



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

45TACD2026

Between

[REDACTED]

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## 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 the Appellant in relation to a Binding Tariff Classification (BTI) issued by the Respondent in relation to an aromatised wine-based drink (“the product”).
2. Tariff classification decisions are in the form of a BTI issued by the Respondent. A BTI is a document which provides a written account of the holder of the classification decision, the tariff code applicable to the product, a detailed description of the product and the legal justification for the decision to classify the product in the particular code.
3. This appeal concerns the interpretation of Heading 2205 and Heading 2208 of the Combined Nomenclature (“CN”) set out in 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 2658/87 ([2018] OJ L 273/1) (“the 2018 Regulation”) which represent European Union (“EU”) legislation.
4. Article 288 of the Treaty on the Functioning of the European Union (“TFEU”) states that EU Regulations are directly applicable in all Member States. This means that they are legally binding on Member States, without any action on the part of the Member States. Article 288 of the TFEU states that with respect to a Regulation, it “*shall be binding in its entirety and directly applicable in all Member States*”. Hence, both the 1987 Regulation and the 2018 Regulation are directly applicable to Ireland as a Member State in their entirety. There is no dispute between the parties about the status of these EU Regulations and their direct applicability to the subject matter of this appeal.
5. By way of a BTI application to the Respondent dated 29 July 2024, the Appellant requested classification for the product under subheading 2205 10 10 of the CN, “*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances; of an actual alcoholic strength by volume of 18% or less*”.
6. On 13 December 2024, the Respondent issued BTI decision [REDACTED] to the Appellant under subheading 2208 90 69 of the CN, “*Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages: Other spirituous beverages*”. The BTI decision is valid for three years.

7. On 18 December 2024, the Appellant issued a first stage formal appeal to the Customs Appeal Unit of the Respondent in relation to the Respondent's BTI decision to classify the product under subheading 2208 90 69 of the CN.
8. On 15 January 2025, the Respondent's Designated Appeals Officer ("the DAO") issued a determination upholding the BTI classification under subheading 2208 90 69 of the CN.
9. On 12 February 2025, the Appellant duly appealed the decision of the Respondent to the Commission by submitting its Notice of Appeal. On 2 April 2025, in accordance with section 949Q TCA 1997, the Appellant submitted a Statement of Case and supporting documentation and on 17 April 2025, the Respondent submitted a Statement of Case. Furthermore, on 7 May 2025, in accordance with section 949S TCA 1997, the Respondent submitted its Outline of Arguments. The Appellant did not submit an Outline of Arguments. In determining this appeal, the Commissioner has considered all of the documentation submitted by both parties to the appeal, including any additional submissions made following receipt of the parties' Outline of Arguments.
10. The appeal proceeded by way of a physical and private hearing that took place over two days, commencing on 23 September 2025 and concluding thereafter, on 21 October 2025. The Commissioner heard evidence in the form of confidential commercially sensitive information in relation to the Appellant's product and thus, it was appropriate to conduct the appeal in private. The Appellant was represented by [REDACTED] ("the Appellant's representative"), and the Respondent was represented by senior counsel. The Appellant's representative gave evidence at the hearing of the appeal on behalf of the Appellant, and the Respondent called three witnesses, including an expert witness from the State Laboratory, to give evidence at the hearing of the appeal. The witnesses for the Respondent were as follows:
  - (i) [REDACTED] ("the Respondent's witness 1")
  - (ii) [REDACTED] ("The Respondent's expert witness");
  - (iii) [REDACTED] ("the Respondent's witness 2");
  - (iv) [REDACTED] ("the Respondent's witness 3").
11. In addition to the documentation submitted prior to the appeal, on the hearing dates, the Commissioner was furnished with a sample of the product, the aromatised wine-based drink, two [REDACTED] liqueurs and a product that the Appellant submitted was similar to the product at issue in this appeal. [REDACTED]  
[REDACTED]. The issue at

stake is the classification of the product, and the question that arises herein is what heading of the CN is the appropriate heading for classification of the product for customs duty purposes.

## Background

12. The Appellant is [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
13. The Appellant submitted that in an effort to meet changing consumers and evolving world market requirements, the Appellant's new product team developed the product for which it required a tariff classification. [REDACTED]  
[REDACTED]  
[REDACTED]
14. On 29 July 2024, the Appellant made an application to the Respondent for classification of the product in Heading 2205 10 10 of the CN. Heading 2205 of the CN pertains to "*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*". The subheading, which is the last four digits of the Heading, namely, 10 10 refers to the product specifically being "*of an actual alcoholic strength by volume of 18% or less*". As part of its application, a sample of the product and a sample of the aromatised wine-based drink were provided to the Respondent for analysis by the State Laboratory, together with requested proposed product labelling.
15. On 3 September 2024, the Respondent requested further information from the Appellant concerning ingredients and details of the manufacturing process, which was provided by the Appellant on 10 September 2024.
16. In correspondence dated 9 September 2024, which is entitled "BTI Application" the Appellant furnished further information to the Respondent. The correspondence from the Appellant stated *inter alia* that:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

17. Attached to the Appellant’s correspondence, was a [REDACTED] [REDACTED] (“the technical bulletin”). The technical bulletin is from [REDACTED] which the Commissioner observes from open-source material is a company that is [REDACTED] [REDACTED] [REDACTED] [REDACTED]<sup>1</sup>

18. The technical bulletin stated that the product is an [REDACTED] [REDACTED] [REDACTED]

- | [REDACTED]
- | [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]
- | [REDACTED]

19. On the 13 September 2024, a sample of the aromatised wine-based drink was requested by the Respondent and sent to the State Laboratory for analysis. Images of the proposed labelling were also requested on the same date. On the 25 October 2024, the images of the proposed labelling were received by the Respondent.

