



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

19TACD2023

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction	3
Background.....	3
Legislation and Guidelines	5
Submissions	14
Appellant	14
Respondent.....	18
Material Facts	21
Analysis	22
i. The Appellant acted as a customs representative and is not the importer	23
ii. Duty is not owed as all goods are entitled to RGR under article 203 of the UCC Regulation.....	25
iii. GB Preferential Origin	28
iv. Heading 9705 of the CN	29
v. The Debt has not been legally established.....	30
vi. Consignments from Northern Ireland (“NI”).....	31
vii. Equity	32
Determination	34

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against the imposition by the Revenue Commissioners (“the Respondent”) of customs duties, by way of a Notification of Customs Debt issued on 1 April 2021, in the sum of €402,963.20 for the period January/February 2021.
2. The customs duties arose following the Respondent opening a Post Clearance Intervention (“PCI”), in relation to the importation of second-hand motor vehicles by the Appellant which were the subject of a claim under Great Britain (“GB”) Preferential Origin (“PO”) and Returned Goods Relief (“RGR”).
3. Vehicles being imported from GB that qualify for PO attract a 0% rate of customs duty. Vehicles that are not entitled to GBPO attract various rates of duty, the most common being 10%. The Appellant contends that despite its entitlement to claim a benefit on the basis of GBPO and/or RGR, the Appellant is a customs representative only, not the importer and thus, has no liability for the said customs debt.
4. The appeal proceeded by way of a hearing on 27 October 2022. The Appellant was represented by [REDACTED] and [REDACTED] and the Respondent was represented by Junior Counsel.

Background

5. The Appellant is a long established customs representative, having been incorporated more than 20 years ago. In January and February 2021, the Appellant imported a number of second-hand motor vehicles into the jurisdiction, namely 279 motor vehicles in total. The Appellant lodged customs declarations to the Respondent’s Automated Import System (“AIS”) in respect of said motor vehicle imports. The AIS is the Respondent’s national electronic import system. AIS handles the validation, processing, duty accounting and clearance of customs declarations. When submitting a customs declaration into AIS, certain mandatory information must be completed in order for the goods to receive an import routing, to correctly calculate and account for any duty at import and for the goods to be cleared for import into the State.
6. In lodging the customs declarations, the Appellant claimed GBPO on a large majority of said motor vehicle imports. The Commissioner has had the benefit of a list of the motor

vehicle imports, which was helpfully provided in the bundles of documentation submitted by the parties to this appeal. Subsequent to the Appellant lodging customs declarations to AIS, the Respondent opened a PCI in relation to the importation of the second-hand motor vehicles claiming GBPO. The purpose of a PCI is to provide reassurance to the Respondent and the EU Commission that import procedures are operating effectively in the State and that the correct duties are being collected at import.

7. On 25 January 2021, the aforementioned PCI was initiated, when the Respondent issued correspondence to the Appellant outlining the specific proofs required to claim GBPO for second-hand vehicles being imported into Ireland.
8. On 16 February 2021, the Respondent issued further correspondence to the Appellant clarifying what was required to substantiate a claim of GBPO. In addition, the correspondence included an explanation of RGR.
9. By letter dated 16 February 2021, the Appellant corresponded with the Respondent to state that *“we have reviewed the declarations cited at Annex 1 to your letter of 21 January 2021 and must agree that the vehicles imported on foot of these declarations are, at least for the most part, not of GB preferential origin.”* In addition, the Appellant stated that it disagreed with the Respondent’s interpretation of e-Customs Helpdesk Notification 14/2021 entitled “Movement of goods from the EU to Ireland through the UK” and the Appellant set out its interpretation of Articles 153 and 154 of the Council Regulation (EU) 952/2013 (as amended) laying down the Union Customs Code (“the UCC Regulation”) and also Article 208 of Implementing Regulation (EU 2015/2477).
10. On 10 March 2021, the Respondent issued a response to the Appellant stating that “I am aware at this stage that Customs Division has confirmed to you that goods, not under customs supervision, in the United Kingdom lost their Union Status at 23:00 on 31st December 2020”. Further, the Respondent requested that the Appellant identify the customs declarations upon which GBPO had been incorrectly claimed and if a claim for RGR was being made, what motor vehicle imports were the subject of the claim, and any supporting documentation in that regard.
11. After several months of correspondence between the Appellant and the Respondent, on 1 April 2021, a Notification of Customs Debt issued to the Appellant, in the sum of €402,963.20 for the period January/February 2021. The Respondent states that this was on the basis that where no response was received by the Respondent, it *“assumed that all MRNs for the period 1 January 2021 to 28 February 2021 qualify for neither returned goods relief nor GB Preferential Origin”*.

12. On 5 May 2021, the Appellant lodged a first stage appeal with the Respondent. On 27th July 2021, the Designated Appeals Officer determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld.
13. On 1st September 2021, the Appellant, duly appealed to the Commission. The Appellant's grounds of appeal in its Notice of Appeal dated 23 July 2021, are set out hereunder as follows:-
- i. *"Duty is not owed as all Declarations cited are entitled to returned goods relief under article 203 of Council Regulation (EU) 952/13.*
 - ii. *The Appellant acted as a direct representative and is therefore not responsible for the alleged debt. There are valid reasons why this is sometimes not stated in the declarations.*
 - iii. *The declarations listed at appendix i are in any event entitled to GB preference and should not form part of any alleged debt. The obligation to prove origin clearly lies with the importer.*
 - iv. *The declarations listed at Appendixes II & IV are entitled to returned good relief even by the incorrect rules cited by Revenue, and therefore should not form part of the alleged debt.*
 - v. *The declarations listed in appendix III are vehicles older than 30 years and correctly classified at 9705*
 - vi. *The debt has not been legally established or entered in the accounts, as required by articles 104 and 105 Council regulation (EU) 952/13.*
 - vii. *Many of the declarations cited are for consignments from Northern Ireland which require no declaration and should not form part of the alleged debt.*
 - viii. *Equity. The appellant did not benefit in any way from the misdeclarations but stands to suffer catastrophic damage and will have little or no legal means of recovering the duty from the beneficiaries".*

Legislation and Guidelines

14. The legislation relevant to this appeal is as follows:-

15. Article 15 of the UCC Regulation provides:-

Provision of information to the customs authorities

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.

16. Article 18 of the UCC Regulation *inter alia* provides:-

Customs representative

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.
2. A customs representative shall be established within the customs territory of the Union. Except where otherwise provided, that requirement shall be waived where the customs representative acts on behalf of persons who are not required to be established within the customs territory of the Union.

17. Article 19 of the UCC Regulation provides:-

Empowerment

1. *When dealing with the customs authorities, a customs representative shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect.*

Persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf.

