Neutral Citation: [2025] UKFTT 117 (TC)

Case Number:TC09425

FIRST-TIER TRIBUNAL
TAX CHAMBER

Taylor House Tribunal Centre, London

Appeal reference: TC/2021/02369

Customs classification – roller banner stands – definition of furniture – whether furniture – no – common nomenclature explanatory notes – whether HMRC improperly relied upon them – no – whether appellant is declarant on the customs declaration and therefore liable for customs debt due to agent error – yes – whether if not, estoppel by convention prevents appeal on the ground not declarant – yes – appeal dismissed

Heard on: 26, 27, 28 June, 4 October 2024
Judgment date: 6 February 2025

Before

TRIBUNAL JUDGE RUDOLF KC
MR RICHARD LAW

Between

QUANTUM HOUSE HOLDINGS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr John Grayston, solicitor, and Dottore Avvocato Davide Rovetta, of Punter Southall Law

For the Respondents: Ms Jennifer Thelen, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION AND ISSUES

1. Anyone who has attended a careers fayre will be familiar with the "roller banner stand" ('RBS')[1]. One or more erected RBSs usually appears behind the stall where prospective employers sit ready to receive those interested (or otherwise) in what they have to say. The RBS will have a printed graphic or advert upon a banner attached to it. Upon that banner will be an image, for example, information by way of the name and details of a company.

2. But is an RBS at the point of importation in this case furniture (or a part thereof) for customs duty purposes?

3. The Appellants in this case are Quantum House Holdings Limited ('QHH'). The Respondents are the Commissioners for His Majesty's Revenue and Customs ('HMRC').

4. This is an appeal to the First-tier Tribunal (Tax Chamber) ('the Tribunal') by QHH. There are four grounds of appeal.

5. The principal issue before us is whether, for the purposes of customs classification and therefore the customs duty rate, an RBS at the point of import (without the banner containing the information) is 'furniture' (or a part thereof) with 0% duty rate or 'another article of aluminium (a base cassette and frame) with a 6% duty rate, or something else entirely.

6. Until 30 August 2018 the uniform approach across the EU was to treat such items as furniture. That changed after that date, following the combined nomenclature explanatory note ('CNEN') issued by the EU as explained below.

7. The appeal requires the Tribunal to consider the details of the provisions of the European Union's ('EU') Union Customs Code (Council Regulation (EU) No. 952/2013) ('UCC'), Regulation (EU) 2015/2446 ('the Delegated Act'), Regulation (EU) 2015/2447 ('the Implementing Act'), the Combined Nomenclature and its explanatory notes, the explanatory notes to the Nomenclature of the Customs Co-operation Council, otherwise known as Explanatory Notes to the Harmonised System, and other international agreements such as Article X of the General Agreement on Tariff and Trade. There are also significant Court of Justice of the European Union ('CJEU') and domestic cases as well as a number of different pieces of guidance issued by HMRC.

8. This issue we shall term 'the classification ground'.

9. There is also a challenge to HMRC's reliance upon the CNEN issued by the EU effective from 31 August 2018 which advised that "information stands" were no longer classified under the heading 'furniture'. As part of this, it is said that HMRC's change of classification was not sufficiently reasoned. That ground is closely aligned with the principal issue, and we shall deal with it as part of the 'classification ground'.

10. In the alternative, QHH invite the Tribunal to allow the appeal in part by reference to the point in time that QHH found out from the French authorities that the classification had changed rather than the date the explanatory note to the combined nomenclature was published and HMRC's change in the classification as a result. The difference is some seven months. This we shall term the 'timing ground'.

11. Finally, the appeal also requires the Tribunal to decide whether QHH were the proper person to be sent the post clearance demand note ("C18 Notice") seeking to enforce the customs debt HMRC said had arisen as a result of the classification away from furniture. This, as will

[1] This is an example to try to bring the RBS to the mind's eye of the reader. The uses of an RBS are wider than their appearance at careers fayres, and, more generally, the graphic can have anything put upon it.

be seen, necessarily includes an analysis of estoppel by convention. This we will term 'the procedural ground'.

12. QHH appeal, by section 16 (1) of the Finance Act 1994, against HMRC's decision dated 12 October 2020 to issue a C18 Notice made up of £214,751.13 in customs duty and £42,918.04 in VAT. That totals £257,669.17. That decision was upheld by an independent review by HMRC on 2 March 2021.

13. QHH essentially submit:

(a) the RBS is furniture with a duty rate of 0% or,

(b) alternatively, a base metal fitting with a duty rate of 2.7% and in any event,

(c) that HMRC improperly relied upon an explanatory note promulgated by the European Union to change the code from 31 August 2018 when they issued the C18 Notice. Retrospectivity should not be permitted and their decision is invalidated by failing to provide sufficient reasons for the change,

(d) if not furniture, then the change in classification (and therefore duty) should be applied from March 2019 when the Appellant became aware of the change as it would only be at that point that a uniform approach was being taken across the customs territory

(e) QHH were not liable for the customs debt as the customs declaration showing their unique registration identity was put there in error. As a result, the demand from HMRC for unpaid duty was sent to the wrong person, and

(f) they are not estopped by convention from relying upon that.

14. HMRC essentially submit:

(a) the RBS is an aluminium frame and base cassette with a duty rate of 6%,

(b) HMRC properly relied upon the explanatory note in coming to that conclusion,

(c) HMRC's decision to classify the RBS in that way from the 31 August 2018 cannot be impugned and there is no reason for that classification to begin when QHH found out about the CNEN,

(d) QHH were the declarant on the customs declaration and liable for the customs debt but, if not,

(e) QHH are estopped by convention from appealing to the Tribunal on that basis.

15. We heard the appeal over four days having adjourned to receive written submissions in advance of the final day. The Tribunal was greatly assisted by the oral and written submissions of Mr Grayston, Avv. Rovetta and Ms Thelen in a complex case with a number of moving parts and a lot of material.

16. We will deal with the classification ground first, the timing ground second and the procedural ground last.

17. As the importations that are the subject of this appeal were at a time when the UK was still a Member State of the EU it is agreed that they were regulated by the provisions of EU customs law.

PREAMBLE

18. Prior to the hearing we received:

(1) A 3,626-page bundle that included the Further amended grounds of appeal, HMRC's amended statement of case and further response, two witness statements from

Mr James Hickling, Head of Finance, two from Mr Jeremy Tennant, Finance Administrator, for QHH, and a witness statement from Officer Taskin Katib for HMRC. All deal with matters four or more years after events. There were also many documents and correspondences between the parties (and the Tribunal). Given the procedural ground, some of that will require to be traversed. This bundle also included skeleton arguments from both parties.

(2) A 3,952-page legislation and authorities bundle containing worldwide, European and UK materials.

(3) A suggested reading list from QHH which greatly helped us to navigate the bundles.

19. During the hearing we received:

(1) The visit report from 2 October 2019 prepared by Officer Katib contemporaneously. As we said at the time, this ought to have been disclosed well before the hearing but, in the absence of any objection and the lack of prejudice to QHH, no issue about its admittance arises. Indeed, as we shall see, it proved of benefit to QHH as well as to the Tribunal.

(2) A short 82-page supplementary bundle of authorities.

(3) An agreed statement of facts about the RBS.

(4) An example RBS with a banner.

(5) An RBS in the form it was at importation into the UK in a cardboard box and zip-up bag. In this form, the RBS consisted of a number of separate components: the aluminium base cassette with plastic end pieces, a short plastic sheet to which a banner could be attached, the spring and the aluminium stand and top rail.

20. We also received, without objection and alongside the agreed facts, a presentation of an RBS and how it fitted together (with said attached example display graphic) by Mr Dallow for QHH.

21. Finally in terms of documents, before the final day, we received written submissions from both sides together with further authorities. We are pleased to record that the written submissions themselves did not substantively exceed 25 pages each. All of this, with everything we received in the hearing, was helpfully consolidated into a single 299-page bundle by QHH.

22. We are very grateful for the way in which the voluminous documentation has been managed and presented in this case. In essence, aside from documents arising in the hearing, we had three bundles: Documents, Legislation/Authorities and (in this case) closing submissions with materials. That is as it should be. It greatly assists the Tribunal to have documents in this way, which is why the standard-case directions from the Tribunal require this.

FINDINGS OF FACT

23. The following are our necessary findings of fact for our analysis and conclusions in these appeals.

(i) Witnesses

24. We heard from all three witnesses from whom we had statements in the order we set out above [18]. Each was cross-examined. All were honest and doing their best to assist the Tribunal. Regarding Mr Hickling, we accept that he would not have said certain things to Officer Katib on the telephone prior to, and at, her visit to the premises on 2 October 2019. All

witness statements were made some four years or more after events. Officer Katib and the Tribunal have the benefit of her contemporaneous visit report. If therefore there is a dispute between Officer Katib's visit report and Mr Hickling's (or any witnesses' including Officer Katib's) evidence, we prefer the content of the report.

(ii) The role of QHH

25. QHH is the holding company that sits atop a VAT group above two subsidiary companies that it owns. Those two are Innotech Digital and Display Limited ('IDD') and Wigston Paper Limited ('Wigston'). IDD is important to the facts of this appeal. Wigston less so.

26. QHH, IDD and Wigston share directors in common. They also share a common VAT number. They each have a unique Economic Operators Registration and Identification number ('EORI') which is a requirement and (unlike a VAT number in a VAT group) unique to the person registered. QHH's EORI is their VAT number with 000 as a suffix. IDD's is the same VAT number but with 001 as the suffix. Wigston has 002 as the suffix.

27. On 18 September 2014 Mr Tennant applied for an EORI for IDD. The subject in the email attaching the application to HMRC was, "V09 1030 EORI Application Quantum House-Holdings" followed by QHH's VAT number. That was an application for IDD to receive an EORI number. The body of the email states:

> "Please see attached application for an EORI number, it would be appreciated if this could be expedited as soon as possible as we have goods at port awaiting clearance, our old VAT number has been cancelled due to a VAT group registration."

28. HMRC replied on 25 September 2014. They said:

> "In order to continue to process your application I will require the Main Group Representative of the VAT group to be EORI activated first, in order to process any group member applications."

29. An instruction on how to do this was given. The Main Group Representative of the VAT number was, we infer from its EORI ending 000 and that it was the holding company and not a 'group member', QHH.

30. On 26 September 2014, after that task had been completed HMRC provided the EORI for IDD ending 001 and with the description "(Group Member)"[2].

31. It is immediately apparent that the intertwining of companies within a VAT group (with a main group representative and group members) and the required order of companies to seek EORI numbers can lead to some confusion as it did here.

32. IDD import raw materials such as aluminium sheets and RBSs into the UK for onward sale. Wigston import creative raw materials in sheets for onward sale. QHH do not import anything on their own account.

33. As recorded in Officer Katib's visit report under the heading **Main business activities Your role in the Supply chain** (where 'Your' is QHH):

> "Holding company for Innotech and wigston papers. Holding company does no trading. Just holding company for both … in 2013 group structure changed. 1/1/2014 [IDD] became own legal entity with EORI … 001. Wigston … with eori number … 002. Both will become part of holding company but own legal entity and imports under own EORI number."

[2] The text is coloured red in the original.

34. We are not satisfied that the final sentence qualifies what comes before it, in the sense that it doesn't specifically describe QHH as actually making imports. Overall, we find that what is recorded was the extent of what was said about the relationship between QHH and IDD and Wigston and, dates aside, is accurate. The Sage spreadsheets produced before us by Mr Hickling confirm the nature of QHH as a non-importer. The various documents such as invoices from suppliers show IDD as conducting the trade. Had any detail, such as 90% of QHH business imports being for IDD, been provided in those terms we would have expected to see it in the visit report. Any such detail provided four years later by HMRC is unreliable. Given our findings overall about the role of QHH it is inherently improbable such detail was provided. What is likely, and we find, is that Mr Hickling said, as he told us, those figures related to the consolidated accounts. As no note is made at the time, the reference to "90% of QHH business imports" presented by HMRC is in error.

35. As we have found, the EORI numbers were activated somewhat later in 2014 (see [30] above) and we accept QHH was the holding company for IDD and Wigston and did no trading itself.

36. Officer Katib recorded that when goods have been shipped to the UK from a supplier:

> "Agent notified. Agent request documents. Documents provided to agent with instruction of values and CMCD to declare. Agent makes declaration. Company holds deferment account. VAT/duty paid. Goods released from customs … Paperwork received and C**[3] checked. [Mr Tennant] responsible for this on both company."

37. The CMCD is the Tariff Commodity Code. The staff did not appreciate that the code might change for a particular good and, as a result, checks were never made in this respect. In terms of binding tariff information ('BTI') IDD had one from HMRC for RBSs which expired on 16 December 2016 showing 0% duty. The code was 9403 2080 00. This was relied on post expiry, and they continued to use the same code at 0%. The same is true of their competitors, at least until 30 August 2018. It was only in March 2019 when French customs told the Appellant's staff that the classification code had changed to one with duty of 6%. No application was made to amend the customs declarations at that point to show code 7616 9990 99 and pay the duty and VAT accordingly.

38. The company that held the deferment account and paid the VAT and duty was IDD. IDD also retained and paid the Agents to act for them. It was common ground that the Agents acted on a direct basis, that is on behalf of their principal. We find that the Agent was instructed by IDD and IDD was its principal[4]. "Both company" at the end of Officer Katib's note (see [36] above) is a reference to IDD and Wigston as the two companies that import.

39. The instructions were given to the Agent by Mr Tennant as to which code to use and the values. Copies of the customs declarations were received afterwards but were not checked through in the detail of what was in each box, beyond the amounts themselves. Mr Tennant told us, and we accept, that IDD was intended to be the importer for customs purposes. However, he at no stage spotted that QHH appears alongside its EORI number. He said, "If I had looked at these documents, I would probably have thought that this was somehow caused by QHH holding the group VAT registration for [IDD]." He did not see this as an issue of consequence, as opposed to simply an inaccuracy. He further said, and we accept, "What

[3] The ** appears in the original and is likely to have come about as to capitalise C the 'shift' button needs to be pressed. If the 'shift' button is not released, then 88 becomes **. We have all done it.

[4] Due to the drafting of the materials that we must consider, the words 'Agent' and 'Representative' are interchangeable.

Officer Katib did was very helpful at the time bringing education in terms of relevance and importance of all the boxes".

40. Mr Hickling was certain that IDD gave clear instructions to the Agents to, "make imports in the name of IDD" although no documents were now available to confirm this. His conclusion was that the Agents made an error, and this could be linked to the fact that "[IDD] uses the QHH VAT number and that the EORI numbers for each of the group companies is derived from the QHH VAT number." Due to passage of time the written instructions could not be located by QHH, IDD or the Agent. The Agent, in a letter requested for the appeal, on 28 May 2024 said:

> "From our records I can see that in 2017 we did declare imports for [IDD] using QUANTUM HOUSE HOLD EORI … 000 although I do not see any explanation or note to explain why this was done."

41. Additionally, from the records presented to us, the Agent was including the name of the consignee as IDD on the C88 at the same time it was inputting QHH's EORI.

42. On balance we find that the use of QHH and its EORI was an Agent's error but one that was not spotted by QHH or IDD when it should have been. The businesses had copies of the customs declarations where this is made clear given the unique QHH EORI is used. We find that it was not something that troubled anyone at the time at QHH/IDD (or up to the point of the appeal to the Tribunal) from the managing director down. The customs debt would have been paid for by one of the group of companies. Indeed, such duties and VAT that were paid where QHH's EORI was used usually came from IDD's deferment account (except where the Agent's deferment was used, which we were told was typically when there was insufficient headroom in IDD's account). Mr Hickling told us in relation to correspondence that he did not think there was anything curious in receiving it in the name of QHH rather than IDD "It was the same VAT group".

43. As Mr Tennant candidly accepted in response to questions by the Tribunal about QHH appearing on the customs paperwork he did not think it was odd at the time:

> "[QHH] was the owner of the VAT group. There was an element of confusion. In recognising the importance of what we are discussing now and in hindsight I agree it is of great importance, but at the time QHH was the group owner and the C79 each month was in the name of [QHH], the importance then was not so relevant to me."

44. That thinking permeated QHH/IDD and, as we shall see, explains why no one attached any importance to disabusing Officer Katib at the meeting on 2 October 2019 that QHH was not in fact the customs declarant and why Officer Katib cannot be criticised for thinking QHH was importing for IDD. All parties proceeded on the basis that QHH was liable for the customs debt.

(iii) The RBS at the point of importation

45. We set out, in full, the statement of agreed facts which the Tribunal gratefully adopts as its findings as to what the RBS is and contains at the point of importation and what it does not:

> "**<u>What is included at point of importation</u>**
>
> The product has an outer carton made of cardboard. Inside the carton is a bag made of woven polyester fabric, with a carrying handle. Included in the carrying bag are the following items:
>
> Common to all the types of stand is a base cassette and top rail frame which in this case is made from aluminium.