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<sup>1</sup> <https://focus-solutions.eu/>

20. On the 5 November 2024, the samples were sent to the State Laboratory for analysis. The product provided to the Respondent contained the following ingredients: -

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

21. It was not in dispute between the parties, that the product contained the ingredients and quantities, set out in the preceding paragraph. The aromatised wine-based portion of the product was made in compliance with Regulation No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 (“the 2014 Regulation”), which defines and sets out specific requirements for the aromatised wine-based drinks. The aromatised wine-based drink was made from a wine of fermented fresh grapes, [REDACTED] [REDACTED], [REDACTED] [REDACTED].

22. On 22 November 2024, the State Laboratory issued a report (“the report”) in respect of the product, signed by the Respondent’s witness 2, which stated *inter alia* that:

“.....  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Classification**

*Heading 2205 provides for – “Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances.”*

<sup>2</sup> “abv” meaning Alcohol by Volume

<sup>3</sup> “v/v” meaning volume concentration of a solution, volume per volume

*A review of the Revenue Manual excludes the product from Headings 2204 and 2205, see below. Alcohol Products Tax, Page 6, Section 2.7 (ii) states –*

*“Whether the particular organoleptic characteristics of the products correspond to those of products classified in CN code 2208. The taste can constitute an objective characteristic or property of a product. If the addition of water and other substances (such as syrup, various aromas and colourings, [REDACTED] results in losing the taste, smell and appearance of a beverage produced from a particular fruit or natural product, that is to say a fermented beverage of CN code 2206, classification in CN code 2208 takes place and the product falls within the “spirits” category for the purposes of Alcohol Products Tax.”*

*Heading 2208 provides for –*

*“Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol.; spirits, liqueurs and other spirituous beverages.”*

*Based on the information provided, in our opinion it appears that classification under subheading 2208 90 69 00, is appropriate on this occasion. We note the end product does not have any characteristics of a wine of 2204 or 2205.”*

23. On 13 December 2024, the Tariff Classification Unit of the Respondent issued a decision to the Respondent classifying the product in CN Heading 2208 90 69 entitled “*other spirituous beverages*”. Heading 2208 of the CN pertains to “*Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs and other spirituous beverages*”.
24. On 18 December 2024, the Appellant appealed the Respondent’s BTI decision to the DAO of the Respondent. On 15 January 2025, the DAO of the Respondent issued a determination upholding the BTI classification under subheading 2208 90 69 of the CN. The DAO of the Respondent making his decision stated that:

*“I note from your appeal that you are of the opinion that your product is produced in compliance with EU regulation 251/2014 and that it meets the requirements of an aromatised wine-based drink. Following analysis of regulation 251/2014, I note that in Annex II B ‘sales denominations and descriptions of aromatised wine-based drinks’, all the products listed have the characteristics of a wine.*

*The Siebrand ruling (ECJ Case C-150/08) was applied in relation to this BTI decision and you have stated that this has no legal merit or standing to your product. I believe the Siebrand ruling outlines that classification of a product is based on whether the*

*base product has kept its characteristics in the end product. This was correctly considered in relation to this BTI.*

*You had envisaged that your product could be classified under heading 2205 which provides for "vermouth and other wine of fresh grapes flavoured with plants or aromatic substances". However, following a review of the Alcohol Products Tax and Reliefs Manual section 2.2.7.1 (ii) excludes your product from headings 2204 and 2205 "Whether the particular organoleptic characteristics of the products correspond to those of products classified in CN code 2208. The taste can constitute an objective characteristic or property of a product. If the addition of water and other substances (such as syrup, various aromas and colourings, and, [REDACTED], results in losing the taste, smell and appearance of a beverage produced from a particular fruit or natural product that is to say a fermented beverage of CN code 2206, classification in CN code 2208 takes place and the product falls within the "spirits" category for the purposes of Alcohol Products Tax."*

[REDACTED]  
[REDACTED]  
[REDACTED] *Heading 2208 provides for "Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, Liqueurs and other spirituous beverages." I note HSEN [REDACTED]*

[REDACTED] *Additionally, BTI [REDACTED] by Germany for a similar product as a classification under heading 2208.*

*Based on the evidence available to me, classification under subheading 2208 96 29 is appropriate for this product. I believe this is further supported using the General Interpretive Rule (GIR 1) and 6. GIR 1 states that classification is determined by the terms of the headings and chapter notes. GIR 6 states that subheadings shall be determined according to the terms of those subheadings and any and related subheading notes.*

*Accordingly, it is my determination that the original classification provided for in BTI decision [REDACTED] is appropriate and for this reason your appeal is not being upheld."*