2. *The customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented. In specific cases, the customs authorities shall not require such evidence to be provided.*
3. *The customs authorities shall not require a person acting as a customs representative, carrying out acts and formalities on a regular basis, to produce on every occasion evidence of empowerment, provided that such person is in a position to produce such evidence on request by the customs authorities.*

18. Article 104 of the UCC Regulation provides:-

Entry in the accounts

1. *The customs authorities referred to in Article 101 shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that Article. The first subparagraph shall not apply in cases referred to in the second subparagraph of Article 102(1).*
2. *The customs authorities need not enter in the accounts amounts of import or export duty which, pursuant to Article 103, correspond to a customs debt which could no longer be notified to the debtor.*
3. *Member States shall determine the practical procedures for the entry in the accounts of the amounts of import or export duty. Those procedures may differ according to whether, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that those amounts will be paid.*

19. Article 105 of the UCC Regulation *inter alia* provides:-

Time of entry in the accounts

1. *Where a customs debt is incurred as a result of the acceptance of the customs declaration of goods for a customs procedure, other than temporary admission with partial relief from import duty, or of any other act having the same legal effect as such acceptance, the customs authorities shall enter the amount of import or export duty payable in the accounts within 14 days of the release of the goods. However, provided that payment has been guaranteed, the total amount of import or export duty relating to all the goods released to one and the same person during a period fixed by the customs authorities, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of that period. Such entry in the accounts shall take place within 14 days of the expiry of the period concerned.*
2. *Where goods may be released subject to certain conditions which govern either the determination of the amount of import or export duty payable or its collection, entry in the accounts shall take place within 14 days of the day on which the amount of import or export duty payable is determined or the obligation to pay that duty is fixed. However, where the customs debt relates to a provisional commercial policy measure taking the form of a duty, the amount of import or export duty payable shall be entered in the accounts within two months of the date of publication in the Official Journal of the European Union of the Regulation establishing the definitive commercial policy measure.*
3. *Where a customs debt is incurred in circumstances not covered by paragraph 1, the amount of import or export duty payable shall be entered in the accounts within 14 days of the date on which the customs authorities are in a position to determine the amount of import or export duty in question and take a decision.*
4. *Paragraph 3 shall apply with regard to the amount of import or export duty to be recovered or which remains to be recovered where the amount of import or export duty payable has not been entered in the accounts in accordance with paragraphs 1, 2 and 3, or has been determined and entered in the accounts at a level lower than the amount payable.*
5. *The time-limits for entry in the accounts laid down in paragraphs 1, 2 and 3 shall not apply in unforeseeable circumstances or in cases of force majeure.*

20. Article 120 of the UCC Regulation provides:-

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.

2. *The special circumstances referred to in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty.*

21. Article 150 of the UCC Regulation provides:-

Choice of a customs procedure

Except where otherwise provided, the declarant shall be free to choose the customs procedure under which to place the goods, under the conditions for that procedure, irrespective of their nature or quantity, or their country of origin, consignment or destination.

22. Article 154 of the UCC Regulation provides:-

Loss of customs status of Union goods

Union goods shall become non-Union goods in the following cases:

- (a) *where they are taken out of the customs territory of the Union, insofar as the rules on internal transit do not apply;*
- (b) *where they have been placed under the external transit procedure, a storage procedure or the inward processing procedure, insofar as the customs legislation so allows;*
- (c) *where they have been placed under the end-use procedure and are either subsequently abandoned to the State, or are destroyed and waste remains;*
- (d) *where the declaration for release for free circulation is invalidated after release of the goods.*

23. Article 163 of the UCC Regulation provides:-

Supporting documents

1. *The supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.*

2. *Supporting documents shall be provided to the customs authorities where Union legislation so requires or where necessary for customs controls.*
3. *In specific cases, economic operators may draw up the supporting documents provided they are authorised to do so by the customs authorities.*

24. Article 203 of the UCC Regulation inter alia provides:-

Scope and effect

1. *Non-Union goods which, having originally been exported as Union goods from the customs territory of the Union, are returned to that territory within a period of three years and declared for release for free circulation shall, upon application by the person concerned, be granted relief from import duty. The first subparagraph shall apply even where the returned goods represent only a part of the goods previously exported from the customs territory of the Union.*
2. *The three-year period referred to in paragraph 1 may be exceeded in order to take account of special circumstances.*
3. *Where, prior to their export from the customs territory of the Union, the returned goods had been released for free circulation duty-free or at a reduced rate of import duty because of a particular end-use, relief from duty under paragraph 1 shall be granted only if they are to be released for free circulation for the same end-use. Where the end-use for which the goods in question are to be released for free circulation is no longer the same, the amount of import duty shall be reduced by any amount collected on the goods when they were first released for free circulation. Should the latter amount exceed that levied on the release for free circulation of the returned goods, no repayment shall be granted.*
4. *Where Union goods have lost their customs status as Union goods pursuant to Article 154 and are subsequently released for free circulation, paragraphs 1, 2 and 3 shall apply.*

25. Article 208 of Commission Regulation (EU) 2015/2447 (Union Customs Code Implementing Regulation)(“the UCC Implementing Regulation”) provides:-

*Proof of the customs status of Union goods for motorised road vehicles
(Article 153(2) of the Code)*

1. *In the case of motorised road vehicles registered in a Member State which have temporarily left and re-entered the customs territory of the Union the customs status of Union goods shall be considered proven where they are accompanied by their*

registration plates and registration documents and the registration particulars shown on those plates and documents unambiguously indicate that registration.

2. *Where the customs status of Union goods cannot be considered proven in accordance with paragraph 1, the proof of the customs status of Union goods shall be provided by one of the other means listed in Article 199 of this Regulation.*

26. Article 253 of the UCC Implementing Regulation provides:-

Information required

(Article 203(6) of the Code)

1. *The declarant shall make the information establishing that the conditions for relief from import duty have been fulfilled available to the customs office where the customs declaration for release for free circulation is lodged.*
2. *The information referred to in paragraph 1 may be provided by any of the following means:*
 - (a) *access to the relevant particulars of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;*
 - (b) *a print out, authenticated by the competent customs office, of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;*
 - (c) *a document issued by the competent customs office, with the relevant particulars of that customs declaration or re-export declaration;*
 - (d) *a document issued by the customs authorities certifying that the conditions for the relief from import duty have been fulfilled (information sheet INF3).*
3. *Where information available to the competent customs authorities establishes that the goods declared for release for free circulation were originally exported from the customs territory of the Union and at that time fulfilled the conditions for being granted relief from import duty as returned goods, the information referred to in paragraph 2 shall not be required.*
4. *Paragraph 2 shall not apply where goods may be declared for release for free circulation orally or by any other act. Nor shall it apply to the international movement of packing materials, means of transport or certain goods admitted under specific customs arrangements unless where provided otherwise.*

27. Article 54 of the Trade and Cooperation Agreement between the European Union (EU) and the United Kingdom (UK) of Great Britain (GB) and Northern Ireland (NI) ("the TCA"), provides:-

Claim for preferential tariff treatment

1. *The importing Party, on importation, shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirements provided for in this Chapter.*
2. *A claim for preferential tariff treatment shall be based on:*
 - (a) *a statement on origin that the product is originating made out by the exporter;*
or
 - (b) *the importer's knowledge that the product is originating.*
3. *The importer making the claim for preferential tariff treatment based on a statement on origin as referred to in point (a) of paragraph 2 shall keep the statement on origin and, when required by the customs authority of the importing Party, shall provide a copy thereof to that customs authority.*