The cassette and outer housing, in this instance are made largely of aluminium but with certain plastic components, which contains a pre-tensioned spring mechanism made up of a plastic tube and a steel spring which is locked by a removable steel pin.

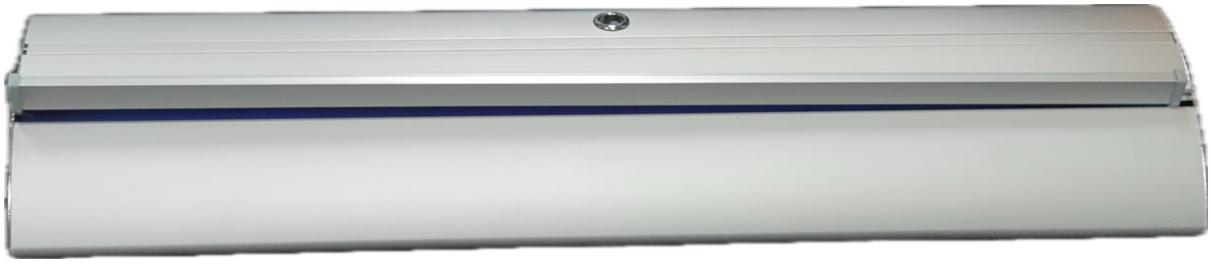
The cassette and outer housing also has feet attached to the body to provide stability when it is placed on the floor:

- A plastic sheet ("the lead paper") is attached to the plastic tube. The sheet includes a self-adhesive strip which can be removed to allow the attachment of a printed advertising or display graphic. The pre-tensioned spring mechanism enables the banner to be deployed and retracted automatically. If the locking pin is removed before attachment of a printed graphic, it would render the product unusable as the sheet would not any longer be accessible to attach the printed graphic.
- The top rail is made of aluminium with plastic end caps which is to be subsequently attached to the printed graphic.
- The pole is made of aluminium tubular sections connected by steel connectors and an elastic bungee cord, with a plastic connector on the top section which when assembled provides the support to hold the printed display or advertising graphic in place against the downward force of the spring mechanism.

Not included at point of importation

At the point of importation and indeed when sold by [IDD], the display stand does not include a printed advertising or display graphic. Rather, the printed advertising or display graphic is provided later. There is a small section – the lead paper – on which the printed advertising or display graphic can be attached."

46. The example RBS cassette and outer housing is shown as follows from the demonstration Mr Dallow gave us in a picture taken by us:



47. From the agreed facts and the photograph of the cassette it can be seen at the point of importation:

(1) the cassette, the pole and the top rail frame are in a bag. The bag is in a carton

(2) The top rail frame is made of aluminium

(3) The cassette is largely made of aluminium but some components within are made of plastic, and the spring mechanism is plastic and steel

(4) The pole is made of aluminium connected by steel connectors and using an elastic bungee cord

(5) A self-adhesive strip is attached which can be removed to allow the attachment of a display graphic or printed advert.

48. The display graphic or printed advert are not included at the point of importation.

(iv) The issue of an Explanatory Note to the Combined Nomenclature

49. As noted above, on 30 August 2018 a CNEN was published in the Official Journal of the European Union. This advised that the commodity code 9403 2080 00 did not include "information displays" such as "street boards" or "roll-ups" and that these should be classified where they are more specifically included. Instead, where the essential characteristic was that of an aluminium frame, the commodity code should begin 7616.

50. The full text of the CNEN is set out at Annex 1 to this decision.

51. The effect of the CNEN came into force on the day it was published. QHH and IDD did not appreciate this change. No processes were in place to check for changes such as this. No amendment was made or sought to be made to the customs declarations at any point.

52. As a result of the CNEN, HMRC concluded that the correct commodity code for RBSs was 7616 9990 99 for imports made from 31 August 2018 onward.

(v) The importations, the declarations and the errors on the inputting of the Economic Operators Registration and Identification number

53. The relevant importations of the RBSs took place between 31 August 2018 and 10 October 2019. For all of those (as well as those for some two years prior to 31 August 2018) QHH was named as the 'consignee' on the customs declaration in the UK and as the company responsible for the customs debt of any duty arising because its EORI was used.

54. The Agent used the system known as CHIEF to electronically input the data onto C88s[5].

55. On the C88s that we were shown and that are relevant to this appeal Box 8 was completed with QHH's EORI, that is with the suffix ending 000 after the VAT number. Underneath that was completed the name and address of the consignee, in each case IDD and the shared physical address with QHH.

56. The name and address should not have been used as it is only to be added if the country code is other than GB, the identity is GBPR or there is a paper declaration. None of those applied in relation to any C88 we are concerned with.

57. Box 14 was completed in the name of the Agent with its EORI and code [2] denoting direct representation.

58. The classification code in Box 33 was 9403 2080 00.

59. In box 48 a "DAN" number is used. The "DAN" is the deferment account number. That is the account from which the Agent will instruct the payment of duty and VAT (if any) to be made from. In this case the DAN number was that of IDD (except as noted above). A DAN account can be used by anyone as long as they have the holder's permission. It does not assist in determining who the declarant is.

60. In the document headed "CHIEF Import Entry Acceptance Advice" generated after the C88 details are inputted the consignee is only referenced by the EORI number and the name of the holder, in this case, QHH. That emphasises the pre-eminence of the EORI.

61. In March 2019 the French Customs authorities told the staff at QHH/IDD that they were using the wrong customs classification code. As a result, QHH changed the code for all imports into the EU other than the UK.

(*vi) The Customs and International Assurance visit of Officer Katib on 2 October 2019 and the issue of the C18 Notice*

[5] See [176] below for a fuller explanation

62. On 11 September 2019 Officer Katib tried to contact QHH by telephone. She did not have success.

63. As a result, on 12 September 2019 Officer Katib wrote to QHH detailing the proposed visit. The reference was CFSS-3318528.

64. The company being proposed to be visited was set out clearly, "**Company** Quantum House Holding Ltd." The reasons for the proposed visit were clearly set out including to ensure the correct amounts of import duty and VAT are declared and to check that:

> "the company record's and systems concerned with the import and/or export of goods are sufficient to provide the information required by EU regulations."

65. That encompassed QHH's processes including the use of its EORI.

66. That letter was not received by QHH at the time.

67. As a result of hiring a consultant, who concluded that the position was inconclusive, on 20 September 2019 Mr Phil Walker, a director, using his IDD email address, and with the details of IDD, submitted a request to the classification team at HMRC. However, against the request for "VAT registration or EORI number (if registered)" he simply put the VAT number rather than any unique EORI.

68. The question he asked was, "Please could we be put in touch with whoever the specialist is covering the importation of aluminium portable display stands. It is a question of what we should do in circumstances where we are unclear about the particular customs categorisation of the main products we sell. It turns out some of your guidance may have changed (so the product has moved into a different category without us knowing it) but our main competitors in market appear to be unaware of it."

69. On 23 September 2019 Officer Katib telephoned Mr Hickling.

70. Mr Hickling told us he did receive Officer Katib's letter of 12 September 2019 but only the day after her visit. In fact, in an email from Officer Katib to him on 23 September 2019 she attaches the letter, schedule and fact sheet CC/FS1g. The schedule requests several items including:

> "Import clearance instructions issued by your company to the freight agent
> …
> Copy of the customs import declaration (C88) …
> …"

71. There was also a request for a detailed discussion about how QHH ascertains the correct commodity code and copies of any binding tariff information certificates (if any).

72. In reply on the same day Mr Hickling confirms receipt that day of the hard copy posted letter.

73. On 2 October 2019 between 09.20 and 17.00 Officer Katib visited the premises of QHH. These times were recorded on her visit report. Officer Katib (with a trainee) met Mr Hickling, financial controller, Mr Phil Walker, managing director, Mr Dallow, product specialist, and Mr Tennant, import/export finance manager, all of whom were presented as QHH staff. We have already recorded some of our findings about QHH and IDD based upon what was recorded in her visit report (see [33] above).

74. Contrary to Mr Hickling's recollection that the visit was over "two or possibly three days", or, as recorded in his supplementary witness statement, "a substantial three-day visit", it was a single day.

75. In her visit report Officer Katib notes the "Trader" was "QHH" and gives the correct EORI ending 000 underneath. Officer Katib records that she "Explained the reason for visit". We have already set out what the letter of 12 September 2019 explained. It is inconceivable that QHH being recorded on the customs declaration and its EORI being used as such was not raised at all and we find it was. Mr Hickling has no memory of Officer Katib raising it and he told us:

> "Had Officer Katib done so and asked whether Innotech was in fact the importer, we would have said absolutely "Yes" and done whatever was needed to amend the mistake on the entries."

76. We accept Officer Katib's evidence that it was not for her to question the business structure and if a decision was made to use QHH's EORI on the customs declaration. Mr Hickling accepted there was a difference between commercial and customs arrangements. The question Mr Hickling would have answered in the way he told us he would was never asked. We further find, as Mr Hickling told us, that QHH not being the importer or customs debtor was "not expressly said in terms" to Officer Katib. Mr Hickling and other's focus was on IDD during the visit rather than QHH and the customs classification rather than whose EORI was being used.

77. At the meeting Mr Hickling and Mr Phil Walker confirmed the group structure. QHH's company house number was confirmed as well as its VAT number. As we have set out, Officer Katib recorded that QHH was the holding company for Innotech and Wigston and that QHH did no trading but was simply the holding company for both.

78. After some discussion Officer Katib and those she was meeting looked at an RBS. Officer Katib asked for material to get a "liability ruling" from HMRC to ensure the correct code was being used. Officer Katib showed everyone how to look at binding tariff agreements and other documents on screen.

79. Officer Katib made it clear to us, and we accept, that there was no deliberate non-compliance, rather a lack of education. That related both to the commodity code being used, which had changed, and the use of QHH's EORI.

80. At and after the meeting, we have no doubt at all that everyone there from HMRC and QHH/IDD was aware that QHH's EORI had been used. It is quite clear from the visit record that what was troubling Mr Phil Walker and others was the prospect of a large debt because of the change in customs code, not whose EORI was being used.

81. On 6 October 2019 Officer Katib requested two Live Liability Rulings ('LLR') from HMRC's Tariff Classification Service ('TCS'). Within those requests under the heading "Importer name" was inserted "QHH". One was what the correct commodity code should be up to 30 August 2018 and one for afterwards.

82. On 10 October 2019 Officer Katib received a fax from the TCS with both LLRs. The conclusions of the then current LLR were communicated to QHH by email of the same date. The attachment was called "20191010 Quantum House Holding Live Ruling result letter.pdf". In the body of the email Officer Katib wrote:

> "I have the results of the Live ruling. Please see attached letter.
>
> …
>
> Please note:
>
> - Your company has imported goods of that description …
>
> …"

83. In the ruling it had next to "Holder" "QHH". Under the heading **Decision** in her letter Officer Katib wrote that the TCS ruled that the RBS fell under commodity code 7616 9990 99 for 31 August 2018 and going forward (but in a separate ruling the old classification for prior to that date). Under the heading **Justification** the TCS set out that they had used the General Interpretative Rules ('GIRS') and GIR 1 was used to classify the product under heading 7616.

84. From 29 October 2019 the business continued its imports of RBSs but changed the EORI used to IDD's rather than QHH's.

85. On 8 November 2019 Phil Walker replied to Officer Katib. This was a detailed response concerned with the timing of the classification code change with no reference to QHH being the wrong person liable for the customs debt.

86. On 3 March 2020 IDD sought a further BTI by an application. In that application having described an RBS in similar terms to the agreed facts they wrote explaining how they had applied the GIRs:

> "We consider that code 8302 4900 99 is the most suitable classification for this product. This code is for miscellaneous articles of base metals (including aluminium). This focuses on base metal mountings, fittings and similar articles suitable for furniture, doors, staircases and windows etc."

87. At that point when the BTI was sought, it was not suggested that an RBS was furniture.

88. On 15 May 2020 QHH obtained BTI … 9991 confirming the proper classification code for RBSs was 7616 9990 99. HMRC wrote (in material part):

7 Description of goods
THE PRODUCT IS AN ALUMINIUM ROLLER BANNER FLOOR STAND, USED TO DISPLAY PRINTED MATERIAL FOR EXAMPLE AT AN EXHIBITION. THE CASSETTE AND TOP RAIL FRAME ARE MADE FROM ALUMINIUM, AVAILABLE IN VARIOUS SIZES TO ACCOMMODATE DIFFERENT SIZED BANNERS 2000MM X 800MM TO 2000MM X 1500MM. SNAP CLIP TOP RAIL, HEAVY DUTY BUNGEE POLE AND SOCKET BASE, LARGE INTERNAL HOUSING, ADJUSTABLE FEET UNDERNEATH THE CASSETTE AND MAGNETIC END CAPS ENCLOSED IN A MATERIAL CARRY BAG. PACKAGED IN A CLEAR PROTECTION SLEEVE AND A DOUBLE WALL CARTON.

9 Justification of the classification of the goods
CLASSIFICATION HAS BEEN DETERMINED IN ACCORDANCE WITH THE FOLLOWING:
GENERAL INTERPRETIVE RULES (GIRS)
GIR 1 HAS BEEN USED TO CLASSIFY THIS PRODUCT BY THE TERMS OF HEADING 7616 OTHER ARTICLES OF ALUMINIUM
GIR 6 HAS BEEN USED TO CLASSIFY THE GOODS TO SUBHEADING LEVEL 761699 OTHER THAN ELEWHERE SPECIFIED IN THIS HEADING
CN CODE 76169990 OTHER THAN CAST
ALSO CLASSIFIED IN ACCORDANCE WITH ;
HARMONIZED SYSTEM EXPLANATORY NOTES (HSEN) HEADING 7616
CNEN TO HEADING 9403 AMENDMENT REFERS
EUROPEAN UNION EC REGULATION (2018/C 305/05)

89. On 12 June 2020 that BTI was appealed by IDD, along with a request for an independent review, again requesting that the classification should be headed 8302.

90. On 24 July 2020 an independent review upheld the terms of the BTI. IDD did not further appeal the BTI.

91. On 1 September 2020 Officer Katib sent a "Right to be Heard" ('RTBH') letter, schedule and calculation for the period 31 August 2018 to 31 March 2020. The calculations identified QHH as the consignee and the amount due was based upon the classification code from the BTI. The letter was issued to Mr Walker at QHH with the reference ending 8528 (see [63] above). The schedule included the paragraph:

> "You are reminded that as an importer or exporter, you are legally responsible for the accuracy of the declaration made to Customs …"

92. It ended:

> "If you have any further evidence or arguments that could change this decision then please send them to me within 30 days of the date of this letter …"

93. On 29 September 2020 Mr Hickling wrote to Officer Katib in reply. The letterhead was IDD's but the reference was that ending 8528. Nowhere did IDD suggest that QHH was not liable for the customs debt. There was an acceptance that the correct commodity code was 76169990 but the request was for any duty to be paid from March 2019 when QHH had been made aware by the French customs authority of the change in classification.

94. By this point HMRC and QHH both operated under the common assumption that QHH was liable for the customs debt. QHH's EORI had been used on the customs declarations between 31 August 2018 and 12 October 2019. As far as QHH and IDD were concerned, they were part of the same VAT group, which meant QHH being liable for the customs debt was assumed to be appropriate, even if their EORI was used in error. On 23 September 2019 QHH had received Ms Katib's letter setting out the reasons for her visit. On 2 October 2019 that visit was made to QHH for those reasons. Between that date and the issue of the RTBH letter nearly a year later not once was there a suggestion to Officer Katib that QHH were not liable for the customs debt. QHH/IDD assumed that they were. The amount of time that passed and activity between Officer Katib and QHH up to and including the issuing of the C18 to QHH meant that QHH through its words and actions in not telling Officer Katib that QHH was the wrong entity to be liable for a customs debt, had a crossed a line, cementing the common assumption that QHH was liable for the customs debt.

95. After a letter dated 6 October 2020 from Officer Katib, on 12 October 2020 HMRC issued the C18 Notice to QHH with a demand reference ending 5657. Officer Katib was the decision maker. In box 8 on the C18, QHH is set out as the 'consignee' with the number ending 2000 alongside it. The C18 Notice was issued under cover of a letter from HMRC of the same date. That was sent to QHH. It informed QHH they could ask for an independent review or appeal to the Tribunal. Mr Hickling accepted that when the C18 was issued to QHH they thought it [IDD, Wigston and QHH] was "all one group" and that, "the VAT group was QHH".