25. The Appellant's appeal concerns the classification of the product for customs duty purposes. The issue in this appeal is whether the product should appropriately be classified in Heading 2205 of the CN namely, "*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*", or as contended for by the Respondent, Heading 2208 of the CN namely, "*Undenatured ethyl alcohol of an alcoholic strength by*

*volume of less than 80% vol; spirits, liqueurs and other spirituous beverages*". In its Notice of Appeal, the Appellant set out eight grounds of appeal in respect of the decision of the Respondent to classify the product in Heading 2208 of the CN and why it contended that the Respondent had erred in its approach to the classification of the product. The eight grounds of appeal as set out in the Appellant's Notice of Appeal are as follows:

1. *"The DAO noted that on his analysis of EU Regulation 251/2014 in Annex II B ' Sales Denominations and Descriptions of Aromatised Wine Based Drinks ' - that all the products listed have the characteristics of wine '. This section specially refers to those products that were given Geographical Indication Protected Designated Names at the time of enacting this legislation e.g. like Sangria that is known by its common name but predominantly tastes of citrus flavour and peel. Likewise in Gluhwein and Viiniglogi, also produced in accordance with EU Regulation 251/2014, the cinnamon and/or cloves added has resulted in a significant change away from the character of a wine.*

2. [REDACTED]

*This EU Regulation 252/2014 clearly sets out:*

*(i) Annex II B,(1): Aromatised Wine Based Drink is a product complying with the definition set out in Article 3 (3).*

*(ii) Article 3 (3) clearly states that an Aromatised Wine Based Drink is a drink:*

*(a) obtained from one or more of the grapevine products defined in points 1, 2 and 4 to 9 of Part II of Annex VII to Regulation (EU) No 1308/2013, with the exception of wines produced with the addition of alcohol and 'Retsina ' wine;*

*(b) in which the grapevine products referred to in point (a) represent 50 % of the total volume;*

*(c) to which NO ALCOHOL has been added, except where Annex II provides otherwise;*

*(d) to which colours may have been added;*

*(e) to which grape must , partially fermented grape must or both may have been added;*

*(f) which may have been sweetened;*

(g) which has an alcoholic strength by volume of not less than 4.5 % vol. and less than 14.5 % vol.

OUR PRODUCT FULLY COMPLIES WITH ALL THAT ABOVE CRITERIA.

(iii) Annex I of 251/2014 'Technical Definitions, Requirements and Restrictions' clearly states in (1) that the addition of authorised flavourings that make the product 'Aromatised' CONFERS ON THE FINAL PRODUCT ORGANOLEPTIC CHARACTERISTICS OTHER THAN THOSE OF WINE. ( and thus cannot taste of wine so as not to mislead the consumer ). CLEARLY THE DESIGNATED APPEALS OFFICER DID NOT TAKE THIS REQUIREMENT INTO ACCOUNT.

3. The BTI and the Designated Appeals Officer MISAPPLIED THE SIEBRAND RULING (ECJ CASE C-150/08) AS THEY BELIEVE THAT THIS RULING CAN BE BROADLY APPLIED AGAINST ALL FERMENTED PRODUCTS. WE VEHEMENTLY DISAGREE:

4. THE PRODUCT AND RULING IN THE SIEBRAND CASE IS NOT RELEVANT BECAUSE:

(a) The DAO referred to the ' Alcohol Products Tax and Reliefs Manual ' ( see attachment no. 4 ) and in particular Section 2.2.7.1 (ii) concerning the Siebrand Case it clearly says ' IN THE CASE OF PRODUCTS CONTAINING A MIXTURE OF FERMENTED AND DISITLLED ALCOHOL ' .

[REDACTED]

[REDACTED]

[REDACTED] We take great care to stay within the boundaries of that legislation. [REDACTED]

[REDACTED]

[REDACTED]

(b) The DAO, from his review of the above Manual says ' Section 2.2.7.1 (ii) excludes your product from headings 2204 or 2205 '. This is an incorrect interpretation as there is NO REFERENCE to either headings 2204 or 2205 in Section 2.2.7.1 (ii) or anywhere else in Section 2.2.2.7.

(c) That Siebrand product contained less than 50 % ferment [REDACTED]

[REDACTED]

(d) Their Ferment was from fruit wine and not of Grapevine origin and was therefore not governed by Regulation 251/2014 or any regulation, and was not covered

*under Tariff Heading 2205 which covers Aromatised Wine made with ' wine of fresh grapes flavoured with plants or aromatic substance ' .*

*(e) The Siebrand product contained greater than 50 % of the alcohol from distilled spirits [REDACTED].*

*(f) Since the Siebrand ruling was for ' Other Fermented Beverages ' not elsewhere classified ' it was originally classified under 2206 tariff heading and that ruling was covered by the explanatory notes for a product that falls under 2206 tariff heading ( OUR PRODUCT DOES NOT FALL UNDER 2206 TARIFF HEADING ).*

*(g) The Designated Appeals Officer states that the note notes as outlined in the Alcohol Products Tax and Reliefs Manual , Section 2.2.7.1 (ii) ( see attached ) excludes Page 14 of 283 our product and that is legally not correct. The application of these explanatory notes is only valid if our product was made from ' Other Fermented Beverages ' (2206) and not ' Grapevine ' (2205) products. If applying the General Rules for the Interpretation of the Harmonised System properly, especially Rules 1 and 6, you could only classify our product under 2205 Tariff Heading and not 2206. Since it does not fall under 2206 then the referenced explanatory notes are not legally binding or valid and cannot be applied to our product.*