28. Article 56 of the TCA provides inter alia that:-

Statement of Origin

1. *A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including, information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.*
2. *A statement on origin shall be made out using one of the language versions set out in Annex 7 in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product. The exporter shall be responsible for providing sufficient detail to allow the identification of the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.*

3. *A statement on origin shall be valid for 12 months from the date it was made out or for such longer period as provided by the Party of import up to a maximum of 24 months.*

29. Article 58 of the TCA provides:-

Importers Knowledge

1. *For the purposes of a claim for preferential tariff treatment that is made under point (b) of Article 54(2), the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.*
2. *Before claiming the preferential treatment, in the event that an importer is unable to obtain the information referred to in paragraph 1 of this Article as a result of the exporter deeming that information to be confidential information or for any other reason, the exporter may provide a statement on origin so that the importer may claim the preferential tariff treatment on the basis of point (a) of Article 54(2).*

30. Article 59 of the TCA *inter alia* provides:-

Record-keeping requirements

1. *For a minimum of three years after the date of importation of the product, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep:*
 - (a) *If the claim was based on a statement on origin, the statement on origin made out by the exporter; or*
 - (b) *If the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements for obtaining originating status.*
2. *An exporter who has made out a statement on origin shall, for a minimum of four years after that statement on origin was made out, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.*

31. Article 61 of the TCA *inter alia* provides:-

Verification

1. *The customs authority of the importing Party may conduct a verification as to whether a product is originating or whether the other requirements of this Chapter are satisfied,*

on the basis of risk assessment methods, which may include random selection. Such verifications may be conducted by means of a request for information from the importer who made the claim referred to in Article 54, at the time the import declaration is submitted, before the release of the products, or after the release of the products

2. *The information requested pursuant to paragraph 1 shall cover no more than the following elements*

(a) if the claim was based on a statement on origin, that statement on origin; and

(b) information pertaining to the fulfilment of origin criteria, which is....

.....

32. Chapter 97 of the Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (“the CN”).
33. The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the Protocol on Ireland/Northern Ireland (“the Protocol”).
34. E-Customs Helpdesk Notifications 36/2020, 14/2021, 24/2021.
35. Guidance Note – Withdrawal of the United Kingdom and EU Rules in the Field of Customs (23 December 2020) (“the Commission Guidance Note”).

Submissions

Appellant

36. ██████ gave evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by ██████:-
 - i. He said that he has been employed by the Appellant since 2020, as a customs consultant. Prior to that he had been employed by the Respondent within its Customs Division. He stated that during 2020 and 2021, a number of new employees have been retained by the Appellant and that it is acknowledged that a number of mistakes were made in terms of the administration of documents and responses to the Respondent. He mentioned that the Covid-19 pandemic coupled with the UK leaving the EU (“Brexit”) led to this difficult period.
 - ii. He stated that appendix 1 page 143 of the Respondent’s bundle of documentation relates to the motor vehicle imports upon which GBPO is claimed. However, he stated that he was of the opinion that RGR is applicable to all the vehicles at issue

in this appeal. He said that Appendix 2, page 153 and appendix 4 page 159 relate to RGR and Appendix 3 page 157 relate to heading 9705 of the CN, such that they are classic cars.

- iii. Reference was made to article 203(4) and article 154 of the UCC Regulation. He stated that all goods in free circulation lost their union status at 23.00 GMT on 31 December 2020. He argued that this was pursuant to article 154 of the UCC Regulation. He said it was his view that goods which were in the union at 22.55 on 31 December 2020 and were not in the union at 23.05 must have been removed from the union. He argued that in accordance with article 154 of the UCC Regulation, the goods lost their union status. He stated that for the purposes of RGR the goods, having lost their union status, became non-union goods and thus could be imported into the union i.e. this jurisdiction with the benefit of RGR. He understood that the UCC Regulation is binding and the legislative provisions under which customs representatives such as the Appellant should operate. He said that the Commission Guidance Note is merely guidance and not binding.
- iv. He stated that the Appellant is not an importer and is a customs representative. However, he said that he accepts that it may not have been declared on the AIS, that the Appellant was a customs representative, for every import. He stated that it is clear from the conditions of carriage, that the Appellant was acting as a customs representative and the Appellant is not required to produce on every occasion, evidence of empowerment. He mentioned that the AIS was introduced in November 2020 and it took the Appellant's employee's considerable time to understand the new system and its drop down menus.
- v. He stated that the empowerment documentation is available in relation to the motor vehicle imports. He said that in any event, if the goods are entitled to RGR, whether the Appellant is the importer or not, becomes irrelevant. He said that the debt is therefore not the debt of the Appellant but is that of the importer, and it is clear to all that the Appellant is not the importer, but merely the declarant
- vi. Reference was made to article 54 of the TCA and that the responsibility for both the veracity of a claim for GBPO lies with the importer if it is relying on importers knowledge and that it would be unreasonable and illogical to expect anyone other than the importer to be in possession of that information. He mentioned that importers knowledge is not a document. He accepted that if the claim was being made on the basis of a statement of origin, then the documentation should be available. Further, he said that in relation to a claim for GBPO, the Respondent has

often accepted the Vehicle Identification Number (VIN) as establishing the origin. However, for some reason in this particular instance, the Respondent has declined to accept the VIN. He argued that the VIN provides all the information needed by the Respondent, in this instance.

- vii. He mentioned that in relation to the claim for classification of certain cars under heading 9705 of the CN, the vehicles are a Triumph Stag, a Mercedes 190 and Volvo 240, all of which have registration documents indicating their age. He said that the vehicles classification under heading 9705 is easily ascertained from the description and registration details, therefore no further proof is required by the Respondent. He said that there are three conditions to be satisfied and he stated that the only cause for doubt is whether there have been substantial changes to the vehicle, but that purchasers are not interested in these types of cars if they are substantially changed and not in original condition. He said that it is not too much of a stretch to assume that the cars are not substantially changed.
- viii. Reference was made to article 153 of the UCC Regulation and article 12 the Protocol. He said that it is clear that the operation of the Protocol is for the authorities in GB and not for the Respondent. He mentioned that there is no requirement for any other commodities imported from Northern Ireland to the Republic of Ireland to make a customs declaration. He said that article 153 of the UCC Regulation applies to Northern Ireland as much as anywhere else in the EU and the goods are entitled to the presumption of free circulation. When asked, he said that he could not identify how many cars are from Northern Ireland, but an interrogation of the Appellant's systems could provide this information.
- ix. He said that the debt was not properly entered into the accounts by the Respondent in accordance with articles 104 and 105 of the UCC Regulation. He said that it was his view that if the Respondent was in a position to issue a notification of the customs debt, then it was also in a position to enter the debt into the accounts within 14 days. He said that the result of this is that the debt is not properly established and should not be pursued.
- x. Reference was made to article 120 of the UCC Regulation. He said that it is unfair that the Appellant as the customs representative would have to pay the customs debt, as the Appellant did not benefit from the imports. He said that the Appellant handles a considerable amount of intra-community trade and that in respect of the number of vehicles that were imported at that particular time, the Appellant is in an

exceptional situation, as compared with other operators engaged in the same business.