96. On 20 October 2020 QHH were aggrieved by the issue of the C18 and sought an independent review. That request was from Phil Walker under the reference ending 5657. Once again, no suggestion was made that QHH were the wrong target of the C18 request. Indeed, in the covering email seeking the review into the C18 issued to QHH Phil Walker said:

> "Further to HMRC's letter of 6 October and the C18 demand of 12 October, the company hereby **asks for an independent review** of HMRC's decision in this matter."

(vii) QHH's appeal against the issue of the C18 Notice

97. On 27 October 2020 HMRC communicated that the independent review into the issuance of the C18 Notice with the reference ending 5657 would be undertaken.

98. On 2 March 2021 an officer of HMRC unconnected with the case completed his review. In his letter of that date he described the key point in issue as being, "… whether the debt should be calculated from 31 August 2018 as Officer Katib has calculated it or from March 2019 as QHH contend."

99. It will be immediately apparent that neither the classification ground nor the procedural ground was raised during the independent review. Rather the focus was upon the timing ground. That is an acceptance, freely given, that QHH did not believe it was anything other than liable for the customs debt reflecting, as it did, QHH's position from before and at the time of the issuing of the C18 Notice.

100. Further correspondence was exchanged, and the review listed the material seen including BTI … 9716, "… for goods of the type being imported by QHH and the subject of this review. The BTI was not issued to QHH and expired on 16 December 2016." It also listed, "12 September 2019 – Letter sent to QHH proposing a visit by HMRC officers to check Customs

and International trade records." The final document was, "16 November 2020 – Letter from James Hickling, emailed to review officer … setting out the reasons why QHH believe the debt in this case should be calculated from March 2019 rather than 31 August 2018." In that final document, on IDD headed notepaper, Mr Hickling accepted that the classification code 7616 9990 99 was now correct. Thus, the classification ground was not only not raised, but at that stage, the change in code was accepted to be correct (save as to timing). No reference to the procedural ground was made at all.

101. The independent review concluded that 7616 9990 99 was the correct customs classification and that this came into force on the day immediately after the CNEN was issued, here 30 August 2018.

102. On 29 June 2021, in a letter on QHH notepaper, QHH wrote, under the heading, "Quantum House Holdings Limited – Review Conclusion Letter Appeal to First Tier Tribunal," "I can confirm that to date Quantum House Holdings Limited has not paid any of the amounts demanded by the C18."

103. At no point in any correspondence to HMRC, to Officer Katib or in the independent review process did QHH once state that IDD should be the correct addressee as the person who should be liable for any customs debt either before or after the issuance of the C18 until the notice of appeal was lodged with the Tribunal.

104. Because of the conclusions of the independent review, QHH remained aggrieved and appealed to the Tribunal. Technically, the appeal was late, but HMRC confirmed to us at the beginning of the hearing that they had no objection to it proceeding.

THE LAW

105. As we have said, we will deal with the classification ground first, the timing ground second and the procedural ground third. The procedural ground involves consideration of EU legislation as well as the principles of estoppel by convention which we have separated out as it is only if QHH is not liable for the customs debt by application of the relevant principles on the facts that estoppel by convention will require consideration.

106. We are grateful to the Advocates on both sides for their written materials and oral submissions. We will be forgiven for not setting out the submissions on the law which were extensive and wide-ranging but all of which we have considered.

(i) The classification ground – what are the principles that apply to categorising an RBS?

107. In the end, upon this issue, there was not a vast chasm between the parties as to the principles (as opposed to their application to the facts).

I. The Union Customs Code ('UCC')

108. Article 1 (1) of the Union Customs Code (Council Regulation (EU) No. 952/2013) ('UCC') under the heading **Subject matter and scope** states:

> "1. This Regulation establishes the Union Customs Code (the Code), laying down the general rules and procedures applicable to goods brought into or taken out of the customs territory of the Union".

109. The primacy of the UCC as applied by Regulation (EU) 2015/2446 ('the Delegated Act') and Regulation (EU) 2015/2447 ('the Implementing Act') governing imports after 1 May 2016 is not in dispute.

110. Article 56 is located within chapter 1 of Title 2 of the UCC and is headed **Common Customs Tariff and Surveillance**. So far as material Article 56 states:

"1. Import and export duty due shall be based on the Common Customs Tariff.

Other measures prescribed by Union provisions governing specific fields relating to trade in goods shall, where appropriate, be applied in accordance with the tariff classification of those goods.

2. The Common Customs Tariff shall comprise all of the following:

(a) the Combined Nomenclature of goods as laid down in Regulation (EEC) No 2658/87;

(b) any other nomenclature which is wholly or partly based on the Combined Nomenclature or which provides for further subdivisions to it, and which is established by Union provisions governing specific fields with a view to the application of tariff measures relating to trade in goods;

(c) the conventional or normal autonomous customs duty applicable to goods covered by the Combined Nomenclature;

(d) the preferential tariff measures contained in agreements which the Union has concluded with certain countries or territories outside the customs territory of the Union or groups of such countries or territories;

(e) preferential tariff measures adopted unilaterally by the Union in respect of certain countries or territories outside the customs territory of the Union or groups of such countries or territories;

(f) autonomous measures providing for a reduction in, or exemption from, customs duty on certain goods;

(g) favourable tariff treatment specified for certain goods, by reason of their nature or end-use, in the framework of measures referred to under points (c) to (f) or (h);

(h) other tariff measures provided for by agricultural or commercial or other Union legislation.

…"

111. Article 57 is headed **Tariff classification of goods**. That states:

"1. For the application of the Common Customs Tariff, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the Combined Nomenclature under which those goods are to be classified.

2. For the application of non-tariff measures, tariff classification of goods shall consist in the determination of one of the subheadings or further subdivisions of the Combined Nomenclature, or of any other nomenclature which is established by Union provisions and which is wholly or partly based on the Combined Nomenclature or which provides for further subdivisions to it, under which those goods are to be classified.

3. The subheading or further subdivision determined in accordance with paragraphs 1 and 2 shall be used for the purpose of applying the measures linked to that subheading.

4. The Commission may adopt measures to determine the tariff classification of goods in accordance with paragraphs 1 and 2".

II. The Common Customs Tariff ('CCT')

112. It will be seen from those Articles that the Common Customs Tariff ('CCT') controls the classification of goods imported into the EU. For our purposes the focus is upon paragraph 2(a) of Article 56 and "the Combined Nomenclature of goods as laid down in Regulation (EEC) No 2658/87" ('CN Regulation').

113. The Combined Nomenclature of goods ('CN') is produced as an annex to the CN Regulation. The CN enables a systematic classification of goods. Each good should be classified once in a single place.

114. The CN is reproduced in the UK Tariff by regulation (and amended annually).

115. In *Vtech Electronics Limited v HMRC* [2003] EWHC 59 (Ch.) ('Vtech') the High Court considered an appeal by the taxpayer against the classification of its products as "toys" rather than "games". The difference in duty was significant, with that for "games" being considerably less. Lawrence Collins J (as he then was) set out the legal background of the CCT:

> "[6] The Common Customs Tariff came into existence in 1968. By art 28 of the revised EC Treaty Common Customs Tariff duties are fixed by the Council acting on a qualified majority on a proposal from the Commission.
>
> [7] The level of customs duties on goods imported from outside the EC is determined at Community level on the basis of the Combined Nomenclature ("CN") established by art 1 of Council reg 2658/1987. The CN is established on the basis of the World Customs Organisation's Harmonised System laid down in the International Convention on the Harmonised Commodity Description and Coding System 1983 to which the Community is a party.
>
> [8] Article 3(1)(a)(ii) of the International Convention provides that, subject to certain exceptions, each contracting party undertakes "to apply the General Rules for the interpretation of the Harmonised System and all the Section, Chapter and Subheading Notes and shall not modify the scope of the Section, Chapters, headings or subheadings of the Harmonised System". The International Convention is kept up to date by the Harmonized System Committee, which is composed of representatives of the contracting states.
>
> [9] The CN, originally in Annex I to reg 2658/87, is re-issued annually: the version applicable to the present case is Annex I to reg 2204/99 (12.10.99 OJ L278). The CN comprises: (a) the nomenclature of the harmonized system provided for by the International Convention; (b) Community subdivisions to that nomenclature ("CN subheadings"); and (c) preliminary provisions, additional section or chapter notes and footnotes relating to CN subheadings.
>
> [10] The CN uses an eight-digit numerical system to identify a product, the first six digits of which are those of the harmonised system, and the two extra digits identify the CN sub-headings of which there are about 10,000. Where there is no Community sub-heading these two digits are "00" and there are also ninth and tenth digits which identify the Community (TARIC) subheadings of which there are about 18,000.
>
> [11] There are Explanatory Notes to the Nomenclature of the Customs Co-operation Council, otherwise known as Explanatory Notes to the Harmonised System ("HSENs"). The Community has also adopted Explanatory Notes to the CN (pursuant to art 9(1)(a) of Council reg 2658/87), known as CNENs.
>
> [12] Binding Tariff Information is issued by the customs authorities of the Member States pursuant to art 12 of the Common Customs Code (Council reg 2913/92/EEC) on request from a trader. They are called "BTIs", and such information is binding on the

authorities in respect of the tariff classification of goods. The BTIs issued in this matter were the subject of the appeal to the Tribunal in the present case."

III. The approach to classification under the CCT

116. In *Vtech*, Lawrence Collins J continued with a section headed 'Interpretation' at [13] – [17]. In material part he said:

> "[13] There are many decisions of the European Court on the interpretation of the tariff headings. The decisive criterion for the tariff classification of goods must be sought generally, regard being had to the requirements of legal certainty, in their objective characteristics and properties, as defined in the headings of the Common Customs Tariff: *eg Case C- 177/91 BioforceGmbH v Oberfinananzdirektion Munchen* [1993] ECR I-45, where the function of the product (hawthorn drops) was decisive; *Case C-309/98 Holz Geenen GmbH v Oberfinananzdirektion Munchen* [2000] ECR I-1975, where the intended use of the product (wood blocks for window frames) was said to be such an objective criterion if it was inherent in the product; *Case C-338/95 Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, where the intended use of the product (pyjamas) was decisive, and the presentation of the goods was regarded as relevant.
>
> [14] The headings and the Explanatory Notes do not have legally binding force and cannot prevail over the provisions of the Common Customs Tariff: *Case C-35/93 Develop Dr Eisbein GmbH & Co. v Hauptzollamt Stuttgart-West* [1994] ECR I-2655, para 21; *Case C-338/95 Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, per Advocate General Jacobs, para 32; *Case C-309/98 Holz Geenen Oberfinananzdirektion Munchen* [2000] ECR I-1975, para 14. But they are important means for ensuring the uniform application of the Common Customs Tariff and are therefore useful aids to interpretation: eg *Case C-338/95 Wiener SI GmbH v Hauptzollamt Emmerich* [2000] ECR I-1975, para 11; *Case C-309/98 Holz Geenen Oberfinananzdirektion Munchen* [2000] ECR I-1975, para 14. They may show that a classification by Commission Regulation is invalid, if the error made by the Commission is manifest: eg *Case C-463/98 Cabletron Systems Ltd v Revenue Commissioners* [2001] ECR I-3495, para 22.
>
> [15] It is for the national court (even in a case which has been referred to the European Court for guidance on the applicable principles) to determine the objective characteristics of a given product, having regard to a number of factors including their physical appearance, composition and presentation: *Case C-338/95 Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, para 21.

117. At [16] in material part he said:

> "The General Rules for the Interpretation of the CN ("GIRs") are contained in s 1A of Pt 1 of Annex 1 to Council reg 2658/87 and have the force of law …"

118. In that case it was not necessary to set out the six rules but here we must do so. The six GIRs are:

> "**Rule 1**
>
> The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the following provisions.
>
> **Rule 2**

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

(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule.

Rule 3

When, by application of rule 2(b) or for any other reason, goods are prima facie classifiable under two or more headings, classification shall be effected as follows:

(a) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;

(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable;

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

Rule 4

Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

Rule 5

In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:

(a) camera cases, musical instrument cases, gun cases, drawing-instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

(b) subject to the provisions of rule 5(a), packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

Rule 6

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise."

119. In *Joined Cases C-288/09 and C-289/09, British Sky Broadcasting Group Plc and Pace PLC* ('BSkyB') the CJEU appears to have gone slightly further than Lawrence Collins J on the question of conflict between the CN on the one hand and a CNEN on the other. It said:

"65 Accordingly, where it is apparent that they are contrary to the wording of the headings of the CN and the section or chapter notes, the Explanatory Notes to the CN must be disregarded (see *Case C-229/06 Sunshine Deutschland Handelsgesellschaft* [2007] ECR I-3251, paragraph 31; *Case C-312/07 JVC France* [2008] ECR I-4165, paragraph 34; and *Kamino International Logistics*, paragraphs 49 and 50)."

120. Whipple LJ, in the Court of Appeal, recently summarised the approach to be taken when considering the classification of goods in *Build-A-Bear Workshop UK Holdings Limited v HMRC* [2022] EWCA Civ 825 ('Build-A-Bear') at [15]:

"(1) The GIRs provide a set of rules for interpretation of the CN in order to ensure that all products are classified under the correct code and (unlike the HSENs and CNENs) all have "the force of law" (Vtech [16]).

(2) It is common ground that, in the interests of legal certainty and ease of verification, the decisive criteria for the tariff classification of goods must be sought in their objective characteristics and properties as defined by the wording of the relevant heading of the CN and of the notes to the sections or chapters of the CN (*Holz Geenen GmBH v Oberfinanzdirektion Munchen* (Case C-309/98) at [14]).

(3) The intended use of the goods may be considered as part of the classification analysis where that use is inherent to the goods and that inherent characteristics capable of being assessed by reference to the objective characteristics and properties of the goods (see *Hauptzollant Hamburg-St. Annen v Thyssen Haniel Logistic GmbH* (Case C-459/93) ("Thyssen Haniel") at [13]).

(4) Having regard to the objective characteristics and properties of the goods, a combined examination of the wording of the headings and explanatory notes to the relevant sections and chapters should be undertaken to determine whether a definitive classification can be reached, in accordance with GIR1 and GIR 6. If not, then in order to resolve the conflict between the competing provisions, recourse must be had to GIRs 2-5 (see the opinion of Advocate General Kokott in *Uroplasty v Inspector v Belastingdienst* (Case C-514/04) ("Uroplasty") at [42].

(5) GIR 3 will only apply when it is apparent that goods are prima facie classifiable under a number of headings (see *Kip Europe SA & Ors and Hewlett Packard International SARL v Administration de douanes* (Cases C-362/07-C363/07) ("Kip Europe") at [39] and the wording of GIR 3 itself).

(6) Classification must proceed on a strictly hierarchical basis, taking each level of the CN in turn. The wording of headings and subheadings can be compared only with the wording of headings and subheadings at the same level (see the opinion of Advocate General Kokott, Uroplasty [43]).

(7) The HSENs and CNENs are an important aid to the interpretation of the scope of the HSENs and the CNENs must therefore be compatible with the provisions of the

CN, and cannot alter the meaning of those provisions (see *Revenue and Customs Commissioners v Honeywell Analytics Limited* [2018] EWCA Civ 579 per Davis LJ ("Honeywell Analytics") at [95] and Invamed per Patten LJ at [12])."

121. The expression of the law at (4) is consistent with *HMRC v Flir Systems AB* [2009] EWCH 82 (Ch.) ('Flir') per Henderson J (as he then was) at [14]. That at (7) is consistent with the Supreme Court's decision in *Amoena v HMRC* [2016] UKSC and the decision of the CJEU in *Develop Dr Eisbein GmbH & Co v Hamptzollant Stuggardt-West* (Case C-35/93).

122. Finally, in *HMRC v International Plywood (Importers) Limited* [2023] UKUT 00278 (TCC) ('Plywood') the Upper Tribunal expressed itself as follows:

"**The Law**

Customs Legislation, Union Customs Code,

13. The Union Customs Code ('UCC') was established by EU Regulation 952/2013 to increase consistency on customs. The CN, laid down in Regulation 2658/87, is the legal basis for the tariff. The CN is amended annually and reproduced in the UK Tariff. The CN, which is directly applicable in all Member States, sets out the tariff subheadings and subdivisions for the classification of goods.

14. The six General Rules of Interpretation ("GIRs"), contained in Part 1, Section 1 of the CN, set out the principles by which the CN must be interpreted. We return to the GIRs below.

15. The CN is based on the international Harmonised Commodity and Coding System ("Harmonised System" or "HS") established by the World Customs Organisation ("WCO").

16. The Explanatory Notes to the Harmonised System ("HSENs") published by the WCO are not legally binding but are highly persuasive in determining the proper classification. There are also Explanatory Notes to the CN ("CNENs") which refer to the HSENs.

