

**FEDERAL COURT**

**BETWEEN:**

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F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	13-jun-2022	
M-A Daigneault		
Montréal, QC	1	

**MAZDA CANADA INC.**  
**55 Vogel Road**  
**Richmond Hill**  
**Ontario, L4B 3K5**

**Applicant**

- and -

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS and  
PRESIDENT OF THE CANADA BORDER SERVICES AGENCY**

**Respondents**

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**APPLICATION FOR JUDICIAL REVIEW**  
pursuant to S.18.1(4)(c), (d) and (e) of the *Federal Court Act*

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**FEDERAL COURT**

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**MAZDA CANADA INC.**

Applicant

- and -

**MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS and  
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**NOTICE OF APPLICATION**

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TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Montreal.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules*, and serve it on the Applicant's solicitor or, where the Applicant is self-represented, on the Applicant WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGEMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Montreal, June 13, 2022

Issued by: \_\_\_\_\_

Address of  
local office: \_\_\_\_\_

TO:           The Attorney General of Canada and  
              Canada Border Services Agency  
              Federal Department of Justice  
              Quebec Regional Office  
              Complexe Guy Favreau  
              200 René-Lévesque Blvd. W.  
              East Tower, 5th Floor  
              Montreal, Quebec  
              H2Z 1X4

**I. THE FACTS:**

1. This is an Application for Judicial Review in respect of a decision dated May 24, 2022 (the "Decision") as issued by Respondent as follows:

<b>Date of Decision</b>	<b>Transaction Number</b>	<b>Original Transaction Number</b>
December 19, 2019	01875990000703	00000800597268
December 19, 2019	01875990000645	00000800598098
December 19, 2019	01052990000731	00000800596085
January 9, 2020	01875990000689	00000800595927
January 9, 2020	01875990000678	00000800597202
January 9, 2020	01052990000720	00000800598167
January 9, 2020	01875990000690	00000800597199
January 9, 2020	01875990000656	00000500597337
January 9, 2020	01052990000719	00000800597257
January 9, 2020	01875990000667	00000800597279
June 7, 2021	01052990000742	Blanket
September 15, 2021	01052990000753	Blanket
February 1, 2022	01052990000764	Blanket
May 27, 2022	01052990000775	Blanket

2. The Applicant makes application for an Order for this Honourable Court to
- i) set aside the Decision;
  - ii) grant the Applicant its costs of this Application;
  - iii) such further and other relief as this Honourable Court may deem just.

**II. GROUNDS FOR THE APPLICATION:**

3. Respondent's Decision incorrectly denied Applicant's refund entitlement stating that Applicant has not proven disposal of the goods.
4. This Application will be supported by the following material:
- i) the Affidavit of an authorized representative of Applicant;
  - ii) requirement for production of documents; and
  - iii) such further and other grounds as counsel may advise and this Honourable Court may permit.
5. Pursuant to Rule 317(2) Counsel for Applicant herein requests that Respondent obtain from its client:

Mr. Neven Nekić

Senior Officer Trade Compliance  
Trade Operations Division  
Canada Border Services Agency  
1980 Matheson Blvd. East  
Mississauga, Ontario L4W 5R7

Telephone: 647-231-4803 / Facsimile: 905-803-5353  
E-mail: Neven.Nekic@cbsa-asfc.gc.ca

A copy of all the material which was in the file of the decision-maker at the time the Decision was rendered.

And to provide such copies to Counsel for Applicant as well as the Registry of the Federal Court.

### ***Arguable Case***

6. Applicant and Respondent entered into a written agreement dated January 5, 1996 by which Respondent agreed to pay refunds of customs duty to Applicant concerning "defective goods" as described in s.76(1) of the *Customs Act* and the *Duty Refund Regulations* (the "Regulations").

*CIBC World Markets v. The Queen*,  
2012 FCA 3

7. Since 1996 Respondent has respected the agreement and has paid to Applicant all of the customs duty refunds which Applicant has filed concerning defective goods.
8. Respondent has refused to pay to Applicant any of the defective goods refund claims which are the subject of the present judicial review.

### ***Refund of Duties Regulations***

9. The relevant portion of the Regulations stipulates:

36 This Part applies to the granting of a refund under subsection 76(1) of the Act of duties paid on goods that are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered and that have, subsequent to their importation, been disposed of in a manner acceptable to the Minister at no expense to Her Majesty in right of Canada or exported.

#### Evidence in Support of Application

38 An application for a refund of duties must be supported by

(a) a written statement by the exporter, vendor or manufacturer of the goods confirming that the goods are defective, are of a quality inferior to that in respect of which duties were paid or are not the goods ordered and identifying the nature of the defect or inferior quality or the goods that were actually ordered, as the case may be;

(b) a copy of any document relating to a refund or credit given by the vendor of the goods to the importer or owner, showing the amount of any refund of the purchase price or of any credit given in respect of the goods;

(c) in the case of goods of inferior quality or that are not the goods ordered, a copy of the invoice, purchase order, contract or other document that shows the goods that were actually ordered; and

(d) a copy of the prescribed form verifying the exportation or disposal of the goods.

#### Amount of Refund

39 The amount of the refund of duties shall be an amount equal to that proportion of the duties paid on the goods that the amount of the refund or credit given by the vendor is of the value for duty of the goods.

#### ***In a Manner Acceptable to the Minister***

10. The written agreement between Applicant and Respondent dated January 5, 1996 confirms the method of disposal of the defective goods which is satisfactory to Respondent.
11. The exporter (Mazda Japan) has never provided a prescribed form verifying the disposal of the parts for which a claim has been submitted to Respondent (and paid by Respondent).
12. Since 1996, Respondent had audited the defective goods refund claims as filed by Applicant and has confirmed that a credit has been provided by Mazda Japan to Applicant as required pursuant to paragraph 28(b) of the Regulations.
13. Respondent has always been satisfied that Applicant disposed of the defective parts.
14. Applicant is in compliance with the record keeping requirements set out in s.40(1) of the *Customs Act*.
15. Appellant is in compliance with the *Imported Goods Records Regulations*.
16. Applicant relies, *inter alia*, on the following decisions of the Supreme Court of Canada:

- *Canada (Immigration and Citizenship) v. Vavilov*, 2019 SCC 85, paragraphs 52, 85, 86, 87, 101, 102, 104, 105, 107, 108 and 109;
- *Canada (Attorney General) v. Mavi*, [2012] 2 SCR 504

17. Appellant relies, *inter alia*, on the following decisions of the Federal Court of Appeal:

- *Canada (Attorney General) v. Honey Fashions Inc.*, 2020 FCA 64;
- *Bozzer v. Canada*, 2011 FCA 186, at paragraph 41;
- *Amoco Canada Petroleum Co. Ltd. v. MNR*, 9 CER 1 (FCA) at page 3;
- *Easy Way Cattle Oilers Ltd. v. Canada*, 2016 FCA 301; and
- *Penner International v. Canada*, 2002 FCA 453.

### **III. CONCLUSION**

18. Wherefore Applicant submits that the Decision of Respondent is unreasonable and must be set aside.

#### **THE WHOLE WITH COSTS.**

**DATED** at Montreal, this 13th day of June 2022.



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