- xi. On cross examination, it was put to him that the VIN is not indicative of origin given the percentage rules in relation to non-originating material used the production of vehicles, which was referenced by the Respondent in correspondence with the Appellant dated 25 January 2021. In relation to RGR, he stated that the time period is three years from the end of the transition period and he did not agree with the Respondent that the important date is when the goods were exported to the UK and not the end of the transition period. He stated that the reason empowerment documentation was not furnished, was that the Appellant was incredibly busy and overstretched at that particular point in time, and that if this appeal is upheld, no debt would arise and thus no empowerment documentation would be required.

37. ██████ gave evidence on behalf of the Appellant. The Commissioner sets out hereunder, a summary of the evidence given by ██████ :-

- i. He mentioned that he has been working in customs clearance for over 40 years and that he had established the Appellant over 20 years ago. He stated that in terms of the empowerment documentation, the Appellant only acts for the importer by way of direct representation not indirect representation, the reason being that the Respondent may seek the debt from the Appellant, rather than from the importer.
- ii. He stated that he knew Brexit was going to occur. However, Brexit was postponed. This postponement coupled with the Covid-19 pandemic, meant it was very difficult to recruit experienced customs staff. He stated that he was under severe pressure in November 2020 and had spent a considerable amount of time in the period before during and after Christmas 2020 training new employees. In addition, the new AIS had been implemented. He stated that he became unwell in early January 2021 and that he did not recover for a number of weeks and this contributed to the delays in the response times with the Respondent. He stated that he "*puts his hands up*" and he did not cope very well with the correspondence that he was receiving from the Respondent.
- iii. He said he understood that the legislation supported the Appellant's position, such that article 154 provides for the loss of customs status. He stated that at that time, he could not go back over the numerous motor vehicle imports to provide the information that was requested by the Respondent. He stated that he had relied on the advice of Mr ██████ that if the Appellant is successful in its appeal, the

documentation would not be required, as no customs debt would arise. He stated that in relation to motor vehicle imports from Northern Ireland, the customs declarations are required in order that the cars can be presented to the National Car Testing Service and assigned a vehicle registration number.

38. Both [REDACTED] and [REDACTED] made final submissions on behalf of the Appellant on its points in relation to GBPO, RGR, Heading 9705 of the CN, the requirement for empowerment documentation and in particular, the relevance of article 154 of the UCC Regulation.

Respondent

39. Mr [REDACTED] gave evidence on behalf of the Respondent. The Commissioner sets out hereunder, a summary of the evidence given by [REDACTED] :-

- i. He said that he is currently employed as an [REDACTED] in the Medium Enterprise Division's motor transport utilities post clearance intervention team. He stated that PCI is a verification check to ensure that goods cleared have been handled properly. He stated that it was a safeguard mechanism to show the EU that Irish customs is operating effectively and protecting the borders of the EU. He stated that his role is to manage the unit and the caseworkers within the unit. He mentioned that he became involved in this particular matter, as the caseworker was having difficulties obtaining from the Appellant, the requisite documentation in relation to a claim of GBPO.
- ii. He said that in relation to a claim of GBPO, whilst each VIN has a unique code and is essentially a map of the vehicle, a VIN cannot be used to establish origin. He stated that the obligation is on the Appellant not the Respondent to have the requisite supporting documentation, in relation to a claim for GBPO, in accordance with article 163 of the UCC Regulation. He mentioned that the vast majority of the Appellant's claims for GBPO, were made on the basis of U116, statement of origin. He said that the AIS, provides a tick box in order to make a claim for GBPO and that either U116 or U117 must be ticked. He stated that an importer should know what documentation is required in order to support a claim being made.
- iii. He stated that the Respondent has been more than reasonable in terms of its dealings with the Appellant and has provided the Appellant with every opportunity to produce documentation in support of its claim to GBPO. In addition, he said that RGR was flagged by the Respondent, as an option which the motor vehicle imports could potentially benefit from.

- iv. He mentioned that a customs declaration is a legally binding document for a revenue official and verifies what goods are being imported. He said that this is important for the customs clearance intervention team. He stated that article 15 of the UCC Regulation covers the accuracy of any form of customs documentation including a customs declaration and that article 163 of the UCC Regulation provides that documentation shall be produced when requested. He stated that the customs debt was imposed because the requisite documentation was not furnished by the Appellant.
- v. Reference was made to page 119 of the Appellant's bundle of documents and to eight individual empowerment documents. He stated that many of these documents are not relevant to the motor vehicle imports, the subject matter of this appeal. However, eight motor vehicle imports have been identified as being relevant. He said that in circumstances where the empowerment documentation has now been produced in respect of eight motor vehicle imports, the Respondent accepts that the Appellant is not liable for that debt. He confirmed that as a consequence, the overall debt as set out in the Respondent's notification of customs debt, can be reduced in the sum of €7,075.40.
- vi. He stated that the motor vehicle imports from Northern Ireland were selected as part of the PCI as customs declarations were inputted by the Appellant for the motor vehicles. He mentioned that the reason there is a requirement for a customs declaration is that it reduces any risk of motor vehicles travelling from mainland UK into Northern Ireland and down to the Republic of Ireland without any customs formalities. The customs declaration is there to protect the EU motor car market, due to a border with GB.
- vii. He mentioned that the claim under heading 9705 of the CN did not initially arise. He said that the Appellant has not provided the information required to show that the motor vehicle imports have not been substantially altered, which is one of the criteria for classification in heading 9705 of the CN.
- viii. He stated that the debt has been legally established. He said that even if the debt had not been entered in accordance with article 120 of the UCC Regulation, the consequence is not as alleged by the Appellant but that there may be ramifications at EU level in terms of Ireland's reputation.
- ix. Reference was made to article 154 of the UCC Regulation, article 203 of the UCC Regulation and the Commission Guidance Note. He said that article 5.4 of the Commission Guidance Note is key.

40. Counsel on behalf of the Respondent stated that it was relying on its outline of arguments in addition to the following legal submissions:-

- i. Reference was made to article 203 of the UCC Regulation. This is not an export scenario and that RGR would not apply in the ordinary course of events, were it not for the Commission Guidance Note and its intervention in that regard. Reference was made to paragraph 5.4 of the Commission Guidance Note.
- ii. Article 154 of the UCC Regulation pertains to the loss of customs status of union goods. That is not what occurred herein or what is envisaged by article 154(a) of the UCC Regulation. This is a country leaving the EU, which is not envisaged in the UCC Regulation. The provisions of the UCC Regulation do not encompass that scenario.
- iii. Reference was made to article 15 of the UCC Regulation and the obligations have not been met at any stage, even to date. Reference was made to article 19 of the UCC Regulation and the onus being on the customs representative to complete the representation details. The Appellant did not complete the representation section of the import declaration and were treated as if it was the importer.
- iv. Reference was made to article 163 of the UCC Regulation and that a customs representative should have the supporting documents required to prove the declaration in its possession at the time of the declaration being lodged.
- v. Reference was made to article 54 and 56 of the TCA and an importers obligations in respect of a claim of GBPO.
- vi. In relation to heading 9705 of the CN, the declarations make no mention of a claim for such classification. In any event, the criteria have not been satisfied to the satisfaction of the Respondent.
- vii. The debt is legally established in accordance with article 120 of the UCC Regulation.
- viii. In relation to the customs declarations in respect of the motor vehicle imports from Northern Ireland, the declarations were made by the Appellant and the Respondent is now unclear as to the Appellant's argument, which was not ventilated in any detail in the notice of appeal or statement of case. There are specific rules that apply and proofs that are required in relation to goods that are moved from mainland GB to Northern Ireland, and then imported into the Republic of Ireland. Therefore, declarations are required.