Principles of interpretation and GIRs

17. The FTT accurately summarised the principles to be applied in classification appeals in its decision at [8]:

> 'At [2-17] of *MSA Britain Ltd v HMRC* [2019] UKFTT 0693 (TC) and [6-10] of *Orlight Ltd v HMRC* [2013] UKFTT 732 (TC), the Tribunal helpfully summarised the law and approach to interpretation in classification appeals, as follows:
>
> (a) Annex 1 of Regulation 2658/87 contains a combined nomenclature ("the CN") which classifies goods using an eight-digit identification system. The first two digits represent the chapter heading, the next two digits represent headings in the chapter, the fifth and sixth digits represent subheadings (which mirror those used in the WTO's nomenclature) and the final two digits represent the EU's further subdivisions.
>
> (b) Annex 1 also contains six general rules for the interpretation of the CN ("the GIRs").
>
> …
>
> (c) "...the decisive criteria for the classification of goods...is in general to be found in their objective characteristics and properties as defined in the wording of the relevant CN and of the notes to the sections or chapters...the intended use

of a product may constitute an objective criterion in relation to a tariff classification if it is inherent in the product, and such inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties..." (*Intermodal Transports BV Case C-495/03*);

(d) There are explanatory notes to the W[C]O's nomenclature, Harmonised System Explanatory Notes ("HSENs") and explanatory notes produced by the European Commission, Combined Nomenclature Explanatory Notes ("CNENs"). Neither have force of law but both may be important aids to interpretation;

(e) Where the EU commission has promulgated a classification regulation in relation to particular goods:

(i) the scope of that regulation must be determined by taking into account, inter alia, the reasons given in the regulation (Hewlett-Packard Case C-199/00);

(ii) A classification regulation can assist in classification of similar products by analogy."

123. The Upper Tribunal in *Plywood* was considering the decision of the Tribunal in the same case, the hearing of which was only two days after the Court of Appeal handed down its decision in *Build-A-Bear*. The Upper Tribunal cited *Build-A-Bear* at [109] for a limited purpose.

124. We must also mention another source of international law. We accept the submission of Avv. Rovetta that, although not directly enforceable, "where the [EU] has legislated in the field in question, the primacy of international agreements concluded by the [EU] over provisions of secondary [EU] legislation means that such provisions must, so far as is possible, be interpreted in a manner that is consistent with those agreements" (see, for example, *Case C-428/08 Monsanto Technology* ('Monsanto') at [72]).

125. Article X (3) (a) of GATT requires that customs authorities classify the goods in a uniform manner within the customs territory. In the report of the WTO adjudicating panel in *Case DS-315 EC – Selected Customs Matters* ('SCM') the conclusion and summary are relied upon by QHH where it was said:

"7.135 In summary, the interpretative material upon which the Panel is entitled to rely under the Vienna Convention in interpreting the term "uniform" in Article X:3(a) of the GATT 1994 indicates that that term covers, inter alia, geographic uniformity. In other words, administration should be uniform in different places within a particular WTO Member. Further, the Panel considers that the form, nature and scale of the alleged non-uniform administration and the laws, regulations, judicial decisions and rulings that are allegedly being administered in a non-uniform manner should be taken into consideration when interpreting the term "uniform" in Article X:3(a) of the GATT 1994 in the context of a particular case. The Panel considers that the narrower the challenge both in terms of the administration that is being challenged and the laws, regulations, decisions and rulings which are alleged to be administered in a non-uniform manner in a particular case, the more demanding the requirement of uniformity. The broader and more wide-ranging the challenge both in terms of the nature of administration that is being challenged and the specific laws, regulations, decisions and rulings or provisions thereof that are alleged to be administered in a non-uniform manner in a particular case, a less exacting standard of uniformity should be applied. The Panel also considers that the interpretation of the term "uniform" in Article X:3(a) of the GATT 1994 does not necessarily entail

instantaneous uniformity. Rather, uniformity must be attained within a period of time that is reasonable. What is reasonable will depend upon the form, nature and scale of the administration at issue as well as the complexity of the factual and legal issues raised by the act of administration that is being challenged. It is the Panel's view that, in all cases, regardless of the form, nature and scope of administration at issue, administration should not fall below certain minimum standards of due process, which encompass notions such as notice, transparency, fairness and equity."

126. However, this must be read in context of the Panel's views on what "uniformity" requires within WTO members and the practical realities that exist. The Panel said:

"*iii) Article X:3(a) GATT lays down minimum standards*

4.211 In line with the foregoing, it must be considered that Article X:3(a) GATT only lays down minimum standards. It does not oblige WTO Members to meet the highest possible standard achievable at a given point in time. This character of Article X:3(a) as a minimum standard has been emphasized by the Appellate Body in US – Shrimp. The Panel in Argentina – Hides and Leather has also cautioned against reading too much into Article X:3(a) GATT.

4.212 Moreover, minor administrative differences in treatment cannot be regarded as implying a violation of Article X:3(a) GATT. This was clearly stated by the GATT Panel in EC – Dessert Apples, which confirmed that certain variations between EC member States in the administration of import licensing, e.g., as regards the form in which licence applications could be made and the requirement of pro-forma invoices, did not constitute a breach of Article X:3(a) GATT.

4.213 Overall, Article X:3(a) GATT is therefore a minimum standards provision which guarantees only a certain minimum level of uniformity in administration. Moreover, Article X:3(a) GATT does not prohibit administrative variations where such variations are minor or do not significantly affect the interests of traders.

(iv) The meaning of "uniform administration"

4.214 The meaning of the requirement of "uniform administration" must be established in the light of the foregoing observations. Moreover, account must be taken of the practical realities in which customs administrations must work.

4.215 The administration of customs laws in the real world involves a number of difficulties and challenges. First of all, the administration of customs frequently involves complex questions of law and fact. Second, the circumstances under which customs authorities operate are in continuous evolution due to changes in goods traded or commercial behaviour. This requires customs authorities to continuously adapt to new realities. Third, customs administration is a mass business.

4.216 Therefore, a measure of realism is required in the application of Article X:3(a) GATT. If customs authorities struggle with a complex new question of law and fact, this does not already mean that authorities in the member concerned administer customs law in a non-uniform manner. Similarly, if it takes a certain amount of time to come to an established practice on a new and complex issue of customs law, this does not yet mean that customs laws are being administered in a non-uniform way.

4.217 A complete uniformity in the application of customs laws could never be achieved by any Member, even those with the most efficient systems of customs administration. In a large country with a large bureaucracy, a minimum degree of non-uniformity is de facto unavoidable. This may occur, for instance, because a trader in a particular case

does not challenge a particular decision even though it was illegal. In such a case, non-uniformity may be the result, but this does not mean that the Member in question fails to meet its obligations under Article X:3(a) GATT. The EC notes that the United States appears to agree with this, since it states that "the fact that divergences occur is not problematic in and of itself".

4.218 The proposition that individual instances of administration are not probative for a violation of Article X:3(a) GATT also finds support in the case law under the DSU. In EC – Poultry, the Appellate Body already confirmed that individual measures of application do not fall within the scope of Article X GATT. In US – Hot Rolled Steel, the Panel stated that rather than relying on individual instances of administration, it was necessary for the complaining party to establish a pattern of decision making contrary to Article X:3(a) GATT.

4.219 Accordingly, whether a particular member meets the requirement of "uniformity" cannot be established merely by looking at an individual example of practice. Rather, uniformity can be assessed only on the basis of an overall pattern of customs administration. Only if, on the basis of such general patterns, a WTO Member's administration of its customs laws can be shown to be non-uniform, is the standard of Article X:3(a) GATT violated.

(b) The burden of proof

4.220 It is established case law under the DSU that the party which asserts a particular claim bears the burden of proof. In the present case, it is the United States which claims that the EC does not administer its customs laws in a uniform manner. It is accordingly the United States which must adduce evidence to establish a prima facie case that its claim is true. Only if the United States discharges this burden of proof will the burden shift to the EC to rebut the US case.

4.221 The United States does not even come close to discharging this burden of proof. In fact, the United States adduces only very sparse evidence regarding the actual administration of EC customs law. The examples given by the United States are partially irrelevant, partially inconclusive, and in any event do not show a general pattern of non-uniform administration of EC customs law.

…"

IV. The competing CNs

127. The meaning of the digits of a customs classification was explained by Lawrence Collins J in *Vtech* at [10] (see [115] above). Here there are three competing CN headings which we reproduce as Annexes to this decision[6].

128. However, central to the competing submissions was disagreement over the four digit heading rather than the sub-headings and digits. It is therefore upon those we focus.

(1) 9403 'Furniture'

[6] As Mr Grayston and Avv. Rovetta set out in their skeleton argument where they reproduced the relevant parts of the tables, "These extracts are taken from Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff". No change to these was reflected in the applicable regulation of 11 October 2018. Attempting to reproduce QHH's reproductions proved to be an inelegant exercise, the fault of which is ours. We have, therefore, included the entirety of the chapters as Annexes from the Commission Implementing Regulation (EU) 2017/1925 of 12 October 2017 itself.

129. QHH principally submit that the heading used prior to the CNEN of 30 August 2018 should continue to apply: namely 9403 found in Section XX (Miscellaneous Manufactured Articles) Chapter 94, because the essential characteristic of an RBS is one of being furniture.

130. That chapter relates to: FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND SIMILAR STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAMEPLATES AND THE LIKE; PREFABRICATED BUILDINGS.

131. As will be recalled, the specific code for the RBS in this appeal was previously 9403 2080 00 and applied across the Customs Union until at least 30 August 2018. This is described as 'other metal furniture' in the CN and has a duty rate of 0%.

132. The CN for Chapter 94 is produced at Annex 2.

133. As we have said, the CNEN promulgated on 30 August 2018 is produced at Annex 1. The essential text was to advise that the commodity code 9403 2080 00 did not include "information displays" such as "street boards" or "roll-ups" and they should be classified where they are more specifically included. Instead, where the essential characteristic was that of an aluminium frame, the commodity code should begin 7616.

134. There are notes to chapter 94 (as we have set out in full in Annex 2). They state, in material part:

> "1. This chapter does not cover:
>
> (a) – (c) …
>
> (d) parts of general use as defined in note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39), or safes of heading 8303;
>
> (e) – (m) …
>
> 2. The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.
>
> The following are, however, to be classified in the headings mentioned above, even if they are designed to be hung, to be fixed to the wall or to stand one on the other:
>
> (a) cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;
>
> (b) seats and beds.
>
> 3. (A) In headings 9401 to 9403 references to parts of goods do not include references to sheets or slabs (whether or not cut to shape but not combined with other parts) of glass (including mirrors), marble or other stone or of any other material referred to in Chapter 68 or 69.
>
> …"

135. Both parties referred us to the HSEN published by the Customs Cooperation Council for Chapter 94 where there is a definition of furniture. That states, for the purposes of that chapter, furniture means:

"(A) Any "movable" articles (**not included** under more specific headings of the Nomenclature), which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings, hotels, theatres, cinemas, offices, churches, schools, cafes, restaurants, laboratories, hospitals, dentists' surgeries, etc., or ships, aircraft, railway coaches, motor vehicles, caravan-trailers or similar means of transport. (It should be noted that, for the purposes of this Chapter, articles are considered to be "movable" furniture even if they are designed for bolting, etc., to the floor, e.g. chairs for use on ships. Similar articles (seats, chairs, etc.) for use in gardens, squares, promenades, etc., are also included in this category.

(B) The following:

(i) Cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery, kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments etc.) and separately presented elements of unit furniture.

(ii) Seats or beds designed to be hung or fixed to the wall.

Except for the goods referred to in subparagraph (B) above, the term "furniture" **does not apply** to articles used as furniture but designed for placing on other furniture or shelves or for hanging on walls or from the ceiling.

It therefore follows that this Chapter **does not cover** other wall fixtures such as coat, hat and similar racks, key racks, clothes-brush hangers and newspaper racks, nor furnishing such as radiator screens. Similarly, this Chapter **excludes** the following types of goods **not** designed for placing on the floor: small articles of cabinet-work and and small furnishing goods of wood (**heading 44.20**) and office equipment (e.g. sorting boxes, paper trays) of plastics or of base metals (**heading 39.26** or **83.04**).

However, equipment (cupboards, radiator screens, etc.) built-in or designed to be built-in, presented at the same time as the prefabricated buildings of heading **94.06** and forming an integral part thereof, remain classified in that heading.

Headings 94.01 to 94.03 cover articles of furniture **of any material** (wood, osier, bamboo, cane, plastics, base metals, glass, leather, stone, ceramics etc.). Such furniture remains in these headings whether or not stuffed or covered, with worked or unworked surfaces, carved, inlaid, decoratively painted, fitted with mirrors or other glass fitments, or on castors etc."

(**emphasis** in original)

136. Thereafter, there is remarkably little authority on what furniture is. The combined researches of the advocates, after a request by the Tribunal, have located three of relevance that contain some principle.

137. In *Skatteministeriet v Imexpo Trading A/S* (C-379/02) the CJEU determined that plastic chairmats were furniture without any wider analysis of what furniture was, save that the HSEN to chapter 94 was relied upon.

138. In *Clear Display Ltd v HMRC* (TC/2020/3587) (7 January 2022) ('Clear Display') this Tribunal, differently constituted, held that the lockable frames in that case were not furniture. Having set out in a table the CN classifications the Tribunal said:

21. It seems to us that whilst things such as street lamps may be said to furnish a street or be street furniture, they are not, in the ordinary use of the word, "furniture". In the heading of Chapter 94 a colon follows the word "furniture" –

> "Furniture: bedding, mattress supports, cushion and similar stuffed furnishings",

and there follows a semicolon before the list recommences with "lamps and lighting fittings…". That indicates to us that the word "furniture" is not to be read broadly but is intended to have a meaning consistent with the items which follow it and so confined to items which furnish a domestic room, an office or possibly a garden. On this construction of the Chapter heading, the Locking Frames do not fall within any heading of the Chapter."

139. The Tribunal went on to find that the CNEN that we are in large part concerned with supported the interpretation in that case that the product was not furniture (together with several other reasons that do not need to detain us).

140. The problem is that as it applies in the case the CN we are considering (published as we have said in October 2017 and October 2018) is headed as we have already set out: FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND SIMILAR STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAMEPLATES AND THE LIKE; PREFABRICATED BUILDINGS.

141. It will be noted that 'Furniture' is followed by a semi-colon, not a colon. As a result, whatever the position the Tribunal found itself in in *Clear Display*, we do not derive any assistance from that case.

142. Finally, in *PR Pet BV v Inspecteur van de Belastingdien*st (C-24/22) the CJEU determined that cat scratching posts were not furniture. In passages containing principle, they said:

> "56. It must therefore be held that the goods falling under heading 9403 of the CN have the common characteristic of being intended for furnishing offices, kitchens, bedrooms, dining rooms, living rooms or shops. Such places have the common feature of being dedicated to occupation by humans.
>
> 57. Moreover, it is apparent, in essence, from the explanatory note of the HS on heading 9403 that goods generally suitable for use in various places such as cupboards, tables, telephone stands, writing-desks, bookcases or other shelved furniture, and furnishings specially designed for private dwellings, hotels or other dwelling places, such as cabinets, linen chests or bread chests, chests of drawers, bedside tables, side-boards, beds, benches and foot-stools form part of the "furniture" falling under that heading. All of these goods are intended for human use.
>
> 58. It follows that goods intended for furnishing a place occupied by humans for human use are covered by heading 9430 of the CN."

143. Drawing the threads together from the notes to chapter 94, the aid to interpretation that is the HSEN and such authority as there is, in our judgment the word furniture (with the assistance derived from the chapter heading and that word followed by a semi-colon, not a colon, per GIR 1) in the heading 9403 is not to be construed narrowly. To be furniture an article must:

(1) Be movable

(2) Have the essential characteristic of being designed to be placed upon the floor (save for the specified exceptions)

(3) Be for use by humans

(4) Be used to equip private dwellings, public buildings, transportation or commercial spaces

(5) Mainly have a utilitarian purpose.

144. As to 'utilitarian purpose', in the absence of any other assistance, and considering it as an ordinary English expression, the standard meaning in this context of being "useful or practical" rather than "decorative or attractive" is appropriate to adopt.

(ii) 8302 'other articles of base metal'

145. In the alternative, QHH submit that the heading 8302 should apply which is that found in Section XV (Base Metals and Articles of Base Metals) Chapter 83. It is submitted that if the RBS is not furniture, then its essential characteristic is one of a mix of base metals. That chapter relates to: MISCELLANEOUS ARTICLES OF BASE METALS.

146. As will be recalled, the specific code of 8302 49 00 was the classification IDD were submitting should apply for the purposes of seeking the BTI (see [86] above). This is described as 'other' miscellaneous articles of base metal in the CN. That would produce a duty rate of 2.7%.

147. The CN for Chapter 83 is produced at Annex 3.

148. The notes to this chapter state:

"1. For the purposes of this chapter, parts of base metal are to be classified with their parent articles. However, articles of iron or steel of heading 7312, 7315, 7317, 7318 or 7320, or similar articles of other base metal (Chapters 74 to 76 and 78 to 81) are not to be taken as parts of articles of this chapter.