*The Designated Appeals Officer states that ' [REDACTED] ' This is incorrect for the following reasons:*

*(a) There were three tariff headings from which the Designated Appeals Officer could choose:*

- (i) 2205 - where the product is produced in compliance with Regulation (EU)251/2014 and the fermentable base is made from Grapevine products. - THIS APPLIES EXACTLY TO OUR PRODUCT.*
- (ii) 2206 - where fermentable base is made up from any other fruit and mixtures.*
- (iii) 2208 - where base is made from spirits or classified under 2206 tariff heading and not retaining the characteristic of the original fruit used.*

*(b) The fact that the original BTI decision and the Designated Appeals Officer acknowledged that our product is made from wine then it cannot be classified under 2206 as that tariff heading is for products made from other fermented beverages or*

*mixtures of fermented beverages. Tariff Heading 2208 is for spiritous beverages whereas ours contains NO spirit.*

*(c) Regulation (EU) 2019/787 ( attachment no. 5 ) is the overall major European legislation governing the Definition, Description, Presentation and Labelling of Spirit Drinks.*

*- In Article 2 (c) it stipulates that a SPIRIT DRINK must have a minimum alcoholic strength of 15 % vol. Our product is at [REDACTED] and therefore NOT a spirit drink.*

*- In Annex I at:*

*- Category 33 (a) defines ' LIQUEUR IS A SPIRIT DRINK ' whereas we use WINE.*

*- Category 33 (a) (ii) it defines a LIQUEUR as ' produced using ethyl alcohol of agricultural origin or one or more spirit drinks....' . Whereas we use WINE and NO ETHYL ALCOHOL.*

*- Category 33 (b) outlines that ' The minimum alcoholic strength by volume of liqueur shall be 15 % ' . It is thus quite clear that our product being at [REDACTED] and as it is produced with wine thus it cannot be categorised as either a liqueur or a spirit drink ( 2208 ) as it is correctly produced in compliance with the Aromatised Wine Based Product legislation as set out in Regulation (EU) 251/2014*

*5. The Designated Appeals Officer references BTI 19997/22-1 ( attachment no. 6 issued by Germany for a SIMILAR product. While it appears this German product contains [REDACTED] it is NOT A SIMILAR product as it is not produced in compliance with Regulation EU ) 251/2014 as the classification ruling lists the components of this product in descending order and it is clear that distilled alcohol makes up the majority of the alcohol present in the product and as such is not governed by Regulation (EU) 251/2014 Chapter II Article 3 No. 3. and thus would not be classified under 2205 Tariff Heading, and thus that decision is not relevant when considering our product.*

*6. The Designated Appeals Officer also references ' [REDACTED]  
[REDACTED]  
[REDACTED] They are defined in the relevant Spirituous Beverages [REDACTED] where at [REDACTED]  
[REDACTED] they need to have a minimum alcohol strength of 15 % vol. and also [REDACTED]. Our product does not qualify for that category [REDACTED]*

7. *It is of vital importance that the relevant EU Regulations are applied here, in that regard we must draw attention to the very kernel of Regulation (EU) 251/2014 where after 23 years Regulation (EEC) No. 1601/91 was updated. The very first reason for this update was at: ( see attachment no. at L 84/14 ) ' Whereas.(1).....However, in the light of technologic innovation, market developments and evolving consumer expectations it is necessary to update the rules applicable.....' This is further emphasised at point No. 8 in that legislative reasoning.*
8. *The DAO referred to the State Laboratory Report, we have requested a copy of this from the DAO and he has referred us to the Freedom Of Information Section of Revenue. We are awaiting that report and thus we reserve the right to address this report at the in-person hearing.”*

### **Legislation and Guidelines**

26. The relevant legislation is set out in the below and includes the following: EU Regulations, the General Rules and the Harmonised System, the Nomenclature, the HSEN, Binding Tariff Information (BTI) and the Customs Code:

#### *The EU Regulations*

27. The Customs Cooperation Council, now the World Customs Organisation (“WCO”), was established by the convention creating that Council, concluded in Brussels on 15 December 1950. The Harmonised Commodity Description and Coding System (“the HS”) was drawn up by the WCO and established by the International Convention on the Harmonised Commodity Description and Coding System (“the HS Convention”) concluded in Brussels on 14 June 1983 and approved, with its amending protocol of 24 June 1986, on behalf of the European Economic Community by Council Decision 87/369/EEC of 7 April 1987.
28. Under Article 3(1) of the HS Convention, each Contracting Party undertakes to ensure that its customs tariff and statistical nomenclatures are in conformity with the HS, to use all of the headings and subheadings of the HS without addition or modification, together with their related numerical codes, and to follow the numerical sequence of that system. Each Contracting Party also undertakes to apply the General Rules for the interpretation of the HS and all the section, chapter and subheading notes of the HS, and not to modify their scope.
29. 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”).

30. 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 Combined Nomenclature of the Common Customs Tariff (“CN”) is set out and established in Annex I to the 1987 Regulation, as amended.