- ix. There is no evidence that the Appellant is in an exceptional situation compared to other operators as provided for under article 120(2) of the UCC Regulation.

Material Facts

41. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

- i. The Appellant has operated as an established customs representative for over 20 years.
- ii. Prior to establishing the Appellant, the Director of the Appellant worked in the area of customs clearance for over 20 years. In total, the Director of the Appellant has over 40 years' experience in the area of customs procedures.
- iii. In January and February 2021, the Appellant imported a number of motor vehicles from the UK and claimed GBPO in respect of the motor vehicle imports.
- iv. The claim for GBPO was made on the basis of country of origin documentation as evidenced by the Appellant choosing U116 when inputting the requisite administrative details to AIS and the customs declarations.
- v. On 23 February 2021, the Appellant wrote to the Respondent and agreed that the vehicles, at least for the most part, were not of GBPO. The result being that the Appellant incorrectly made a claim for GBPO over a large number of the motor vehicle imports.
- vi. Subsequently, the Appellant claimed RGR in relation to all vehicles and classification under Heading 9705 of the CN, in relation to three vehicles in total.
- vii. The Appellant failed to enter into the AIS, the appropriate information that was required to establish it was acting as a customs representative and not the importer. In addition, the Appellant failed to comply with the request of the Respondent for empowerment documentation to establish the Appellant's status as a customs representative.
- viii. Having regard to the rules relating to the value of non-originating material used in the production of a vehicle, a VIN is not capable of establishing the country of origin of a vehicle.
- ix. The Appellant failed to provide information requested by the Respondent in relation to its claim for GBPO, despite numerous requests on the part of the Respondent.

- x. The Appellant failed to provide information requested by the Respondent in relation to its claim for RGR, despite numerous requests on the part of the Respondent.
- xi. The Appellant failed to provide information requested by the Respondent in relation to the classification of 3 motor vehicles under heading 9705 of the CN.
- xii. A declaration is required when importing motor vehicles from Northern Ireland to the Republic of Ireland.

Analysis

42. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

43. The Appellant’s appeal relates to a number of grounds as set out in its notice of Appeal dated 23 July 2021. The Commissioner intends to deal with each ground separately, in circumstances where the Commissioner is of the view that each ground is distinct and merits careful consideration on its own. However, the Commissioner intends to deal with the grounds of appeal not in the same order as set out in the Appellant’s Notice of Appeal. This is because the Commissioner considers it appropriate that the question of whether the Appellant was acting as a customs representative and thus is not the importer, should be dealt with initially. The Commissioner does not accept the Appellant’s argument that if the appeal is determined in its favour and the relief claimed is thus available to the Appellant, the status of the Appellant does not matter, as the customs debt will not be due and owing by the Appellant. The Commissioner sets out the reasons for this reasoning hereunder.

44. The Commissioner notes that the Appellant is a long standing customs agent and representative. Both of the Appellant’s witnesses gave detailed testimony as to their experience working in the area of customs procedures. In addition, the Commissioner heard evidence of the introduction of the AIS by the Respondent and the challenges the Appellant’s employee’s had with understanding the new system. In addition, the Director of the Appellant gave evidence that early 2021 was a difficult period for operations, when

the UK left the EU, coupled with the Covid-19 pandemic and personal sickness. The Commissioner is grateful to the witnesses for giving such evidence, as it assists the Commissioner with her understanding of the role of a customs representative and its challenges.

i. The Appellant acted as a customs representative and is not the importer

45. The Appellant contends that it is solely the customs representative and not the importer, who is liable for a customs debt, thus the customs debt should not be attributed to the Appellant, as it was acting in the role of a direct representative. The Respondent does not accept that argument, on the grounds that the Appellant neglected to input the requisite information on the customs declarations and AIS that it was acting as a direct representative. Further, no evidence to date has been produced to show that the Appellant was acting in such a capacity. The Commissioner has considered the evidence in relation to the role of a customs representative and the empowerment documentation that a customs representative is required to retain, in relation its representation of an importer for the purposes of importing goods.
46. The Commissioner notes Section 2 of the UCC Regulation which deals with customs representation. Article 18 of the UCC Regulation provides that any person may appoint a representative in their dealings with the customs authorities to carry out the formalities laid down by the customs rules. It further provides that representation can be direct or indirect. In the case of direct representation, the customs representative shall act in the name of and on behalf of another person and in the case of indirect representation, the customs representative acts in its own name but on behalf of another person. The evidence of the Director of the Appellant is that he always operates on the basis of direct representation, as the risks associated with indirect representation and a customs debt being affixed to the Appellant, are too great.
47. Section 19 of the UCC Regulation provides that a representative shall state that it is acting on behalf of the person represented and shall specify whether the representation is direct or indirect. The Commissioner has considered the mandatory use of language in article 19 of the UCC Regulation, namely "*shall state*". This means that it was mandatory that the Appellant state that it was acting on behalf of a person either directly or indirectly. Moreover, the Commissioner notes that article 19 of the UCC Regulation provides that persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so, shall be deemed to be acting in their own name and on their own behalf. The Commissioner has had regard to the Respondent's evidence that there is a "tick box" on the

Respondent's AIS that allows a customs representative to input the information required by the UCC Regulation.

48. The evidence of the Respondent was that the Appellant did not complete the representation section on the AIS or the customs declarations. Consequently, the Respondent treated the Appellant as if it was the importer of the motor vehicles. The lack of provision of the requisite information to the Respondent was not disputed by the Appellant's witnesses. The Director of the Appellant offered a number of reasons such as staffing problems, sickness and the general chaotic period post Brexit. This is in addition to the argument that in fact, it is not required should the various reliefs be available to the Appellant.
49. The Commissioner notes that the Appellant is an experienced customs representative. In such circumstances, the Commissioner is of the view that the Appellant should have been acutely aware of the importance of establishing customs representation. Article 19 specifically provides a power to the customs authorities to request a customs representative to provide evidence of empowerment. Whilst the customs authorities shall not require a person acting as a customs representative to produce on every occasion evidence of empowerment, a customs representative should be in a position to produce such evidence if requested.
50. The Commissioner is also cognisant of article 15 of the UCC Regulation which provides that documentation and information in relation to the accomplishment of customs formalities or in customs controls shall be produced at the request of the customs authorities, within any time-limit specified. Again, the language used is mandatory in nature. The Commissioner notes that the request for empowerment documentation by the Respondent was not complied with, despite the Appellant indicating in correspondence that the documentation was in fact available for production.
51. The Commissioner accepts that at that time there was an unprecedented scenario, in terms of Brexit. However, the Appellant is experienced in the business of customs representation and should have been aware of the importance of correctly completing the representation details, on the AIS and customs declarations. Moreover, numerous extensions of time were provided by the Respondent to comply with the request, yet no documentation was produced by the Appellant. Accordingly, the Commissioner is satisfied that in failing to do so the Appellant is in breach of article 15 and 19 of the UCC Regulation. The Commissioner finds that the Appellant either knew or should have known of its obligations in respect of the accurate completion of customs declarations and the provision of information and documentation.