2. For the purposes of heading 8302, the word 'castors' means those having a diameter (including, where appropriate, tyres) not exceeding 75 mm, or those having a diameter (including, where appropriate, tyres) exceeding 75 mm provided that the width of the wheel or tyre fitted thereto is less than 30 mm."

(iii) 7616 'articles of aluminium'

149. HMRC submit that the heading used by them in the BTI consistent with the CNEN of 30 August 2018 should continue to apply, namely 7616 also found in Section XV but in Chapter 76. They submit that the RBS is an aluminium cassette and frame giving it its essential character and is largely made of aluminium. That chapter relates to: ALUMINIUM AND ARTICLES THEREOF.

150. As will be recalled, the specific code of 7616 99 90 for the RBS that led to the issue of the C18 was from the BTI consistent with the CNEN which points, so it is said, to the RBS in this case toward being classified under heading 7616 99 00. This is described as 'other' articles of aluminium.

151. The CN for Chapter 76 is produced at Annex 4.

152. There are significant notes to chapter 76, but none have been drawn to our attention and, upon review, they do not seem to be relevant to our task.

V. Determining the correct classification

153. Drawing the threads together from the authorities:

(1) "The decisive criterion for the tariff classification of goods must be sought generally, regard being had to the requirements of legal certainty, in their objective characteristics and properties, as defined in the headings of the Common Customs Tariff" (Vtech at [13], also: *Build-A-Bear* at [15 (2)], *Plywood* at [17]) and "the notes to the sections or chapters of the CN" (*Build-A-Bear* at [15 (2)])[7].

(2) In seeking to classify the RBS, we must have regard to several factors including their physical appearance, composition and presentation (*Vtech* at [15]), and intended use. That may be considered as part of the classification analysis where that use is inherent to the goods and the inherent characteristics are capable of being assessed by reference to the objective characteristics and properties of the goods (*Build-A-Bear* at [15 (3)].

(3) In doing so we must apply the GIRs which "have the force of law" (*Vtech* at [16], *Build-A-Bear* at [15 (1)], *Plywood* at [14]) and do so "hierarchically" at each stage of the classification (that is heading (first four digits) and sub-headings (fifth and sixth, then seventh and eighth digits)). Comparison of wording may only take place at the same level of heading or sub-heading (*Flir*, *Build-A-Bear* at [15 (4)-(6)]. We start with GIRs 1 and 6 (*Build-A-Bear* at [15 (4)]. If the analysis gets that far, GIR 3 will only apply where the product is prima facie classifiable under more than one heading (*Build-A-Bear* at [15 (5)].

(4) The CNEN is an aid to interpretation, but its terms cannot override the CN (*Vtech* at [14], *Build-A-Bear* at [15 (7)], *Plywood* at [17]). An HSEN is also an aid to interpretation (*Plywood* at [17]). If the CNEN is inconsistent with the CN it must be disregarded (*BSkyB* at [65]).

(5) Insofar as possible, any interpretation should be consistent with international agreements (*Monsanto* at [72]) such as GATT and the requirement for uniformity (*SCM* at [4.219]).

(6) There are no classification regulations relating to this product and so we say no more about them (save to observe, if there were, such regulations would be binding (*Plywood* at [17])).

154. Finally, in terms of the CNEN itself a challenge is made to HMRC's use of it and a failure to give reasons under article 41 of the Charter of Fundamental Rights of the European Union and Article 296 of the Treaty of the European Union. QHH submit that the "C18 and the Review Decision are therefore invalid because they do not comply properly with the above duty to state reasons".

(ii) The timing ground

155. The timing ground is, as we understand the Appellant's submissions, founded in the requirement for uniformity discussed at [124] – [126] above.

(iii) The procedural ground – who is liable for the customs debt and the correct recipient of a C18?

156. As we have already explained, imports into the United Kingdom after 1 May 2016 were governed by the UCC, the Delegated Act and Implementing Act.

I. The UCC

[7] Insofar as there may be a tension between what Lawrence Collins J said in *Vtech* at [14] about headings, and Whipple LJ in *Build-A-Bear* at [15 (2)] and headings, we are bound by the latter. However, given the terms of GIR 1, it seems likely Lawrence Collins J was referring to the titles.

157. As we have seen, Article 1 (1) of the UCC sets out its primacy ([108] – [109] above).

158. The following paragraphs of Article 5 under the heading **Definitions** (for the purposes of the UCC) are relevant and state:

> "(4) "person" means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts;
>
> (5) "economic operator" means a person who, in the course of his or her business, is involved in activities covered by the customs legislation;
>
> (6) "customs representative" means any person appointed by another person to carry out the acts and formalities required under the customs legislation in his or her dealings with customs authorities;
>
> …
>
> (8) "customs formalities" means all the operations which must be carried out by a person and by the customs authorities in order to comply with the customs legislation;
>
> (9) "entry summary declaration" means the act whereby a person informs the customs authorities, in the prescribed form and manner and within a specific time-limit, that goods are to be brought into the customs territory of the Union;
>
> …
>
> (12) "customs declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;
>
> …
>
> (15) "declarant" means the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re-export declaration or a re-export notification in his or her own name or the person in whose name such a declaration or notification is lodged;
>
> (16) "customs procedure" means any of the following procedures under which goods may be placed in accordance with the Code:
>
> (a) release for free circulation;
>
> (b) special procedures;
>
> (c) export;
>
> …
>
> (18) "customs debt" means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force;
>
> (19) "debtor" means any person liable for a customs debt;
>
> …"
>
> (emphasis added)

159. The following paragraph of Article 9 under the heading **Registration** states:

> "1. Economic operators established in the customs territory of the Union shall register with the customs authorities responsible for the place where they are established."

160. That registration is in the form of the EORI (Economic Operators Registration and Identification number). Interposing the Delegated Act there, the EORI, by Article 1 (18), is stated as:

> "'Economic Operators Registration and Identification number' (EORI number) means an identification number, unique in the customs territory of the Union, assigned by a customs authority to an economic operator or to another person in order to register him for customs purposes".

161. Article 3 states:

> "At the time of registration of a person, the customs authorities shall collect and store the data laid down in Annex 12-01 concerning that person. That data shall constitute the EORI record."

162. As can be seen, before being registered for customs purposes, an economic operator must have an EORI.

163. Article 15 of the UCC under the heading **Provision of information to the customs authorities** states:

> "1. Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time-limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.
>
> 2. The lodging of a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification by a person to the customs authorities, or the submission of an application for an authorisation or any other decision, shall render the person concerned responsible for all of the following:
>
> (a) the accuracy and completeness of the information given in the declaration, notification or application;
>
> (b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application;
>
> (c) where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations.
>
> The first subparagraph shall also apply to the provision of any information in any other form required by, or given to, the customs authorities.
>
> Where the declaration or notification is lodged, the application is submitted, or information is provided, by a customs representative of the person concerned, as referred to in Article 18, that customs representative shall also be bound by the obligations set out in the first subparagraph of this paragraph."
>
> (emphasis added)

164. Article 18 is headed **Customs Representative**. Paragraph 1 states:

> "1. Any person may appoint a customs representative.
>
> Such representation may be either direct, in which case the customs representative shall act in the name of and on behalf of another person, or indirect, in which case the customs representative shall act in his or her own name but on behalf of another person."

165. Article 51 is headed **Keeping of documents and other information**. That states:

"1. The person concerned shall, for the purposes of customs controls, keep the documents and information referred to in Article 15(1) for at least three years, by any means accessible by and acceptable to the customs authorities.

In the case of goods released for free circulation in circumstances other than those referred to in the third subparagraph, or goods declared for export, that period shall run from the end of the year in which the customs declarations for release for free circulation or export are accepted.

In the case of goods released for free circulation duty-free or at a reduced rate of import duty on account of their end-use, that period shall run from the end of the year in which they cease to be subject to customs supervision.

In the case of goods placed under another customs procedure or of goods in temporary storage, that period shall run from the end of the year in which the customs procedure concerned has been discharged or temporary storage has ended.

2. Without prejudice to Article 103(4), where a customs control in respect of a customs debt shows that the relevant entry in the accounts has to be corrected and the person concerned has been notified of this, the documents and information shall be kept for three years beyond the time-limit provided for in paragraph 1 of this Article.

Where an appeal has been lodged or where court proceedings have begun, the documents and information shall be kept for the period provided for in paragraph 1 or until the appeals procedure or court proceedings are terminated, whichever is the later."

166. We must set out the heading in the UCC where Article 77 is located together with Article 77 in full. That states:

"TITLE III

CUSTOMS DEBT AND GUARANTEES

CHAPTER 1

Incurrence of a customs debt

Section 1

Customs debt on import

Article 77

Release for free circulation and temporary admission

1. A customs debt on import shall be incurred through the placing of non-Union goods liable to import duty under either of the following customs procedures:

(a) release for free circulation, including under the end-use provisions;

(b) temporary admission with partial relief from import duty.

2. A customs debt shall be incurred at the time of acceptance of the customs declaration.

3. The declarant shall be the debtor. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor."

Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the

declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.

(emphasis added)

167. Article 87 is headed **Place where the customs debt is incurred**. Paragraph (1) states:

"1. A customs debt shall be incurred at the place where the customs declaration or the re-export declaration referred to in Articles 77, 78 and 81 is lodged."

168. Article 102 is headed **Notification of the customs debt**. Paragraph (1) states:

"1. The customs debt shall be notified to the debtor in the form prescribed at the place where the customs debt is incurred, or is deemed to have been incurred in accordance with Article 87."

169. Article 103 is headed **Limitation of the customs debt**. Paragraph (1) states:

"1. No customs debt shall be notified to the debtor after the expiry of a period of three years from the date on which the customs debt was incurred."

170. In our judgment the following principles emerge from the provisions of the UCC:

(1) The UCC lays down the general rules applicable to goods arriving in or exiting member states of the EU (Article 1)

(2) A person (Article 5 (4) may be an economic operator, that is someone whose activities are covered by customs legislation (Article 5 (5))

(3) Such a person must register with the customs authorities where they are established (Article 9)

(4) Such a person may appoint a representative who may be a direct or an indirect representative. A direct representative acts in the name of the person (Article 18)

(5) A person who wishes their goods to be released under a given customs procedure such as for free circulation must lodge a customs declaration (Article 5 (16))

(6) A customs debt arises upon import where:

(a) A person places their goods to be released for free circulation (Article 77 (1) (a)), and

(b) the customs declaration is accepted (Article 77 (2))

(7) A customs debt is incurred at the place where the customs declaration is lodged (Article 87 (1))

(8) A customs declaration means the act where the person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure (Article 5 (12))

(9) The person lodging a customs declaration in his own name or the person in whose name such a declaration or notification is lodged is the declarant (Article 5 (15))

(10) A customs debt is the obligation on a debtor to pay the import duties (Article 5 (18))

(11) The declarant is the debtor (Article 77 (3)). The debtor is a person liable for the customs debt (Article 5 (19))

(12) The lodging of the customs declaration makes the person responsible for the accuracy and completeness of it (Article 15 (2) (a)). The person is the declarant

(13) The person shall keep all relevant information for at least 3 years from the end of the year that the goods were released for free circulation (Article 51 (1))

(14) HMRC may send a notification of customs debt to the debtor (Article 102) within three years of the declaration being accepted (Article 77 (2), 103 (1)).

171. In *Illumitronica* (Case 251/00 14 November 2002) ('Illumitronica') the CJEU (in a different context) said [at 33]:

> "The circumstances that the Declarant acted in good faith and with care, unaware of any irregularity which prevented the collection of duties which he should have paid if that irregularity had not been committed, has no bearing on his capacity as the person liable, which results exclusively from the legal effects associated with the formality of the declaration".

172. To all that end, it will be remembered that the customs declaration must be lodged "in the prescribed form and manner". We must therefore turn to the guidance provided by HMRC which prescribes how the customs declaration is lodged and the form used to make the customs declaration.

173. It will be seen that the critical detail is the EORI. Further, the actual alphabetical identification of the consignee by name and address are details that should not be entered save in three limited circumstances.

II. HMRC's Guidance

174. The guidance we must consider is principally the "UK Trade Tariff: imports and community transport inwards" (updated 4 May 2018) ('the Trade guidance'). This is 'outward facing' in that it is there for the benefit of those who engage (in this case) with the importation of goods into the UK. We also consider the "Customs Debt liability" guidance ('the Debt guidance').

175. Mr Grayston very properly and helpfully referred us to 'INCHP06450 – Special directions: post clearance recovery of arrears of duty and VAT: part 2 Post Clearance Demand Notes' ('the INCH guidance'). That is an inward facing internal HMRC manual.

176. Turning to the Trade guidance. This is prescriptive. In section 1 it sets out where the rules that apply prescriptively can be found in both EU and UK legislation. It requires 'a C88 form' ('C88') to be used for customs declarations in the UK (also known as a Single Administrative Document ('SAD')). Where the C88 or SAD is declared to HMRC electronically (which is observed to be beneficial but not mandatory) this is through a system known as CHIEF (the customs entry processing computer)[8]. The process of inputting by persons or their representatives is known as Direct Trader Input ('DTI'). Section 2 deals with standard import procedures. It begins with "This part explains in detail the information to be declared under each box heading on an import declaration".

177. There is the following at 2.2 which we set out in full:

> "**2.2 Trader identification**
>
> The identity of the trader is a combination of the country code of the issuing country and the Identity reference allocated by that country. For UK traders enter 'GB' followed by the trader's Economic Operator Registration and Identification (EORI) number.
>
> In the UK, identities are EORI numbers which are (with a few minor exceptions) 12 characters long and are usually a 9 digit VAT number followed by a 3 digit suffix

[8] "Customs Handling of Import and Export Freight"

(typically 000). Traders who are EORI number members of a VAT group registration will have already been issued with a 3 digit suffix as part of their registration for VAT. Where exports are made by VAT group members they should use this same 3 digit suffix as the EORI number suffix on export declarations."

(emphasis added)

178. Section 2 continues with guidance how to fill in each of the boxes on the C88. Box 8 is that which has been the focus of a considerable amount of time before us. It is set out on the C88 as, "**Box 8 – consignee and number**". The guidance says depending upon circumstances, the consignee's identity and their name and address are to be provided. The consignee can be declared at 'header level' or for each item. The consignee "includes any owner of the goods or any other person possessing, or beneficially interested in them at any time between their importation and their clearance by customs or the person to whom the goods have to be delivered".

179. The guidance also states:

"An import VAT certificate C79 will only be issued when the consignee EORI number is declared at the header level. In the absence of an import VAT certificate, a copy of the declaration will need to be kept as evidence of the importation."

180. As to name and address, the full name and address is only to be added if the country code is other than GB, the identity is GBPR or there is a paper declaration.

181. Box 14 is also relevant. It is set out on the C88 as, "**Box 14 – declarant/representative**". The guidance states that, "The declarant's type of representation and, depending on the circumstances, their identity and name and address are to be provided." Three options are offered (a) trader completing own declaration, such as self-representation (b) direct representation (c) indirect representation. The correct designation is indicated by the use of [1], [2] or [3] respectively.

182. In part 8 headed "Check List" the second item that needs to be "shown correctly" is the "trader's unique reference number in Box 8".

183. The guidance continues in ways that we do not need to consider or set out.

184. In our judgment the Trade guidance is entirely consistent with the Articles of the UCC.

185. Turning to the Debt guidance. This is informative (not prescriptive). It sets out information on, "What happens if you underpay import or export duties and who is responsible for the debt".

186. Under the heading "**Customs debt notification**" is set out:

"If HMRC believes you're liable for a customs debt, they'll send you a letter to let you know the decision they intend to make. You have 30 days from the date the letter was issued to reply with any information that might affect this decision – this is known as your 'right to be heard'.

If you do not reply within 30 days, or the information you've given does not change HMRC's decision, you'll receive a post clearance demand note (C18) to inform you that the customs debt is now due, along with instructions about how to pay.

If you still disagree with the decision you can submit an appeal."

187. Here there is an opportunity for the declarant who believes they have been inappropriately the subject of a customs debt to say so and why. If an error was made as to the identity of the declarant, then it can be corrected.

188. The Debt guidance continues under the heading "**Who is liable**":

> "The person or organisation who made the customs declaration relating to the goods being imported is liable for the customs debt (the debtor).
>
> If you are the declarant but use an agent or representative to make a customs declaration on your behalf, they may be liable depending on the type of representation."

189. It continues under the heading "**VAT Groups**":

> "The debtor will be the member company which makes the customs declaration and potentially an agent acting on their behalf, depending on the type of representation".