#### *General Rules and the Harmonised System*

31. The General Rules for Interpretation of the CN are extracted from the International Convention on the Harmonised Commodity Description and Coding System (also known as the “Harmonised System” or “HS”). The objective of the HS is to facilitate international trade by the establishment, *inter alia*, of tariff and statistical nomenclatures in conformity with an international harmonised system.
32. The General Rules for the interpretation of the CN (General Interpretive Rules (“GIR”)), which are set out in Part One, Section 1, of the CN, state that Classification of Goods in the Combined Nomenclature shall be governed by six principles.
33. The six principles are set below and provide that:-

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.*
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 3.*

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.*

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

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.*

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.*

#### *The Nomenclature*

34. The Nomenclature is governed by the HS Convention, which was elaborated under the auspices of the World Customs Organisation ('WCO'). In the EU, the HS Nomenclature was given the force of law in the 1987 Regulation.
35. The HS Nomenclature comprises about 5,000 commodity groups, which are identified by a six-digit code and arranged according to a legal and logical structure based on fixed 17 rules. EU Member States are contracting parties to the aforementioned Convention. Ireland became a contracting party to the HS on 22 December 1987 and the Convention entered into force, in respect of Ireland, on 1 January 1988.
36. In the EU, the HS Nomenclature was given the force of law in the 1987 Regulation. In particular, the 1987 Regulation integrated the HS Nomenclature and comprised additional eight-digit subdivisions and legal notes specifically created to address the need of the Community which is the CN. Thus, the CN is based on the HS Nomenclature drawn up by WCO.

#### *The Harmonised System Explanatory Notes (HSEN)*

37. Under Article 3(1) of the HS Convention, each contracting party undertakes to ensure that its customs tariff and statistical nomenclatures will be in conformity with the HS. As an aid to the correct classification of goods, the WCO has produced explanatory notes ("HSEN").
38. The HSEN and CN under consideration in this appeal are as follows:
39. Chapter 22 of the General HSEN is entitled:-

*"Beverages, spirits and vinegar".*

40. CN Chapter Notes to Chapter 22 *inter alia* state that:

"....."

8. Only vermouth and other wine of fresh grapes flavoured with plants and aromatic substances having an actual alcoholic strength by volume of not less than 7 % vol shall be regarded as products of heading 2205.

.....”

#### Heading 2205

41. Heading 2205 of the CN states that: -

“Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances”.

42. Subheadings 2205 10 10 of the CN state that:

“2505 10                    In containers holding 2 litres or less:”

“2505 10 10                of an alcoholic strength by volume of 18% vol or less”

43. The HSEN for Heading 2205 of the CN states that:-

“.....”

*This heading includes a variety of beverages (generally used as aperitives or tonics) made with wine of fresh grapes of heading 22.04, and flavoured with infusions of plant substances (leaves, roots, fruits, etc.) or aromatic substances.*

*It may also include the above types of beverages which contain added vitamins or iron compounds. These products which are sometimes referred to as ‘food supplements’ are designed to maintain general health or well-being.*

*The heading does not cover:*

*(a) Wines obtained from dried grapes and prepared with aromatic plants or substances (heading 22.06).*

*(b) Medicaments of heading 30.03 or 30.04.”*

44. The CN Explanatory Note to Heading 2205 of the CN states that:

*“wines covered by this heading and described in the HS Explanatory Note to heading 2205 include:*

*1. beverages known as ‘Marsala all’uovo’, ‘Marsala alla mandorla’ and ‘Crema di Marsala all’uovo’ which are based on Marsala wine, and flavoured with egg yolks, almonds and other aromatic materials;*

2. *wine-based beverages known as Sangria, flavored with lemon or orange, for example.*

*See additional note 8 to this chapter. Products having an actual alcoholic strength by volume of less than 7% vol fall in heading to 2206 00.”*

*Heading 2208*

45. Heading 2208 of the CN states that:

*“Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs and other spirituous beverages.”*

46. Subheadings 2208 90 69 of the CN states that:

*“2208 90                    Other”*

*“2208 90 69              Other spirituous beverages”*

47. The HSEN relating to Heading 2208 of the CN *inter alia* states that:

*“The heading covers, **whatever their alcoholic strength:***

*(A) **Spirits** produced by distilling wine, cider or other fermented beverages or fermented grain or other vegetable products, without adding flavouring; they retain, wholly or partly, the secondary constituents (esters, aldehydes, acids, higher alcohols, etc.) which give the spirits their peculiar individual flavours and aromas.*

*(B) **Liqueurs and cordials**, being spirituous beverages to which sugar, honey or other natural sweeteners and extracts or essences have been added (e.g., spirituous beverages produced by distilling, or by mixing, ethyl alcohol or distilled spirits, with one or more of the following: fruits, flowers or other parts of plants, extracts, essences, essential oils or juices, whether or not concentrated). These products also include liqueurs and cordials containing sugar crystals, fruit juice, liqueurs, egg liqueurs, herb liqueurs, berry liqueurs, spice liqueurs, tea liqueurs, chocolate liqueurs, milk liqueurs and honey liqueurs.*

*(C) **All other spirituous beverages not falling in any preceding heading of this Chapter.***

.....

