, but do not necessarily give the Wheel Bodies the essential character of a finished wheel.

14. For instance, Mr. Lepore's expert report included a statement that the "principal feature or characteristic of a forged wheel is that the impurities/flaws in the steel get reduced in size by the pounding of the metal to its final shape."²³ The CBSA relies on this statement as evidence that the Wheel Bodies must therefore have the essential character of a finished wheel by the time they are imported.²⁴ However, this statement by Mr. Lepore was clearly referring to the principal feature of a forged wheel – that is, as opposed to a cast wheel – rather than a principal feature of finished wheels generally. By the CBSA's logic, any forged good that has reduced impurities or flaws by virtue of having been pounded into its shape (e.g., a forged steel sword), would be considered to have the essential features of a finished wheel.

15. Furthermore, although the CBSA relies on the forging process as evidence of the Wheel Bodies having the essential character of finished wheels, this ignores the fact that some finished wheels are not forged, but rather are cast. Thus, steps specific to the forging process cannot be considered to be "essential features" of a "wheel, whether or not fitted with axles". Indeed, the only essential features of a finished wheel should be those consistent with the ordinary meaning of a "wheel": "A solid disc ... attached or able to be attached at its centre to an axle around which

²² For instance, any hot forging process must involve steps such as a raw material check, a saw cut, blank heating (though blanks may differ depending on the type of good being produced), water descaling, preforming, forging (the shape of the forging will differ according to the type of good being produced), hot measurement, pre-heating, heating, quenching, tempering, machining, final inspection, shot peening, and storing and transportation.

²³ Expert Report of Peter (Pietro) Lepore dated September 24, 2019 at para 36.

²⁴ CBSA Additional Submissions dated November 12, 2019 at para 20.

it revolves...”.²⁵ In this case, although the Wheel Bodies can be considered solid discs, they are not able to be attached at their centres to axles. They therefore cannot be considered to have the essential features of finished wheels.

16. The CBSA argues that an article does not have to be “fully operational” to have the essential features or essential character of a finished good.²⁶ Ronsco agrees. However, the ordinary meaning of the term “wheel” makes it clear that the essential character of a wheel requires it to be able to be attached at its centre to an axle. Given this requirement, the Wheel Bodies do not have the essential features of finished wheels.

17. This conclusion is independent of any “functional” test, or consideration of whether the Wheel Bodies can be placed under a train directly upon importation. For example, an article could have the essential features of a finished wheel but not be fully operational if it were a disc capable of being attached to an axle at its centre, yet still requiring additional work (e.g., sanding or finishing) that prevented it from functioning properly. In this case, however, the bore holes are both unfinished and not even centred – factors which clearly place the Wheel Bodies squarely outside the scope of the term “wheels”.

18. In any event, the CBSA’s argument that an article can have the essential character of a finished good without being “fully operational” is based on the Tribunal’s decisions in the *Outdoor Gear*²⁷ and *Bauer*²⁸ cases. These cases involved goods that required no further manufacturing –

²⁵ Shorter Oxford English Dictionary, 6th ed, Vol II (N-Z) at “Wheel” (noun), Definition #2, ASWS at para 21 and Tab 4. This definition defines a wheel as (i) a “solid disc...”; or (ii) “a circular ring with spokes radiating from the centre...”. Wheels for rolling-stock clearly fulfill the first of these, as they are “solid discs” rather than “rings with spokes”.

²⁶ CBSA Additional Submissions dated November 12, 2019 at para 21, citing [Outdoor Gear Canada v President of the Canada Border Services Agency](#) (21 November 2011), AP-2010-060 (CITT), ARS, Tab 5 at para 44 [*Outdoor Gear*].

²⁷ *Outdoor Gear*, *supra* note 26, ARS, Tab 5 at para 44.

²⁸ *Bauer*, *supra* note 13, ARS, Tab 3 at para 20.

that is, nearly completed goods that simply required small parts to be added. *Outdoor Gear* concerned assembled bicycle rims, spokes and hubs that were simply missing “tubes, valves, nipples [and] tires.”²⁹ In *Bauer*, the goods at issue were skates that only required insoles to be added to be finished.³⁰ The goods in both of these cases can be distinguished from the Wheel Bodies, which require further manufacturing using industrial machinery and subject to detailed and precise technical specifications. Clearly, the Wheel Bodies lacking the essential character of finished wheels is based on more than the goods simply not being “fully operational”.

19. In conclusion, the Wheel Bodies should be classified as “parts of wheels” under tariff item 8607.19.30 based on Rule 1 of the *General Rules*. In the alternative, the Wheel Bodies cannot be considered to have the essential character of finished wheels under Rule 2(a) and must therefore be classified under tariff item 8607.19.30 pursuant to Rule 3(a) or 3(c) of the *General Rules*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of November, 2019.



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²⁹ *Outdoor Gear*, *supra* note 26, ARS, Tab 5 at para 2.

³⁰ *Bauer*, *supra* note 13, ARS, Tab 3 at para 20. See also CBSA Additional Submissions dated November 12, 2019, footnote 21.

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