190. Finally for our purposes, the Debt guidance informs the reader about the types of representation. In terms of direct representation (which is relevant to this appeal) it states:

> "direct representation, where the representative acts in the principal's name – using Code 2 in box 14 of the customs declaration."

191. It continues "If an agent acts as a direct representative of the principal, the principal is solely liable for the customs debt".

192. The guidance is accurate as far as it goes but could be more explicit about amending customs declaration if an error is discovered in the identity of the declarant. However, that does not alter any of our conclusions and does not detract from the obligation of those charged with completing customs declaration to do so accurately.

193. Finally, we turn to the issuing of a C18 from the INCH guidance.

194. Under the heading **General** the manual states the following:

> "Post Clearance Demand Notes (C18) are a means of bringing to account additional revenues found to be due after the processing of the prime entry. C18s are issued … at the request of the officer identifying the debt. This could be as a result of a compliance event or following a frontier examination. …
>
> The basis rule for duty purposes is that the declarant is the customs debtor. The Economic Operator Registration Identification (EORI) number shown in Box 8 or 14 of the SAD may not belong to the name and address shown in the same box if a VAT group registration is involved. EORI numbers are mandatory. The demand for duty should be made of the name and address shown, not the owner of the EORI if different."

195. Mr Grayston for QHH relies heavily upon the second paragraph to support his submission that HMRC have sent the C18 to the wrong person. Ms Thelen submits that this can have no application in the present case where the Appellant's case is one of error rather than a deliberate decision because an intentional decision has been made. Additionally, it is an internal manual which QHH did not see at the time.

III. Drawing the threads together

196. We accept the submission made by Ms Thelen that the person in whose name the customs declaration is lodged is the debtor and is liable to pay the customs debt. In this case the 'name' of the person is ascertained by, and solely by, the EORI. Articles 1 (18) and 3 of the Delegated Act are clear that the details of the person registered – including their name – are part of the EORI.

197. We observe that this may be thought not to sit entirely readily with the concept that the declarant and debtor may be someone who has not appointed a representative or have not had anything to do with the importation as per QHH's submission.

198. However, any such unease would be ill-founded. Primacy is given to the customs declaration (and consequentially the duty owed). The identification of the declarant (and therefore the holder of the customs debt liability) must solely be by reference to the EORI – the only unique identifier across the Customs Union – or the system would not work. However, the system is flexible enough to cope with error and its correction after the event.

199. Our analysis of the UCC at (1) – (7) ([170] above) focuses upon the person making the importation, their obligations and, if relevant, the appointment of a representative to act on their behalf.

200. From (8) – (14) the position changes and the focuses are upon the declarant, the customs debt, the debtor and how HMRC secure payment whether an error has been made or not. What was said in *Illumitronica* supports this.

201. If an error has been made as to the identity of the declarant it can be corrected by amendment of the customs declaration or, depending upon the facts, by way of appeal(s).

202. It follows we do not accept Mr Grayston and Avv. Rovetta's submission that, because of the error we have found there to be, there was an obligation upon HMRC to conduct an enquiry into an otherwise regular declaration (which includes the identity of the declarant by a valid EORI) to ensure that the declaration is accurate, considering the C88 as a whole.

203. By way of illustration, it is noteworthy that QHH/IDD did not appreciate the error at any stage. Although there is a difference between the identity of the declarant by reference to the EORI and the consignee by name and address, in our judgment that does not alter things. Although we have found it to be here, it is not even clear that such a difference would in other cases, necessarily, be an error. Here, the presence of the name and address were unnecessary and contrary to the HMRC guidance (see [180] above). What mattered, and what was required by law, was the EORI.

204. That is just as applicable, contrary to QHH's submissions, so that a failure to check must not result in the cancelling of a C18, again assuming an error. HMRC cannot possibly know from an otherwise regular declaration whether an error has occurred or not, where there is only an unnecessary name and address entered in breach of the guidance. It would grind the system to a halt if HMRC had to enquire into what would be every regular customs declaration which had an unnecessary detail with a validly entered EORI.

205. The responsibility for getting it right lies with the business whether a representative is used or not. Further, as we have said, there is a process available to provide HMRC with information as to why a particular declarant should not be liable for the customs debt, that is part of the process which a notice sent under Article 102 enables[9].

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[9] We note there are several Articles that deal with repayment and remission in chapter 3 of Title 3 from Article 116 to Article 123. We observe that Article 116 provides for remission of import duty on several grounds including equity (and refusal would be subject to appeal in the normal way (see Article 44)). Article 120 (1) states:

> "1. In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 119 an amount of import or export duty shall be repaid or remitted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor."

Article 120 (2) is a deeming provision as to what will amount to special circumstances, but there appears to be no wider definition of that phrase.

In cases where an unconnected incorrectly named (or worse) declarant may not have been in a position to give further information so as to enable the amendment of the customs declaration(s) or if HMRC tried to enforce customs debt after a C18 Notice issued in such circumstances, the appeals process to the Tribunal would appear

206. Turning to the content of the INCH guidance, we do not accept Ms Thelen's submission that QHH were unaware of it and so it is inapplicable. This guidance speaks to HMRC, not the taxpayer.

207. That said, it cannot bear the weight Mr Grayston seeks to place upon it. First, this guidance is not issued in a vacuum. The first paragraph explicitly recognises that a C18 may become due after a 'compliance event'. Where, as here, QHH did not disabuse Officer Katib of the notion that QHH was the liable for the customs debt (given QHH itself had not even noticed that there was a disconnect between the EORI and the name in Box 8 and would not have thought it was an issue if they had), no criticism can attach to Officer Katib for sending the C18 to QHH, whose EORI had been used, as was the requirement. Secondly, we agree with Ms Thelen that the INCH guidance suggests that an intentional decision in a VAT group would have been made to use an EORI from one member and the name and address of another. As we have seen, registration for an EORI has to have the Main Group Representative registered first (see [28] above). In our judgment, this is to cater for a situation where, as part of a VAT group and the business structure entirely properly set up, there may not be an EORI for the person sought to be made liable for the customs debt. It is not to apply to cases of error which no-one prior to the issue of the C18 had appreciated.

208. Thus, three situations can be readily considered (with or without a representative, on a direct or indirect basis). First, the importer and the declarant may be one and the same person. Here no issue arises, and all is at it should be. Secondly, however a person ('A') may be the importer in fact but for reasons of their own, they wish for a different but willing and connected person ('B') (who may be a representative on an indirect basis) to be liable for the customs debt and be the declarant. B must have an EORI, or they will not be capable of being or being made the declarant by, or on behalf of, A. Here again no issue arises, and all is as it should be. Thirdly, an error (or worse) may have been made in the completion of the customs declaration so that person A makes another person ('C') (connected or not) the declarant.

209. Where there is a connection between A and C in that third scenario and an error made, the content of the customs declaration will be known or capable of being known to both. The customs declaration is not filled out in a vacuum. It has an air of unreality to suggest otherwise. There is nothing preventing a person from amending a customs declaration including changing the name of the declarant once any inaccuracy is appreciated. That would remove C as being liable for the customs debt and put the liability onto A where, in that situation, it belongs. And as we shall see, there is a process available to provide HMRC with information as to why a particular debtor should not be held liable for the customs debt once notice has been sent, which may include amending the customs declaration. It is important to remember that being the debtor gives rise only to a liability in the first instance.

210. However, if no amendment is made C is the declarant and liable for the customs debt and capable of being subject of a C18 Notice by HMRC.

(iii) Estoppel by convention – what are the principles that apply?

211. In the tax case *Tinkler v HMRC* [2022] AC 886; [2021] UKSC 39 a unanimous Supreme Court reversed the Court of Appeal and held that the doctrine of estoppel by convention operated to prohibit a taxpayer from complaining to the Tribunal denying the validity of the enquiry. The common assumption of fact between the parties in that case was the belief that HMRC had opened a valid enquiry when they had not.

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to comfortably be able to accommodate such unfairness as an example of where the combination of the taxing legislation provided that jurisdiction. But this is not something we need to decide, and we do not.

212. At the start of his analysis, Lord Burrows JSC said:

> "28 There are several types of estoppel recognised in English law. These include estoppel by representation, promissory estoppel, proprietary estoppel, estoppel by convention and, most recently, so-called contractual estoppel. Whatever their historical roots, most of these doctrines are nowadays usually regarded as equitable doctrines not least because there is a heavy emphasis in the case law on "unconscionability" (although, wherever possible, one should seek to clarify what that vague phrase means in relation to the particular facts in play)."

213. The headnote helpfully records the tests to be applied to see whether there had been an estoppel by convention. It reflects the Supreme Court endorsement of the principles of estoppel by convention from *Revenue and Customs Comrs v Benchdollar Ltd* [2010] 1 All ER 174 ('Benchdollar') as approved by the Court of Appeal in *Blindley Heath Investments Ltd v Bass* ('Blindley Heath') [2017] Ch 389, at [91], subject to one qualification explained at [92]). It states:

> "(1) that in the context of non-contractual dealings, an estoppel by convention would arise where (i) there was a common assumption of fact or law by the party raising the estoppel ("C") and the party against whom the estoppel was raised ("D") and it was made clear, by words or conduct that could be said to have crossed the line between them, that they shared that common assumption, (ii) D had conveyed to C that D expected C to rely on the sharing of the common assumption such that D might be said to have assumed some element of responsibility for C's reliance on the common assumption, (iii) C had in fact relied on that common assumption rather than merely upon its own independent view of the matter, (iv) that reliance had occurred in connection with some subsequent mutual dealing between C and D, and (v) C had thereby suffered some detriment, or D received some benefit, in such a way as to make it unconscionable for D to assert the true legal or factual position; that underpinning the first three of those principles was the idea that C not only had been strengthened or influenced in its reliance on the common assumption by the knowledge that D was affirming it, but also that D must have intended or expected that that would be the effect on C of its affirmation of the common assumption, so that one could say that D had assumed some element of responsibility for C's reliance on the common assumption; that, further, circumstances could arise where, even if all the other elements of estoppel by convention could be made out, the conduct of the party raising the estoppel would make it unconscionable for that party to rely on the doctrine; that, on the facts of the present case, the requirements as expressed in those five principles were met and there was nothing in the revenue's own conduct which made it unconscionable for it to rely on the doctrine; and that, accordingly, the taxpayer would be estopped from denying the validity of the enquiry unless either or both of his challenges to the applicability of the doctrine of estoppel by convention were made out."

214. As to (i)-(iii), Lord Burrows JSC said:

> "51 It may be helpful if I explain in my own words the important ideas that lie behind the first three principles of *Benchdollar*. Those ideas are as follows. The person raising the estoppel (who I shall refer to as "C") must know that the person against whom the estoppel is raised (who I shall refer to as "D") shares the common assumption and must be strengthened, or influenced, in its reliance on that common assumption by that knowledge; and D must (objectively) intend, or expect, that that will be the effect on C of its conduct crossing the line so that one can say that D has assumed some element of responsibility for C's reliance on the common assumption.

52 It will be apparent from that explanation of the ideas underpinning the first three *Benchdollar* principles that C must rely to some extent on D's affirmation of the common assumption and D must (objectively) intend or expect that reliance. …

The Law Relating to Estoppel by Representation, 4th ed (2004)p189, which was cited by Briggs J just before his statement of principles:

> "In the context of estoppel by convention, the question here is whether the party estopped actually (or as reasonably understood by the estoppel raiser) intended the estoppel raiser to rely on the subscription of the party estopped to their common view (as opposed to each, keeping his own counsel, being responsible for his own view)."

(iv) What are the powers of the Tribunal in this appeal?

215. It is agreed that as the issuance of a C18 was not an "ancillary decision" but a "relevant decision" within section 13A of the Finance Act 1994 our powers are those set out in section 16 (5) namely:

> "… the powers of the appeal Tribunal on an appeal under this section shall also include power to quash or vary a decision and power to substitute their own decision for any decision quashed on appeal."

216. It is further agreed that the burden of proof lies upon QHH on the balance of probabilities to disturb the issuance of the C18 (section 16 (6)).

DISCUSSION AND ANALYSIS

217. As we have throughout, we deal with the classification ground first, then the timing ground before turning to the procedural ground.

(i) the classification ground

218. We have, we hope without any discourtesy, distilled the essential submissions of both parties on these issues. We have considered all the submissions made to us in writing in the skeleton arguments and the closing submission, as well as orally.

219. We deal with the principal issue of classification and then HMRC's reliance upon the CNEN.

I. The appellant's submissions on classification

220. QHH submit that, applying GIR 1, the correct answer is that the RBS is, as it always has been, correctly classified as furniture (or a part thereof) and should remain classified under heading 9403. The RBS meets all the requirements of something that is furniture and the CNEN cannot alter what is furniture or not, if the RBS is in fact furniture by reference to its objective characteristics and properties. In this case, the overall make up, especially the spring, point away from HMRC's contention and the intended use solidify the RBS as furniture.

221. Alternatively, if not furniture, then due to the make up the classification should be as a miscellaneous article of base metal under Chapter 83.

II. HMRC's submissions on classification

222. HMRC submit that applying GIR 1 the correct answer is that the RBS should be classified under heading 7616 as another aluminium article as that is what it is (more specifically a cassette and frame). The CNEN excludes the RBS from classification as furniture and explains that it should be categorised by reference to its constituent parts; again, here heading 7161. Further, there is no dispute between the HSEN and CNEN and it is not furniture at the point of importation which serves a utilitarian purpose.

III. Our conclusions on classification

223. Our ratiocination is as follows.

224. We remind ourselves of our analysis at [143] – [153] above where we drew the threads together.

225. In seeking the objective characteristics and properties of an RBS at the point of importation as defined in the headings of the CCT and notes to the sections or chapters we have regard to the physical appearance, composition and presentation of the RBS. In doing so we start with GIR 1 (and 6). We find assistance in the HSEN to chapter 94 that we have quoted at [135] above in relation to furniture. For these purposes we put aside the CNEN issued on 30 August 2018 as, in our judgment, it does not particularly aid our interpretation of the heading 9403.

226. As we have said, given the conflict between the parties about the correct chapter the classification falls within, we concentrate on the heading in the first four digits.

227. In our judgment, applying that approach, from the agreed facts of what an RBS is at the point of importation, it does not fall within 'furniture and parts thereof' per heading 9403. We accept an RBS is movable, has the essential characteristic of being designed to be placed upon the floor, to be used by humans and in an appropriate setting such as a public building or commercial space. However, we cannot say that it has been shown that it mainly has a utilitarian purpose at the point of importation. That is not affected by its intended use in the sense that until the banner with graphic or advert is attached to the RBS its intended purpose cannot be known. It is therefore not furniture 'or a part thereof'.

228. By contrast, in our judgment, applying our approach, from the agreed facts of what an RBS is at the point of importation, it does fall within 'another article of aluminium' per heading 7616. It is those parts – the cassette principally made of aluminium, the top rail which is used to support any banner that might be attached, also made of aluminium, and the pole also made of aluminium – which have the essential characteristic of another article of aluminium. The existence of some plastic and the spring do not alter that. It places too much weight on the spring to say that the RBS is not otherwise another article of aluminium.

229. Applying GIR 1 and 6 we find that the RBS in its imported state is another article of aluminium and not furniture. Therefore, the CNEN is in our judgment correct. QHH have not shown that the C18 notice is excessive.

230. However, if we were wrong about the application of GIR 1, in deference to the arguments we received at our request on the incomplete nature, we would have concluded that applying GIR 2 would lead to the same conclusion. GIR 2 (a) states:

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

231. QHH submit, "… it is clear that the imported product has the essential characteristics of a finished [RBS] and of a finished furniture. It can already work, and one needs just to choose the display graphics to be used with it. As such therefore, such product has the essential characteristics of finished furniture".

232. In our judgment, the phrase 'one needs to just to choose the display graphic to be used with it' is doing too much heavy lifting. It is the combined frame and graphic that might be considered to make the article furniture. One without the other deprives the respective part of

the essential characteristic of the finished article. At the point of import therefore, the RBS does not have the essential characteristic of the complete article with banner with painted graphic or advertisement.

233. Whether, with any given banner, the RBS would become an article of furniture does not, in our judgment, matter as it does not fall for consideration here. That is not what is imported, and we cannot know what the banner would contain. If it contained information at the point of importation, it may be argued the RBS with banner had a utilitarian purpose. If it was decorative, then it may be argued it would not.

234. As a result of our conclusions, we do not need to consider Chapter 83. However, without deciding, we consider note 1 of Chapter 83 is likely to preclude categorisation of the RBS under this heading where chapter 76 applies, as we have found, and is therefore consistent with our decision.

IV. HMRC's reliance upon the CNEN

235. Finally, in terms of HMRC's reliance upon the CNEN, QHH maintain two submissions.

236. First, QHH submit that the CNEN's own wording is inapplicable to the RBS in this case. They submit the "CNEN refers in particular to street boards and information displays, none of which in fact correspond to the [RBSs] imported …".