Provided that **their alcoholic strength by volume is less than 80% Vol**, the heading also covers undenatured spirits (ethyl alcohol and neutral spirits) which, contrary to those at (A), (B) and (C) above, are characterised by the absence of secondary constituents giving a flavor or aroma. These spirits remain in the heading whether intended for human consumption or for industrial purposes.

In addition to undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol, the heading includes *inter alia*:

.....

[REDACTED]

.....

The heading **does not**, however, **include**:

(a) Vermouths, and other aperitifs with a basis of wine of fresh grapes (**heading 22.05**).

.....”

48. The CN Explanatory Note to Heading 2208 *inter alia* states that:

“Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% Vol;  
Spirits, liqueurs and other spirituous beverages of heading to 2208 are alcoholic liquids generally intended for human consumption and are prepared:

- Either directly by distilling (with or without added flavoring) natural fermented liquids such as wine or cider, or previously fermented fruit, marc, grain or other vegetable products, or
- by simply adding various aromatic substances, and sometimes sugar, to alcohol produced by distillation.
- The various spirituous beverages are described in the HS Explanatory note to heading 2208, third paragraph, (1) to (18).

As regards undenatured spirits, it should be noted that they remain classified in this heading even if they have an alcoholic strength of 80 % vol or higher, whether or not the product is ready for consumption as a drink.

*This heading does not cover alcoholic beverages obtained by fermentation (headings 2203 00 to 2206 00).”*

49. As a Contracting Party to the HS Convention, Ireland and the EU are obliged, under Article 3, paragraph 1(a)(II): “*not to modify the scope of the Sections, chapters, headings or subheadings of the Harmonised System*”. This means that classification decisions cannot be taken which involve the expansion of a heading or code beyond that provided. The Explanatory Notes are an important aid to interpretation, but do not have legally binding force.

*BTIs and the Customs Code*

50. Tariff classification decisions are in the form of BTI. A BTI is a document which provides a written account of the holder of the classification decision, the tariff code applicable to the product, a detailed description of the product and the legal justification for the decision to classify the product in the particular code.

51. The case law, BTIs and Cross Rulings referred to by the parties and considered by the Commissioner are set out in this Determination.

**Evidence and Submissions**

*Appellant’s evidence and submissions*

52. The Appellant’s representative gave evidence and made submissions on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence and the submissions given by the Appellant’s representative:-

52.1. The Appellant’s representative confirmed that the product [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

52.2. The Appellant’s representative gave evidence that in [REDACTED] the Appellant made the application for a BTI. He explained that the company is [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The Appellant’s representative testified that the intended use of the product was

to compete with similar products in the market, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

52.3. [REDACTED]  
[REDACTED]  
[REDACTED]

He stated that the Appellant has always been an innovative company, and that the Appellant had noticed the 2014 Regulation in respect of aromatised wine-based products. The Appellant's representative stated that the 2014 Regulation was very specific for aromatised wine and aromatised wine-based products, and its principal feature was that aromatised wine and aromatised wine-based products must be produced from wine of fresh grapes, and that the fresh grape wine must be more than 50% of the product itself. In addition, no distilled alcohol is permitted in aromatised wine-based products, and it must have an abv of between 4.5% and 14.5%. The Appellant's representative confirmed that the product's aromatised wine-based portion of the product, [REDACTED] complied with the 2014 Regulation. He stated that the 2014 Regulation was enacted six years after the judgment of the Court of Justice of the European Union ("CJEU") in Case C-150/08 *Siebrand BV v Staatssecretaris van Financiën* ECLI:EU:C:2009:294 ("the *Siebrand* decision").

52.4. The Appellant's representative explained that the wine of fresh grapes used in the aromatised wine-based drink emanates from [REDACTED]  
Thereafter, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

52.5. The Appellant's representative submitted that the classification officer of the Respondent did not follow the rules and regulations on the classification of products, in particular the GIRs. The Appellant's representative stated that the Appellant's product has one alcoholic ingredient, which is wine produced by fermentation of fresh grapes and having regard to Heading 2208 of the CN, it is not appropriate to classify fermented products therein, as it is reserved for

spirituous products, made from distilled alcohol, and there was case law that confirmed that point.

- 52.6. The Appellant's representative testified that Regulation 2024/585 ("the 2024 Regulation") governs the use of milk products in aromatised wines and specifies that it is possible to use milk products, in products that are capable of classification in Heading 2205 of the CN. The Appellant's representative made reference to a recent German BTI dated August 2025, which he argued had ingredients similar to the product herein and that it was classified in Heading 2205 of the CN. He said that spirits and spirituous products, and that particularly the word "liqueur", means that a product must have over 15% abv to be classified in Heading 2008 of the CN. However, he said, the product has an abv of [REDACTED]. Hence, he said, it cannot be classified in the "Liqueur" category of products, namely Heading 2208 70 of the CN, which is the subheading for "Liqueurs".
- 52.7. The Appellant's representative gave evidence that despite requests by the Appellant, it did not receive a copy of the State Laboratory analytical report. He stated that in July, the Appellant did receive a letter from the Respondent with its Outline of Arguments in this appeal, but it did not provide the Appellant with the analytical results on which the Respondent formed its opinion as to the classification of the product.
- 52.8. The Appellant's representative gave evidence that he noted that the DAO of the Respondent stated that most of the products listed under the aromatised wine-based drinks legislation, Annex II(b), have the characteristics of a wine. However, this he said was incorrect, and examples of that have been provided in the Appellant's submissions, including a list of products in the 2014 Regulation, many of which do not have the characteristics of a wine. The Appellant's representative relayed that the following sentence in Annex 1 of the 2014 Regulation is very important wherein it states that: "*Addition of such substances confers on the final product organoleptic characteristics other than those of wine.*" The Appellant's representative testified that the reason this is so important was that in order not to confuse consumers buying aromatised wine products, the products do not have the organoleptic characteristics of wine, namely that of the original wine. Hence, he said, for the DAO of the Respondent to state that the product does not have the characteristics of wine, was incorrect and the DAO of the Respondent did not have regard to that particular important sentence in the 2014 Regulation.