52. In the absence of empowerment documentation being provided by the Appellant, the Commissioner is satisfied that the Appellant has not discharged the burden of proof to establish that it was acting as a direct representative. Accordingly, the Commissioner is satisfied that the Respondent was correct to treat the Appellant as the importer. For the purposes of this appeal, the Commissioner intends to treat the Appellant as the importer of the goods, having made such a finding.

53. Notably, the Appellant produced a number of empowerment documents in its bundle of documents, some of which were relevant to this appeal and some irrelevant. The Commissioner considered the documentation and the Respondent accepted that empowerment documentation was sufficient to demonstrate that for eight vehicles in total, the Appellant was acting in the role of customs representative. Thus, the Respondent agreed to reduce the liabilities in the sum of €7,075.40, which reduces the overall customs debt to the sum of €395,887.80.

ii. Duty is not owed as all goods are entitled to RGR under article 203 of the UCC Regulation

54. The Commissioner notes that initially GBPO was claimed in respect of the vast majority of the motor vehicle imports and that subsequently, after the PCI was opened by the Respondent, the Appellant claimed RGR. The Commissioner notes that in correspondence between the parties, the Respondent highlighted to the Appellant that a benefit under RGR may be relevant.

55. In January 2020, the EU and UK Parliaments ratified the Protocol and the UK entered a transition period from 1 February 2020 until 31 December 2020, whereby the UK continued, for the purposes of the movement of goods, services, and people, as if it were a full EU member state. On 31 December 2020, all goods not under customs supervision in the UK lost their union status at 23.00.

56. The Appellant contends that the vehicles are entitled to the benefit of RGR under article 203(4) of the UCC Regulation as the motor vehicles in question were union goods until the end of the transition period, as provided for in the Protocol, and which caused them to be removed from the customs territory of the union at 23.00 on 31 December 2020. The Appellant relies on article 154 of the UCC Regulation and the Protocol, in this regard.

57. Article 154 of the UCC Regulation provides that “*union goods shall become non-union goods in the follow cases: (a) were they are taken out of the customs territory of the Union, insofar as the rules on internal transit do not apply*”. The Appellant argues that the

relevant date for removal from the customs union is therefore, the end of the transition period namely, 23.00 on 31 December 2020.

58. Article 203 of the UCC Regulation provides that *"Non-Union goods which having originally been exported as Union goods from the customs territory of the Union are returned to that territory within a period of three years and declared for release for free circulation shall upon application by the person concerned be granted relief from import duty"*. Article 203(4) of the UCC Regulation provides that *"where union goods have lost their customs status as union goods pursuant to article 154 and are subsequently released for free circulation, paragraphs 1, 2, and 3 shall apply"*.
59. The Respondent does not accept that article 154 is applicable to the present situation as it is not an export scenario, which is a requirement of article 203(1) of the UCC Regulation, but rather it is a country leaving the EU. It is an unprecedented scenario which is not envisaged by the UCC Regulation. In particular, it is not envisaged by article 154 of the UCC Regulation, which the Respondent states has no relevance to this situation. The Commissioner notes the Respondent argues that the Commission Guidance Note is relevant here and whilst it is not binding, but for the Commission Guidance Note, in particular, paragraph 5.4, RGR would not be available.
60. Notably, both parties agree that this is not an export scenario. However, the Appellant is steadfast in its argument that the goods were taken out of the customs union, in accordance with article 154 of the UCC Regulation at the end of the transition period, as that was when the goods lost their customs status. Further the Appellant's argument is that no "export" is required for article 203 of the UCC Regulation to be applicable, just that the goods were taken out of the customs union.
61. The Commissioner has considered the Commission Guidance Note, in particular paragraph 5.4 which states inter alia that *"where union goods are brought from the union to the UK before the end of the transition period, the provisions on returned goods referred to in Article 203 UCC apply if the economic operator can provide evidence that the union goods:...Please note that the end of the transition period is not one of the special circumstances that would allow exceeding the three year period referred to in Article 203(1) UCC. The transport documents should serve as proof that the Union goods were taken to the UK prior to the end of the transition period, if necessary, accompanied by other relevant documents (e.g. lease contract). Where applicable, proof that the state of the goods has not been altered may be required"*.
62. In tandem, the Commissioner has considered both article 154 and article 203 of the UCC Regulation and its applicability to the scenario herein. The Commissioner agrees that it

is an unprecedented situation, when the UK left the EU on 31 December 2020. Consequently, the Commissioner is satisfied that this is not something that was envisaged by the UCC Regulation nor could it have been. The loss of customs status in such a manner is not envisaged in article 154 of the UCC Regulation.

63. Accordingly, the Commissioner is satisfied that the goods did not lose their customs status in accordance with article 154 of the UCC Regulation at the end of the transition period on 31 December 2020. What happened was that the UK exited the EU, an action not envisaged by the UCC Regulation and consequently, article 154 of the UCC Regulation has no application to the present situation.
64. Having regard to the Commission Guidance note and the UCC Regulation, the Commissioner considers that were it not for the intervention of the EU Commission Guidance, RGR would not be applicable in this scenario, as the goods would have been union goods on import into the UK and it would have been an EU situation on import rather than a non-union country. Therefore, article 203 of the UCC Regulation would otherwise not apply were it not for paragraph 5.4 of the Commission Guidance Note, as the goods on the date of export from the EU into the UK, would have been union goods prior to the end of the transition period. The Commissioner agrees that this is a facilitation on the part of the EU.
65. Notwithstanding the above finding, the Commissioner is satisfied that it does not preclude the motor vehicle imports from benefitting from RGR, instead, it means that the imports and the applicability of the RGR is to be determined having regard to the date upon which the goods were exported from the EU into the UK (before the end of the transition period), as the goods must be re-imported into the EU within 3 years from the original date of export. The Respondent in correspondence dated 16 February 2021, set out the proofs required from the Appellant in order that a successful claim of RGR can be made. It also referred the Appellant to the Respondent's e-Customs Notification Helpdesk number 14/2021 for guidance on RGR.
66. The Commissioner notes that the requisite proofs have not been provided to the Respondent, in order to establish a claim of RGR. Accordingly, in the absence of the provision of such documentation, the Commissioner is satisfied that the Respondent was correct to impose the customs duty in respect of the motor vehicle imports. As set out at length above, the Commissioner is satisfied that the Appellant was aware of its obligations under article 15 of the UCC Regulation and its responsibilities following a request for information and/or documentation being made by the Respondent.