237. HMRC submit that the reliance upon the CNEN in terms of classification of the RBS was entirely proper and done in accordance with the applicable principles of interpretation.

238. We can deal with this ground shortly. The CNEN says that heading 9403 (other furniture and parts thereof) "does not include "information displays" such as "street boards" or "roll-ups"". The "such as" is important. If the RBS was furniture (whether or not a street board or roll-up), then, when the banner is attached with informative content (as opposed to art for example), it was certainly an information display.

239. Secondly, QHH submit there was a breach of the duty to give reasons as to why the change was made from one classification to another which renders the C18 and the independent review invalid. In our judgment, HMRC were entitled to use the CNEN to assist with their classification and did so properly when they issued the BTI (see [88] above). Officer Katib relied upon that when issuing the C18 to QHH and in the review decision thereafter. It demonstrates that HMRC followed the law in terms of the hierarchy of the GIRs and the use to which the CNEN can be made.

240. The BTI, the reasons for which we have quoted at [88] above, provides the reasoning as to how HMRC have concluded that from 31 August 2018 the RBS is not furniture by, principally, the application of GIR 1 and 6. That is sufficient reasoning. We note that QHH were not troubled by this change in classification after the receipt of the BTI and the rejection of its internal appeal and then the receipt of the C18 and within the independent review as the change was conceded and, as we have seen, only the timing ground was pursued at that stage. There is, in our judgment, nothing in this ground.

(ii) the timing ground

241. QHH submit that a breach of the rule of uniformity of application is "… clearly not fair and in breach of the due process rights of the Appellant". As a result, as we understand it, it is only from March 2019 when the French authorities made it known that the classification had changed is uniformity applied.

242. We remind ourselves what that means by reference to SCM at [4.219] (see [126] above) and the narrow challenge being made to make more exacting the requirement per SCM at [7.135] (see [125] above).

243. We do not find that QHH has proven a lack of uniformity in this case. The evidence adduced simply does not make that more probable than not.

244. First, the evidence is that the French authorities informed QHH of the change in March 2019 upon which QHH changed their import code at that point for non-UK imports. However, there is no evidence as to when the French authorities made their change, as opposed to informing QHH. Further, there is no evidence as to what the rest of the Customs Union was doing and when they made their changes. Even if the French authorities only made their change in March 2019, in the absence of evidence, we cannot say that it was the French authorities who were not the outlier in terms of uniformity.

245. Secondly, that competitors to QHH may not have had their code changed is not a reason not to properly interpret the CN. The evidence is anecdotal (both as to this occurring and the precise nature of the product imported) and we do not know whether competitors have been issued C18s or not. It took HMRC in the Appellant's case some time to conclude that the classification had changed.

246. As the Panel said in *SCM*:

> "4.221 The United States does not even come close to discharging this burden of proof. In fact, the United States adduces only very sparse evidence regarding the actual administration of EC customs law. The examples given by the United States are partially irrelevant, partially inconclusive, and in any event do not show a general pattern of non-uniform administration of EC customs law."

247. The same holds here. There is no reason to reduce the amount of the C18 Notice so that the duty of 6% with 20% VAT on top should begin in March 2019.

248. Nor can it be said there is any unfairness generally. Checks should have been made or a further BTI sought once the first IDD BTI had expired to guard against a change of classification.

(iii) the procedural ground

Who is the declarant liable for the customs debt and the correct recipient of the C18?

249. Given our analysis at [196] – [210] above, the answer to this question is straightforward. We do not accept QHH's submission that the importer and the declarant are necessarily the same person. We do not accept QHH's submission that an error vitiates QHH's appearance as declarant because of the use of their EORI. And, as we have said, we do not accept the submission here that HMRC had an obligation to check the customs declaration itself for error.

250. The simple answer to this question is that QHH's EORI was used and as a result QHH is the declarant and liable for the customs debt. No application to amend the customs declaration was made and, in the circumstances we have found them to be, HMRC were entitled to send the C18 Notice to QHH. Even at that stage no amendment to the customs declaration was sought.

251. If we are wrong about QHH being the declarant as their EORI was used on the C88 on the facts we have found and the law we have interpreted it to be, we turn to whether there is an estoppel by convention prohibiting QHH from asserting they are not the correct recipient of the C18 and therefore liable for the customs debt.

Estoppel by Convention

252. We remind ourselves of the requirements for an estoppel by convention from *Tinkler* which, in this instance, HMRC would need to prove on the balance of probabilities (see [211] – [216] above).

253. Dealing with the requirements *seriatim*, and employing the language the Supreme Court set out, first there was a common assumption of fact and law between HMRC who raise the estoppel and QHH against whom the estoppel was raised that QHH were liable for the customs debt. As we have set out at [94] above the conduct of QHH throughout crossed the line between the parties that cemented that common assumption. Secondly, QHH by its conduct and correspondence conveyed to HMRC that they expected HMRC to rely upon that common assumption so that QHH must bear not only some element but all of the responsibility for the common assumption. There were numerous occasions for QHH to either amend the customs declaration so that IDD's EORI was shown or at least disabuse HMRC so as to be clear QHH were not liable for the customs debt. Instead, time after time, as we have found, QHH simply proceeded upon the assumption, common to both parties, that they were liable for the customs debt; expecting HMRC to proceed on that basis. Thirdly, HMRC relied upon that common assumption, not just its own view. Officer Katib formed her view that QHH were liable for the customs debt which was the reason for her compliance visit. What happened at that visit and thereafter, as we have found, demonstrates that her view was cemented by the common assumption shared by HMRC and QHH that QHH were liable for the customs debt. Fourthly, that reliance occurred in the subsequent dealings between the parties crystallising at the issue of the C18 Notice. Fifthly, the benefit to QHH of not being liable for the customs debt and the shared detriment to HMRC of that situation being able to be asserted would, before us, lead to the non-payment of six figures worth of duty when that customs debt was clearly owed by the VAT group member IDD, that group headed by QHH.

254. Standing back, there is no behaviour by HMRC which would make it unconscionable for it to rely upon estoppel by convention.

255. As a result, in the circumstances, we are quite satisfied that HMRC have demonstrated an estoppel by convention if it were needed and if we were wrong about QHH being the declarant and customs debtor at the time the customs declarations were completed. If it were not so, then six figures of otherwise properly owed duty by IDD would not be claimable by HMRC. It is that state of affairs that would be unconscionable.

CONCLUSION

256. We dismiss QHH's appeal on all grounds.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

257. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

NATHANIEL RUDOLF KC
TRIBUNAL JUDGE

Release date: 06th FEBRUARY 2025

Annex 1

Annex VI

Explanatory Notes to the Combined Nomenclature of the European Union

Pursuant to Article 9(1)(a) of Council Regulation (EEC) No 2658/87[1], the Explanatory Notes to the Combined Nomenclature of the European Union[2] are hereby amended as follows:

On page 379

9403 Other furniture and parts thereof

The following text shall be added after the existing text:

'This heading does not include "information displays" such as "street boards" and "roll-up´s".

They are to be classified in other headings of the Nomenclature under which they are more specifically included (for example, street boards with writing or drawing surfaces corresponding to products of heading 9610) or according to their constituent material;

(a) under a heading specifically covering these articles (for example, plates of base metal corresponding to products of heading 8310 are classified under this heading), or

(b) under a heading covering various articles of this material (for example, heading 3926 or heading 7616).

Example of a street board to be classified in heading 9610:

Street board with a blackboard surface.

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(1) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

(2) OJ C 76, 4.3.2015, p. 1.

Example of a street board to be classified in heading 8310:

Street board made solely of base metal.

Examples of street boards and roll-ups, which are to be classified according to their constituent material, under a heading covering various articles of this material:

	
A base of hard plastics, a top of an aluminium frame with a plastic sheet in the middle covered by transparent PVC foils from both sides.	A frame of a base metal (aluminium) with rubber attachments and transparent PVC foils covering a sheet of paper.
Heading 7616 (the essential character is provided by the aluminium frame).	Heading 7616 (the essential character is provided by the aluminium frame).

	
A central plastic plate attached to five almost equal plastic rods (bars), all of which can be tilted in different directions. Four of them have a plastic hook at the end and a plastic cap is mounted on the fifth rod.	A structure of a base metal (aluminium) and a banner of various materials (PVC, polyester fabric and polyester film) mounted between the cassette and a clamping profile.
Heading 3926 (the article is made solely of plastics).	Heading 7616 (the essential character of the article is provided by the aluminium frame due to its importance in providing stability).'

Annex 2

SECTION XX

MISCELLANEOUS MANUFACTURED ARTICLES

CHAPTER 94

FURNITURE; BEDDING, MATTRESSES, MATTRESS SUPPORTS, CUSHIONS AND SIMILAR STUFFED FURNISHINGS; LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED; ILLUMINATED SIGNS, ILLUMINATED NAMEPLATES AND THE LIKE; PREFABRICATED BUILDINGS

Notes

1. This chapter does not cover:

   (a) pneumatic or water mattresses, pillows or cushions, of Chapter 39, 40 or 63;

   (b) mirrors designed for placing on the floor or ground (for example, cheval-glasses (swing-mirrors)) of heading 7009;

   (c) articles of Chapter 71;

   (d) parts of general use as defined in note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39), or safes of heading 8303;

   (e) furniture specially designed as parts of refrigerating or freezing equipment of heading 8418; furniture specially designed for sewing machines (heading 8452);

   (f) lamps or lighting fittings of Chapter 85;

   (g) furniture specially designed as parts of apparatus of heading 8518 (heading 8518), of heading 8519 or 8521 (heading 8522) or of headings 8525 to 8528 (heading 8529);

   (h) articles of heading 8714;

   (ij) dentists' chairs incorporating dental appliances of heading 9018 or dentists' spittoons (heading 9018);

   (k) articles of Chapter 91 (for example, clocks and clock cases);

   (l) toy furniture or toy lamps or lighting fittings (heading 9503), billiard tables or other furniture specially constructed for games (heading 9504), furniture for conjuring tricks or decorations (other than electric garlands) such as Chinese lanterns (heading 9505); or

   (m) monopods, bipods, tripods and similar articles (heading 9620).

2. The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

   The following are, however, to be classified in the headings mentioned above, even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

   (a) cupboards, bookcases, other shelved furniture (including single shelves presented with supports for fixing them to the wall) and unit furniture;

   (b) seats and beds.

3. (A) In headings 9401 to 9403 references to parts of goods do not include references to sheets or slabs (whether or not cut to shape but not combined with other parts) of glass (including mirrors), marble or other stone or of any other material referred to in Chapter 68 or 69.

   (B) Goods described in heading 9404, presented separately, are not to be classified in heading 9401, 9402 or 9403 as parts of goods.

4. For the purposes of heading 9406, the expression 'prefabricated buildings' means buildings which are finished in the factory or put up as elements, presented together, to be assembled on site, such as housing or worksite accommodation, offices, schools, shops, sheds, garages or similar buildings.

Additional Note

1. *For the purposes of heading 9404, the expression "stuffed or internally fitted with any material" covers material of any thickness.*

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
9401	**Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:**		
9401 10 00	– Seats of a kind used for aircraft	Free	—
9401 20 00	– Seats of a kind used for motor vehicles	3,7	—
9401 30 00	– Swivel seats with variable height adjustment	Free	—
9401 40 00	– Seats other than garden seats or camping equipment, convertible into beds	Free	—
	– Seats of cane, osier, bamboo or similar materials:		
9401 52 00	– – Of bamboo	5,6	—
9401 53 00	– – Of rattan	5,6	—
9401 59 00	– – Other	5,6	—
	– Other seats, with wooden frames:		
9401 61 00	– – Upholstered	Free	—
9401 69 00	– – Other	Free	—
	– Other seats, with metal frames:		
9401 71 00	– – Upholstered	Free	—
9401 79 00	– – Other	Free	—
9401 80 00	– Other seats	Free	—
9401 90	– Parts:		
9401 90 10	– – Of seats of a kind used for aircraft	1,7	—
	– – Other:		
9401 90 30	– – – Of wood	2,7	—
9401 90 80	– – – Other	2,7	—
9402	**Medical, surgical, dental or veterinary furniture (for example, operating tables, examination tables, hospital beds with mechanical fittings, dentists' chairs); barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements; parts of the foregoing articles:**		
9402 10 00	– Dentists', barbers' or similar chairs and parts thereof	Free	—
9402 90 00	– Other	Free	—
9403	**Other furniture and parts thereof:**		
9403 10	– Metal furniture of a kind used in offices:		
	– – Not exceeding 80 cm in height:		

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
9403 10 51	– – – Desks	Free	—
9403 10 58	– – – Other	Free	—
	– – Exceeding 80 cm in height:		
9403 10 91	– – – Cupboards with doors, shutters or flaps	Free	—
9403 10 93	– – – Filing, card-index and other cabinets	Free	—
9403 10 98	– – – Other	Free	—
9403 20	**– Other metal furniture:**		
9403 20 20	– – Beds	Free	—
9403 20 80	– – Other	Free	—
9403 30	**– Wooden furniture of a kind used in offices:**		
	– – Not exceeding 80 cm in height:		
9403 30 11	– – – Desks	Free	—
9403 30 19	– – – Other	Free	—
	– – Exceeding 80 cm in height:		
9403 30 91	– – – Cupboards with doors, shutters or flaps; filing, card-index and other cabinets	Free	—
9403 30 99	– – – Other	Free	—
9403 40	**– Wooden furniture of a kind used in the kitchen:**		
9403 40 10	– – Fitted kitchen units	2,7	—
9403 40 90	– – Other	2,7	—
9403 50 00	**– Wooden furniture of a kind used in the bedroom**	Free	—
9403 60	**– Other wooden furniture:**		
9403 60 10	– – Wooden furniture of a kind used in the dining room and the living room	Free	—
9403 60 30	– – Wooden furniture of a kind used in shops	Free	—
9403 60 90	– – Other wooden furniture	Free	—
9403 70 00	**– Furniture of plastics**	Free	—
	– Furniture of other materials, including cane, osier, bamboo or similar materials:		
9403 82 00	– – **Of bamboo**	5,6	—
9403 83 00	– – **Of rattan**	5,6	—
9403 89 00	– – **Other**	5,6	—
9403 90	**– Parts:**		
9403 90 10	– – Of metal	2,7	—
9403 90 30	– – Of wood	2,7	—
9403 90 90	– – Of other materials	2,7	—

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
9404	**Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered:**		
9404 10 00	**– Mattress supports**	3,7	—
	– Mattresses:		
9404 21	**– – Of cellular rubber or plastics, whether or not covered:**		
9404 21 10	– – – Of rubber	3,7	—
9404 21 90	– – – Of plastics	3,7	—
9404 29	**– – Of other materials:**		
9404 29 10	– – – Spring interior	3,7	—
9404 29 90	– – – Other	3,7	—
9404 30 00	**– Sleeping bags**	3,7	p/st
9404 90	**– Other:**		
9404 90 10	– – Filled with feathers or down	3,7	—
9404 90 90	– – Other	3,7	—
9405	**Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:**		
9405 10	**– Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:**		
	– – Of plastics or of ceramic materials:		
9405 10 21	– – – Of plastics, of a kind used with filament lamps	4,7	—
9405 10 40	– – – Other	4,7	—
9405 10 50	– – Of glass	3,7	—
	– – Of other materials:		
9405 10 91	– – – Of a kind used with filament lamps	2,7	—
9405 10 98	– – – Other	2,7	—
9405 20	**– Electric table, desk, bedside or floor-standing lamps:**		
	– – Of plastics or of ceramic materials:		
9405 20 11	– – – Of plastics, of a kind used with filament lamps	4,7	—
9405 20 40	– – – Other	4,7	—
9405 20 50	– – Of glass	3,7	—
	– – Of other materials:		
9405 20 91	– – – Of a kind used with filament lamps	2,7	—
9405 20 99	– – – Other	2,7	—

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
9405 30 00	– **Lighting sets of a kind used for Christmas trees**	3,7	—
9405 40	– **Other electric lamps and lighting fittings:**		
9405 40 10	– – Searchlights and spotlights	3,7	—
	– – Other:		
	– – – Of plastics:		
9405 40 31	– – – – Of a kind used with filament lamps	4,7	—
9405 40 35	– – – – Of a kind used with tubular fluorescent lamps	4,7	—
9405 40 39	– – – – Other	4,7	—
	– – – Of other materials:		
9405 40 91	– – – – Of a kind used with filament lamps	2,7	—
9405 40 95	– – – – Of a kind used with tubular fluorescent lamps	2,7	—
9405 40 99	– – – – Other	2,7	—
9405 50 00	– **Non-electrical lamps and lighting fittings**	2,7	—
9405 60	– **Illuminated signs, illuminated nameplates and the like:**		
9405 60 20	– – Of plastics	4,7	—
9405 60 80	– – Of other materials	2,7	—
	– **Parts:**		
9405 91	– – **Of glass:**		
9405 91 10	– – – Articles for electrical lighting fittings (excluding searchlights and spotlights)	5,7	—
9405 91 90	– – – Other	3,7	—
9405 92 00	– – **Of plastics**	4,7	—
9405 99 00	– – **Other**	2,7	—
9406	**Prefabricated buildings:**		
9406 10 00	– **Of wood**	2,7	—
9406 90	– **Other:**		
9406 90 10	– – Mobile homes	2,7	—
	– – Other:		
	– – – Of iron or steel:		
9406 90 31	– – – – Greenhouses	2,7	—
9406 90 38	– – – – Other	2,7	—
9406 90 90	– – – Of other materials	2,7	—

Annex 3

CHAPTER 83

MISCELLANEOUS ARTICLES OF BASE METAL

Notes

1. For the purposes of this chapter, parts of base metal are to be classified with their parent articles. However, articles of iron or steel of heading 7312, 7315, 7317, 7318 or 7320, or similar articles of other base metal (Chapters 74 to 76 and 78 to 81) are not to be taken as parts of articles of this chapter.