- 52.9. The Appellant's representative referred to the *Siebrand* decision and stated that it has no relevance whatsoever to the Appellant's appeal. He said that the *Siebrand* decision concerned products that were made of mixtures of distilled alcohol and other fruit wines. It did not concern a wine of fresh grapes, but rather an apple cider type product, whereas the Appellant uses in its product, only wine of fermented fresh grapes and no distilled alcohol, in accordance with the 2014 Regulation. That he said, makes an important distinction between the *Siebrand* decision and the product, where there is no distilled alcohol added to the product or the aromatised wine-based portion of the product. He testified that the 2014 Regulation requires that the product lose its characteristics of wine, having regard to the words "*Addition of such substances confers on the final product organoleptic characteristics other than those of wine.*" He testified that those words mean that the product's organoleptic characteristics are different from that of wine, but that it remained an aromatised wine made from wine of fermented fresh grapes.
- 52.10. The Appellant's representative stated that the Respondent's Alcohol Products Tax and Duty Manual, entitled Alcohol Products Tax and Reliefs (Incorporating Notice No. 1886 on Alcohol Products Tax), Document last updated October 2024 ("the Respondent's manual"), included in the documentation submitted in this appeal, deals with Heading 2206 of the CN and not Heading 2205 of the CN. The Appellant's representative stated that there was a distinction between fruit wines and grape wines, which is governed by its own specific legislation. He said that the *Siebrand* decision was dealing with fruit wines mixed with distilled alcohol, not with a fermented grape wine, which was what the product being considered for classification herein was, and which product contained no added distilled alcohol.
- 52.11. The Appellant's representative argued that the DAO of the Respondent fell into further error when he gave an opinion that the product was a liqueur but failed to recognise that the product herein had an abv of [REDACTED] and that a liqueur was required to have an abv of 15% to be classified therein. He submitted that EU Regulation 2019/787 governs all spirituous products, and liqueurs are defined in section 33 of that EU Regulation, as products that shall be over 15% abv. In addition, he said there was reliance on a German BTI, BTI decision DEBTI19997122-1 ("the German BTI"), but this issued for a mixed alcoholic beverage, similar to the *Siebrand* decision. The product, the subject of the German BTI, he said was made from fruit wine and distilled alcohol, and it was clearly distinguishable from the product, as the product herein contained an

aromatised wine-based drink made from the wine of fermented fresh grapes, with no additional distilled alcohol being added to the aromatised wine-based drink or the product.

- 52.12. In relation to the Spanish BTI, BTI decision ESBTIESBTI2022SOL978 (“the Spanish BTI”), included in the Respondent’s documentation in the appeal, the Appellant’s representative stated that the abv of the product was only 5.5% and the criteria for classification in Heading 2205 of the CN was at least 7% abv. Therefore, he said, it must have been classified in Heading 2208 of the CN due to its abv of 5.5%, as it could not be classified in Heading 2205 of the CN. The Appellant’s representative also referred to the BTI decision it received from the Respondent in 2008, prior to the *Siebrand* decision.
- 52.13. The Appellant’s representative referred to the HSEN to Heading 2208 of the CN which states that “*This heading does not, however, include: Vermouths and other aperitives...(heading 2205).*” The Appellant’s representative argued that having regard to the HSEN, it was not permitted to classify products of Heading 2205 of the CN, being products such as Vermouths and other aperitives with a basis of wine of fresh grapes, in Heading 2208 of the CN. Furthermore, he referred to the CN Explanatory Notes wherein it states: “*This heading does not cover alcoholic beverages obtained by fermenting. (2203 to 2206).*” He argued that this means that the product must be classified in Heading 2205 of the CN.
- 52.14. The Appellant’s representative submitted that the criteria to be considered for classification are the objective characteristics and properties of the product and the Appellant’s product was made of an aromatised wine-based drink. He stated that the Appellant’s product has all the relevant quantities and ingredients that comply with the 2014 Regulation, so the properties are well defined. He referred to the decision in Case C-142/06 *Olicom A/S v Skatteministeriet* ECLI:EU:C:2007:449 (“the *Olicom* decision”) in that regard. The Appellant’s representative gave evidence that he was aware that the Respondent had submitted numerous judgments in support of its position, but that the product could be distinguished from each of the decisions of the court. He submitted that the product was not considered objectively, but rather it was considered subjectively by the Respondent. He stated that the product was that of an aromatised wine-based drink and complied with the EU Regulations in terms of its ingredients and characteristics, in that regard. He stated that the intended use of the product was as an aromatised wine-based product. He said the product

complied also with EEC Regulation 1333/2008 which approves the products that may be added to wine-based drinks. He stated that the 2024 Regulation, supplements the 2014 Regulation, such that it permits the inclusion of sulphates, eggs and milk in aromatised wine products. The Appellant's representative relayed that [REDACTED]