iii. GB Preferential Origin

67. The TCA provides for zero tariffs and zero quotas on all UK origin goods traded between GB and the EU. The zero tariff and zero quota provisions apply to all goods that comply with the appropriate rules of origin. For imports to benefit from duty free treatment, the importer must be able to prove the origin and make a claim on their customs declaration for preferential treatment. The rules for second hand UK motor vehicles are explicit and relate to the value of non-original material used in the production of cars.
68. The evidence was that the Appellant initially claimed GBPO in relation to the vast majority of the customs declarations, but later conceded that for the most part the motor vehicle imports were not of GBPO. The evidence of the Appellant's witness was that the benefit of RGR should apply to all of the motor vehicle imports. Nevertheless, the Appellant stated that some may benefit from GBPO and the Appellant proceeded with this ground of appeal.
69. Under the TCA, an EU importer can only claim GBPO where it is in possession of either a statement of origin or importers knowledge. This is in accordance with the provisions of article 54 of the TCA. Moreover, article 54(1) of the TCA provides that it is the importer who shall be responsible for the correctness of the statement of origin and the information provided.
70. The Commissioner notes the evidence that a claim for GBPO based on either the statement of origin or importers knowledge is declared on the AIS and customs declaration by using a "tick box" entitled U116 (Statement of Origin) or U117 (Importers Knowledge).
71. The Appellant argues that importers knowledge does not require any documentation to be produced and it is essentially the knowledge that the importer has in relation to the vehicles. The argument was that the Appellant, as the customs representative, could not have this importers knowledge. Therefore, the Appellant argues that the Respondent should be pursuing the importer in relation to such information.
72. The Respondent contends that it is the importer who is wholly responsible for ensuring that the rules as provided for in Chapter 2 of the TCA, Rules of Origin, have been met. The Respondent does not accept the Appellant's arguments as to knowledge, and contends that in order to prove importers knowledge, a bill of materials used to make the vehicle, showing clearly the originating materials, is required. The Respondent states that a VIN is not acceptable to prove an entitlement to GBPO, as it cannot provide this level of information to the Respondent.

73. The Commissioner has had regard to the Respondent's witness evidence where he stated that the Appellant's claims for GBPO were for the most part based on U116. This can be seen from the customs declarations that were made in relation to the motor vehicle imports. The evidence of the Respondent's witness was contested by the Appellant, such that the Appellant argued that the customs declarations can be amended.
74. The Commissioner has considered in detail the evidence and documentation in relation to the Appellant's claim of GBPO. It is clear to the Commissioner that the Appellant made a claim for GBPO on the basis of U116, namely a statement of origin. The Commissioner has set out above, the importance of accuracy when completing customs declarations and the AIS, in respect of goods being imported into this jurisdiction. The Commissioner is satisfied that the Appellant having chosen U116, was confirming that it was relying on documentation that it had in relation to statement of origin. In other words, the Appellant was required to have the statement of origin in its possession at the time of the declarations being lodged. The language in article 54(3) of the TCA is clear and unambiguous and states "*The importer making the claim for preferential tariff treatment based on a statement on origin as referred to in point (a) of paragraph 2 shall keep the statement on origin and, when required by the customs authority of the importing Party, shall provide a copy thereof to that customs authority*".
75. Accordingly, having regard to article 54 of the TCA, the Commissioner is satisfied that the Appellant should have been in a position to produce the requisite documentation, in the form of a statement of origin, to the Respondent on request, in order to establish its claim for GBPO. However, the relevant proofs have not been provided to the Respondent. In the absence of the provision of such documentation to the Respondent to support the Appellant's claim, the Commissioner is satisfied that the Respondent was correct to impose the customs duty in respect of the motor vehicle imports.

iv. Heading 9705 of the CN

76. The Appellant contends that three vehicles (Appendix III) are entitled to the benefit of classification under heading 9705 of the CN.
77. Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ([1987] OJ L 256/1) ("the 1987 Regulation") and Commission Implementing Regulation (EU 2018/ 1602 of 31 October 2018 amending Annex I to Council Regulation (EEC) No 2568/87 ([2018] OJ L 273/1) ("the 2018 Regulation") represent EU legislation which is directly applicable in all Member States (together, "the Regulations").

78. The purpose of those Regulations is to facilitate international trade by the establishment, *inter alia*, of tariff and statistical nomenclatures in conformity with an international harmonised system and is designed to show the various rules applying to specific products when imported into the EU. In this connection, the CN is set out and established in Annex I to the 1987 Regulation as amended.
79. Chapter 97 of the CN provides for “*Works of Art, Collectors’ Pieces and Antiques*”. The Commissioner is satisfied that importer must be in a position to provide the relevant proofs to the Respondent to establish an entitlement to classification under heading 9705 of the CN namely, that the vehicles are in their original state, they are in excess of 30 years old and of a model or type that are no longer in production.
80. The Appellant’s witness gave evidence that it is obvious that the vehicles are in excess of 30 years old and are no longer in production. However, there was no evidence adduced in relation to the vehicles being in their original state, without substantial changes being made to them. The Appellant’s witness argued that purchasers of such vehicles require them in their original state and it can therefore be assumed that the vehicles are in their original state. The Commissioner notes that the Appellant’s witness stated that it may be possible to go back to the importers for a statement to that effect, but that this would be quite an onerous requirement. The Commissioner notes that information relating to the vehicles original condition has been requested by the Respondent on numerous occasions, in order to establish whether the motor vehicle imports actually qualify for classification in this heading. However, this information has not been provided by the Appellant.
81. The Commissioner has no doubt that heading 9705 of the CN is clear in its requirements in order to establish a classification under that heading. Having regard to the evidence adduced and the documentation submitted in this appeal, the Commissioner is satisfied that the Appellant has not provided the requisite proofs for classification in heading 9705 of the CN. Moreover, the Commissioner considers that actual proofs are required, as opposed to an assumption that the vehicles are in their original state. Consequently, the Commissioner is satisfied that the Respondent was correct to impose the customs duty in respect of the said motor vehicle imports.

v. The Debt has not been legally established

82. Article 105 of the UCC Regulation deals with time limits for entry of a customs debt into the accounts. The evidence was that the Respondent entered the customs debt into the accounts on 29 September 2021. The Commissioner notes that the Respondent relies

on both the Appellant's conduct, in terms of its failure to cooperate with the requests of the Respondent and an IT issue in the Respondent's accounting system, as reasons why the debt was not entered in accordance with the time limits prescribed in article 105 of the UCC Regulation.