2. For the purposes of heading 8302, the word 'castors' means those having a diameter (including, where appropriate, tyres) not exceeding 75 mm, or those having a diameter (including, where appropriate, tyres) exceeding 75 mm provided that the width of the wheel or tyre fitted thereto is less than 30 mm.

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
8301	**Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys for any of the foregoing articles, of base metal:**		
8301 10 00	**– Padlocks**	2,7	—
8301 20 00	**– Locks of a kind used for motor vehicles**	2,7	—
8301 30 00	**– Locks of a kind used for furniture**	2,7	—
8301 40	**– Other locks:**		
	– – Locks of a kind used for doors of buildings:		
8301 40 11	– – – Cylinder	2,7	—
8301 40 19	– – – Other	2,7	—
8301 40 90	– – Other locks	2,7	—
8301 50 00	**– Clasps and frames with clasps, incorporating locks**	2,7	—
8301 60 00	**– Parts**	2,7	—
8301 70 00	**– Keys presented separately**	2,7	—
8302	**Base-metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base-metal hat-racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal:**		
8302 10 00	**– Hinges**	2,7	—
8302 20 00	**– Castors**	2,7	—
8302 30 00	**– Other mountings, fittings and similar articles suitable for motor vehicles**	2,7	—
	– Other mountings, fittings and similar articles:		
8302 41	**– – Suitable for buildings:**		
8302 41 10	– – – For doors	2,7	—
8302 41 50	– – – For windows and French windows	2,7	—
8302 41 90	– – – Other	2,7	—
8302 42 00	**– – Other, suitable for furniture**	2,7	—
8302 49 00	**– – Other**	2,7	—
8302 50 00	**– Hat-racks, hat-pegs, brackets and similar fixtures**	2,7	—

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
8302 60 00	– Automatic door closers	2,7	—
8303 00	Armoured or reinforced safes, strongboxes and doors and safe deposit lockers for strong-rooms, cash or deed boxes and the like, of base metal:		
8303 00 40	– Armoured or reinforced safes, strongboxes and doors and safe deposit lockers for strongrooms	2,7	—
8303 00 90	– Cash or deed boxes and the like	2,7	—
8304 00 00	Filing cabinets, card-index cabinets, paper trays, paper rests, pen trays, office-stamp stands and similar office or desk equipment, of base metal, other than office furniture of heading 9403	2,7	—
8305	Fittings for loose-leaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal:		
8305 10 00	– Fittings for loose-leaf binders or files	2,7	—
8305 20 00	– Staples in strips	2,7	—
8305 90 00	– Other, including parts	2,7	—
8306	Bells, gongs and the like, non-electric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal:		
8306 10 00	– Bells, gongs and the like	Free	—
	– Statuettes and other ornaments:		
8306 21 00	– – Plated with precious metal	Free	—
8306 29 00	– – Other	Free	—
8306 30 00	– Photograph, picture or similar frames; mirrors	2,7	—
8307	Flexible tubing of base metal, with or without fittings:		
8307 10 00	– Of iron or steel	2,7	—
8307 90 00	– Of other base metal	2,7	—
8308	Clasps, frames with clasps, buckles, buckle-clasps, hooks, eyes, eyelets and the like, of base metal, of a kind used for clothing or clothing accessories, footwear, jewellery, wrist watches, books, awnings, leather goods, travel goods or saddlery or for other made up articles; tubular or bifurcated rivets, of base metal; beads and spangles, of base metal:		
8308 10 00	– Hooks, eyes and eyelets	2,7	—
8308 20 00	– Tubular or bifurcated rivets	2,7	—
8308 90 00	– Other, including parts	2,7	—
8309	Stoppers, caps and lids (including crown corks, screw caps and pouring stoppers), capsules for bottles, threaded bungs, bung covers, seals and other packing accessories, of base metal:		
8309 10 00	– Crown corks	2,7	—
8309 90	– Other:		
8309 90 10	– – Capsules of lead; capsules of aluminium of a diameter exceeding 21 mm	3,7	—
8309 90 90	– – Other	2,7	—
8310 00 00	Sign-plates, nameplates, address-plates and similar plates, numbers, letters and other symbols, of base metal, excluding those of heading 9405	2,7	—
8311	Wire, rods, tubes, plates, electrodes and similar products, of base metal or of metal carbides, coated or cored with flux material, of a kind used for soldering, brazing, welding or deposition of metal or of metal carbides; wire and rods, of agglomerated base metal powder, used for metal spraying:		
8311 10 00	– Coated electrodes of base metal, for electric arc-welding	2,7	—
8311 20 00	– Cored wire of base metal, for electric arc-welding	2,7	—
8311 30 00	– Coated rods and cored wire, of base metal, for soldering, brazing or welding by flame	2,7	—
8311 90 00	– Other	2,7	—

Annex 4

CHAPTER 76

ALUMINIUM AND ARTICLES THEREOF

Note

1. In this chapter, the following expressions have the meanings hereby assigned to them:

(a) Bars and rods:

Rolled, extruded, drawn or forged products, not in coils, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including 'flattened circles' and 'modified rectangles', of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products which have a rectangular (including 'modified rectangular') cross-section exceeds one-tenth of the width. The expression also covers cast or sintered products, of the same forms and dimensions, which have been subsequently worked after production (otherwise than by simple trimming or descaling), provided that they have not thereby assumed the character of articles or products of other headings.

(b) Profiles:

Rolled, extruded, drawn, forged or formed products, coiled or not, of a uniform cross-section along their whole length, which do not conform to any of the definitions of bars, rods, wire, plates, sheets, strip, foil, tubes or pipes. The expression also covers cast or sintered products, of the same forms, which have been subsequently worked after production (otherwise than by simple trimming or descaling), provided that they have not thereby assumed the character of articles or products of other headings.

(c) Wire:

Rolled, extruded or drawn products, in coils, which have a uniform solid cross-section along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons (including 'flattened circles' and 'modified rectangles', of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel). Products with a rectangular (including square), triangular or polygonal cross-section may have corners rounded along their whole length. The thickness of such products which have a rectangular (including 'modified rectangular') cross-section exceeds one-tenth of the width.

(d) Plates, sheets, strip and foil:

Flat-surfaced products (other than the unwrought products of heading 7601), coiled or not, of solid rectangular (other than square) cross-section with or without rounded corners (including 'modified rectangles' of which two opposite sides are convex arcs, the other two sides being straight, of equal length and parallel) of a uniform thickness, which are:

— of rectangular (including square) shape with a thickness not exceeding one-tenth of the width,

— of a shape other than rectangular or square, of any size, provided that they do not assume the character of articles or products of other headings.

Headings 7606 and 7607 apply, inter alia, to plates, sheets, strip and foil with patterns (for example, grooves, ribs, chequers, tears, buttons, lozenges) and to such products which have been perforated, corrugated, polished or coated, provided that they do not thereby assume the character of articles or products of other headings.

(e) Tubes and pipes:

Hollow products, coiled or not, which have a uniform cross-section with only one enclosed void along their whole length in the shape of circles, ovals, rectangles (including squares), equilateral triangles or regular convex polygons, and which have a uniform wall thickness. Products with a rectangular (including square), equilateral triangular or regular convex polygonal cross-section, which may have corners rounded along their whole length, are also to be considered as tubes and pipes provided the inner and outer cross-sections are concentric and have the same form and orientation. Tubes and pipes of the foregoing cross-sections may be polished, coated, bent, threaded, drilled, waisted, expanded, cone-shaped or fitted with flanges, collars or rings.

Subheading notes

1. In this chapter, the following expressions have the meanings hereby assigned to them:

   (a) Aluminium, not alloyed:

   Metal containing by weight at least 99 % of aluminium, provided that the content by weight of any other element does not exceed the limit specified in the following table:

Other elements

Element	Limiting content % by weight
Fe + Si (iron plus silicon)	1
Other elements ([1]), each	0,1 ([2])

([1]) Other elements are, for example, Cr, Cu, Mg, Mn, Ni, Zn.
([2]) Copper is permitted in a proportion greater than 0,1 % but not more than 0,2 %, provided that neither the chromium nor manganese content exceeds 0,05 %.

   (b) Aluminium alloys:

   Metallic substances in which aluminium predominates by weight over each of the other elements, provided that:

   (1) the content by weight of at least one of the other elements or of iron plus silicon taken together is greater than the limit specified in the foregoing table; or

   (2) the total content by weight of such other elements exceeds 1 %.

2. Notwithstanding the provisions of chapter note 1(c), for the purposes of subheading 7616 91 the term 'wire' applies only to products, whether or not in coils, of any cross-sectional shape, of which no cross-sectional dimension exceeds 6 mm.

Additional note

1. *For the purposes of subheading 7601 20 20, the following terms shall have the meanings hereby assigned to them:*

   — *'slabs': unwrought products which have a uniform solid cross-section along their whole length in the shape of a rectangle or other polygon, of a width exceeding 800 mm, of a thickness exceeding 280 mm and of a length always superior to the width and to the thickness. These products are intended for being rolled;*

   — *'billets': unwrought products which have a uniform solid cross-section along their whole length in the shape of a circle (including a 'flattened circle'), of a diameter exceeding 125 mm. These products are intended for being extruded.*

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
7601	**Unwrought aluminium:**		
7601 10 00	– **Aluminium, not alloyed**	6 ([1])	—
7601 20	– **Aluminium alloys:**		
7601 20 20	– – Slabs and billets	6	—
7601 20 80	– – Other	6	—
7602 00	**Aluminium waste and scrap:**		

([1]) Autonomous rate of duty: 3.

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
	– Waste:		
7602 00 11	– – Turnings, shavings, chips, milling waste, sawdust and filings; waste of coloured, coated or bonded sheets and foil, of a thickness (excluding any backing) not exceeding 0,2 mm	Free	—
7602 00 19	– – Other (including factory rejects)	Free	—
7602 00 90	– Scrap	Free	—
7603	**Aluminium powders and flakes:**		
7603 10 00	– **Powders of non-lamellar structure**	5	—
7603 20 00	– **Powders of lamellar structure; flakes**	5	—
7604	**Aluminium bars, rods and profiles:**		
7604 10	– **Of aluminium, not alloyed:**		
7604 10 10	– – Bars and rods	7,5	—
7604 10 90	– – Profiles	7,5	—
	– **Of aluminium alloys:**		
7604 21 00	– – **Hollow profiles**	7,5	—
7604 29	– – **Other:**		
7604 29 10	– – – Bars and rods	7,5	—
7604 29 90	– – – Profiles	7,5	—
7605	**Aluminium wire:**		
	– **Of aluminium, not alloyed:**		
7605 11 00	– – **Of which the maximum cross-sectional dimension exceeds 7 mm**	7,5	—
7605 19 00	– – **Other**	7,5	—
	– **Of aluminium alloys:**		
7605 21 00	– – **Of which the maximum cross-sectional dimension exceeds 7 mm**	7,5	—
7605 29 00	– – **Other**	7,5	—
7606	**Aluminium plates, sheets and strip, of a thickness exceeding 0,2 mm:**		
	– **Rectangular (including square):**		
7606 11	– – **Of aluminium, not alloyed:**		
7606 11 10	– – – Painted, varnished or coated with plastics	7,5	—
	– – – Other, of a thickness of:		
7606 11 91	– – – – Less than 3 mm	7,5	—
7606 11 93	– – – – Not less than 3 mm but less than 6 mm	7,5	—
7606 11 99	– – – – Not less than 6 mm	7,5	—
7606 12	– – **Of aluminium alloys:**		
7606 12 20	– – – Painted, varnished or coated with plastics	7,5	—
	– – – Other, of a thickness of:		
7606 12 92	– – – – Less than 3 mm	7,5	—
7606 12 93	– – – – Not less than 3 mm but less than 6 mm	7,5	—

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
7606 12 99	– – – – Not less than 6 mm	7,5	—
	– **Other:**		
7606 91 00	– – **Of aluminium, not alloyed**	7,5	—
7606 92 00	– – **Of aluminium alloys**	7,5	—
7607	**Aluminium foil (whether or not printed or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0,2 mm:**		
	– **Not backed:**		
7607 11	– – **Rolled but not further worked:**		
	– – – Of a thickness of less than 0,021 mm:		
7607 11 11	– – – – In rolls of a weight not exceeding 10 kg	7,5	—
7607 11 19	– – – – Other	7,5	—
7607 11 90	– – – Of a thickness of not less than 0,021 mm but not more than 0,2 mm	7,5	—
7607 19	– – **Other:**		
7607 19 10	– – – Of a thickness of less than 0,021 mm	7,5	—
7607 19 90	– – – Of a thickness of not less than 0,021 mm but not more than 0,2 mm	7,5	—
7607 20	– **Backed:**		
7607 20 10	– – Of a thickness (excluding any backing) of less than 0,021 mm	10	—
7607 20 90	– – Of a thickness (excluding any backing) of not less than 0,021 mm but not more than 0,2 mm	7,5	—
7608	**Aluminium tubes and pipes:**		
7608 10 00	– **Of aluminium, not alloyed**	7,5	—
7608 20	– **Of aluminium alloys:**		
7608 20 20	– – Welded	7,5	—
	– – Other:		
7608 20 81	– – – Not further worked than extruded	7,5	—
7608 20 89	– – – Other	7,5	—
7609 00 00	**Aluminium tube or pipe fittings (for example, couplings, elbows, sleeves)**	5,9	—
7610	**Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures:**		
7610 10 00	– **Doors, windows and their frames and thresholds for doors**	6	p/st (1)
7610 90	– **Other:**		

(1) A door or window with or without its frame or threshold is considered as one piece.

CN code	Description	Conventional rate of duty (%)	Supplementary unit
1	2	3	4
7610 90 10	-- Bridges and bridge-sections, towers and lattice masts	7	—
7610 90 90	-- Other	6	—
7611 00 00	**Aluminium reservoirs, tanks, vats and similar containers, for any material (other than compressed or liquefied gas), of a capacity exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment**	6	—
7612	**Aluminium casks, drums, cans, boxes and similar containers (including rigid or collapsible tubular containers), for any material (other than compressed or liquefied gas), of a capacity not exceeding 300 litres, whether or not lined or heat-insulated, but not fitted with mechanical or thermal equipment:**		
7612 10 00	– Collapsible tubular containers	6	—
7612 90	– Other:		
7612 90 20	-- Containers of a kind used for aerosols	6	p/st
7612 90 30	-- Manufactured from foil of a thickness not exceeding 0,2 mm	6	—
7612 90 80	-- Other	6	—
7613 00 00	**Aluminium containers for compressed or liquefied gas**	6	—
7614	**Stranded wire, cables, plaited bands and the like, of aluminium, not electrically insulated:**		
7614 10 00	– With steel core	6	—
7614 90 00	– Other	6	—
7615	**Table, kitchen or other household articles and parts thereof, of aluminium; pot scourers and scouring or polishing pads, gloves and the like, of aluminium; sanitary ware and parts thereof, of aluminium:**		
7615 10	– Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like:		
7615 10 10	-- Cast	6	—
7615 10 30	-- Manufactured from foil of a thickness not exceeding 0,2 mm	6	—
7615 10 80	-- Other	6	—
7615 20 00	– Sanitary ware and parts thereof	6	—
7616	**Other articles of aluminium:**		
7616 10 00	– Nails, tacks, staples (other than those of heading 8305), screws, bolts, nuts, screw hooks, rivets, cotters, cotter pins, washers and similar articles	6	—
	– Other:		
7616 91 00	-- Cloth, grill, netting and fencing, of aluminium wire	6	—
7616 99	-- Other:		
7616 99 10	--- Cast	6	—
7616 99 90	--- Other	6	—