83. The Commissioner notes that the Appellant argues that such a failure to comply with the prescribed time limits should result in the debt not being due and owing, whereas the Respondent states that there is no consequence for the Appellant. When asked by the Commissioner what consequence, if any, occurred in such circumstances, the Respondent submitted that the consequences would be Ireland's reputation within the EU, in terms of its adherence to customs procedures, but certainly not what the Appellant contends for.
84. The Commissioner has considered the submissions and applicable legislative provisions in relation to the requirements for entry of the debt into the accounts and is of the view that the Respondent did not enter the debt in accordance with article 105 of the UCC Regulation. However, the Commissioner is satisfied that neither article 105 of the UCC Regulation, nor any other part of the UCC Regulation, provides for cancellation of a customs debt for failure to enter the debt in accordance with the prescribed time limits as set out in article 105(5) of the UCC Regulation. The Commissioner is satisfied that even if some consequence for the Appellant flowed from this, the Respondent has relied on unforeseeable circumstances as the reason why the debt was not entered until 29 September 2021. The evidence as to the issue the Respondent has with the IT system was uncontested and the Commissioner has no reason not to accept the evidence of the Respondent's witness in this regard.
85. Additionally, the Commissioner accepts the Respondent's submission that it gave the Appellant every opportunity to provide empowerment documentation to evidence that it was a customs representative and not the importer, both prior to and following the issuing of the notification of customs debt. However, no documentation was provided and the Respondent proceeded to enter the debt in accordance with article 105 of the UCC Regulation.

vi. Consignments from Northern Ireland ("NI")

86. The Appellant argues that many of the customs declarations are for consignments from NI which do not require customs declarations and should not form part of the customs debt. The Appellant argues that when a vehicle moves from NI to the Republic of Ireland

("ROI"), it is an intercommunity movement, in accordance with the Protocol. Further, the Appellant argues that it is a matter for the NI authorities and not the Respondent.

87. The Respondent contends that the customs declarations were completed by the Appellant and states that it is now unaware why it is in dispute. Further, the Respondent's witness gave evidence that the "*customs declaration is there to protect the EU zone and to protect the EU motor car market. It's something that had to be in place obviously with regards the fact that we have a border with one part of Great Britain, being the Northern Ireland and the Northern Ireland protocol.*". The Respondent submitted that it was relying on a recent decision of Commissioner Noone in 120TACD2022, in relation to the requirement for a customs declaration to be completed and imposition of a customs duty herein.
88. Under the Protocol, it was agreed between the UK and the EU that NI would continue to apply and adhere to EU rules in relation to trade in goods, with the result that there would be no customs formalities, including payment of tariffs, on trade between ROI and NI. However, on 14 January 2021, the UK government unilaterally introduced significant changes to the UK VAT margin scheme for used cars imported from GB into NI. As a result, used cars imported from GB to NI after 31 December 2020 are liable for duty and VAT when brought into the ROI, on the same basis as used cars brought into the ROI from GB. Importers that do not have proof of declaration to customs to NI, must complete a customs declaration and pay the customs duty.
89. Having regard to the position as set out in the Respondent's e-Customs Helpdesk Notification 26/2021, together with the UCC Regulation and the Protocol, which the Appellant had the benefit of, the Commissioner is satisfied that the customs duty was correctly imposed by the Respondent. Consequently, the Commissioner is satisfied that the Respondent was correct to impose the customs duty in respect of the said motor vehicle imports.

vii. Equity

90. The Appellant argues that it did not benefit in any way from the misdeclarations and would not be in a position to recover from the importers, any liabilities imposed in respect of said motor vehicle imports. The Appellant contends that "*it is not in the business of buying or selling motor vehicles*".
91. Article 120 of the UCC Regulation deals with equity and provides for a situation where a customs debt is incurred under special circumstances, such special circumstances being

where the debtor is in an exceptional situation as compared with other operators engaged in the same business.

92. Having had regard to article 120 of the UCC Regulation, in addition to the evidence and submissions made in relation to this argument, *inter alia* that “*the Appellant is particularly exposed by its involvement in the used vehicle trade*” the Commissioner is satisfied that the Appellant has not shown that on balance, it is a debtor to which article 120 of the UCC Regulation applies.
93. Finally, in light of the manner in which the Appellant has conducted itself with the Respondent, the Commissioner is of the view that a number of further points should be addressed.
94. In relation to the customs debt, the Commissioner considers that under no circumstances should the Appellant have claimed GBPO or RGR on the motor vehicle imports, unless it had the requisite supporting documentation and required proofs to support such a claim. Despite the Appellant being an experienced customs representative, GPBO was incorrectly claimed at the outset, by the Appellant. In addition, the Commissioner notes the evidence of the Appellant’s witness that the lists of motor vehicle imports that were submitted in the bundles of documentation, are not entirely accurate and the VIN’s are misrepresented on some of them. It is of great importance that goods imported into this jurisdiction are supported by the necessary information and documentation, in accordance with the UCC Regulation and TCA. The Commissioner has no doubt that the Appellant has a very good understanding of the applicable legislative provisions and requirements for the importation of goods, having worked in the industry for many years
95. It is apparent to the Commissioner that the evidence adduced in this appeal illustrates a disregard on the Appellant’s part, for the rules and regulations applicable to the importation of goods into this jurisdiction. The Appellant has established itself as a long standing customs representative. Nevertheless, the Appellant failed to abide by the most basic of rules relating to its role as a customs representative. The Appellant maintains that it was solely a customs representative and not the importer, yet failed to complete customs declarations required by a customs representative, in breach of article 18 and 19 of the UCC Regulation. Moreover, in breach of article 15 of the UCC Regulation, the Appellant refused to provide to the Respondent when requested, empowerment documentation in relation to its appointment as a customs representative, in addition to the requisite proofs to support its various claims, such as country of origin documentation. This was despite the Appellant stating in correspondence, on a number of occasions, that empowerment documentation was available.

96. The Commissioner notes that the Appellant's witnesses stated in evidence that it was not necessary to provide empowerment documentation to the Respondent, in circumstances where, if it is successful on appeal and the relief claimed is afforded to the Appellant, then it is not required. The Commissioner is satisfied that having regard to the UCC Regulation and its language, that it is a mandatory requirement that requests of the Respondent are complied with. This protects the integrity of the customs procedures in this jurisdiction, its borders and Ireland's reputation generally, in terms of customs clearance procedures. The Commissioner is satisfied that the Appellant is aware of its obligations when the Respondent engages its powers under the UCC Regulation. Further, the Commissioner considers it notable that the Appellant claimed GBPO on the vast majority of the imports where it only weeks later, conceded that the goods were not entitled to GBPO. Customs declarations submitted by the Appellant, are legally binding returns similar to any other return made to the Respondent.
97. Whilst the Commissioner has some sympathy for the Appellant in terms of the difficult period in early 2021, as outlined by the Director of the Appellant, the facts established at the hearing are that the Appellant has maintained its refusal to provide any documentation to the Respondent. This is despite the Respondent engaging in lengthy correspondence, telephone calls and provision of further time lines for submission of the required proofs. Notably, the Respondent was willing to assess each customs declaration to evaluate whether or not the motor vehicles were entitled to the 0% rate of duty, irrespective of whether the 0% rate applied on the basis GBPO or RGR, once supporting documentation was received. Yet, at no stage has the Appellant provided the evidence required to allow the Respondent to evaluate the claims made.

Determination

98. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in showing that the tax is not payable. Therefore, the Notification of Customs Debt in the agreed amended sum of €395,887.80 shall stand.
99. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties.
100. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal

on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine
Appeal Commissioner
18 November 2022

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997