52.15. In response to a question from the Commissioner, the Appellant's representative testified that it was possible to have a [REDACTED] liqueur made from distilled alcohol and reference was made to the Appellant's product "[REDACTED]" and to a competitor product being [REDACTED]. He stated that these are very different products, made from pure distilled alcohol. Furthermore, he relayed that [REDACTED] has its own protected designation under European legislation, and it must be made from agricultural distilled alcohol. Whereas the product he said, must have on its labelling, clearly stated for the consumer, that it was an aromatised wine-based product. He confirmed that the three words, [REDACTED] [REDACTED] were protected under law, and cannot be used to describe a product not made of distilled alcohol. He stated that Whiskey, Champagne and Parma Ham all have similar designations and protections under European legislation.

52.16. The Appellant's representative gave evidence that the product is a [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

52.17. The Appellant's representative gave evidence that distilled alcohol would be a product that is distilled up to 96% vol and diluted down for drinking, a totally different classification and starting with a different ingredient as well, namely it is usually a grain or molasses. He said that distilled alcohol is a very distinct category

on its own. In contrast, he testified that fermented alcohol is like a cider or a beer or a fruit wine or a grape wine.

52.18. The Appellant's representative was cross examined on his evidence. Counsel for the Respondent made reference to Heading 2204 of the CN and the Appellant's representative was asked why the Appellant did not make an application for a BTI under that heading of the CN. The Appellant's representative relayed that the product was produced under the aromatised wine and aromatised wine-based product regulations, rather than the wine-based regulations and that there are very specific regulations concerning Heading 2204 of the CN and wine. He stated that the 2014 Regulation specifically deals with the aromatised wines and the appropriate Heading of the CN was Heading 2205 of the CN for aromatised wines.

52.19. It was put to the Appellant's representative that the 2014 Regulation had no relevance to the matter of customs classification. The Appellant's representative did not agree with that proposition and confirmed that the 2014 Regulation must be taken into account when considering the products objective characteristics and the correct classification of the product.

52.20. Counsel for the Respondent asked the Appellant's representative about the relevance of the intellectual property rights of a product belonging to a particular country, and it was again put to the Appellant's representative that this was irrelevant to the classification of the product. The Appellant's representative agreed but qualified his answer by stating that it was relevant to an understanding of the characteristics of the product.

52.21. It was put to the Appellant's representative by counsel for the Respondent that the test that the Respondent must apply was to look at the CN headings, the GIRs and then apply the *Siebrand* test, which sets out that member states must consider the objective characteristics and intended use of a product. The Appellant's representative confirmed that the DAO of the Respondent referred to the 2014 Regulation in his decision and hence, he must have considered it when making his decision. It was put to the Appellant's representative that there was a misunderstanding by the Appellant's representative as to the relevance of the decision in *Siebrand* to the Appellant's appeal. The Appellant's representative stated that *Siebrand* concerned Heading 2206 of the CN and the products at issue were mixed products, with both fruit wine and distilled alcohol, which was entirely different to the Appellant's appeal, which concerned a product only of fermented wine of fresh grapes, without any additional distilled alcohol. The Appellant's

representative stated that the reason the product in *Siebrand* was classified ultimately in Heading 2208 of the CN, was due to the addition of distilled alcohol.

52.22. Counsel for the Respondent put it to the witness that the *Siebrand* decision sets out that a Member State, when making a decision about classification, must consider the objective characteristics and the intended use of the product as part of that assessment. The Appellant's representative stated that he did not disagree that this was the correct test to be applied to the classification of goods for customs purposes.

52.23. Counsel for the Respondent directed the Appellant's representative to Heading 2205 of the CN which states: "*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*" and he was asked why the Appellant had not applied for classification in Heading 2206 of the CN. The Appellant's representative stated that Heading 2206 of the CN was for mixed products and the Appellant opted for the most appropriate Heading, which as an aromatised wine, was Heading 2205 of the CN.

52.24. Counsel for the Respondent posited to the witness that the product, even though it might start with a fermented wine base, [REDACTED] [REDACTED] it no longer had the characteristics of a wine, or indeed, never had the characteristics of a Vermouth. The Appellant's representative testified that Vermouth does not have the characteristics of the original wine either, and that it was important to restate the essential sentence in the Annex of the 2014 Regulation, where it was permissible to change the organoleptic character away from wine and that was clearly set out in the 2014 Regulation concerning aromatised wine products.

52.25. Counsel for the Respondent put to the witness that Heading 2204 of the CN was for wine and Heading 2205 of the CN was for Vermouth and other wines of fresh grapes flavoured with plants or aromatic substances. The Appellant's representative stated that this was what the product was, namely an aromatised wine-based drink and what the Appellant was attempting to do, was to correctly classify the product in accordance with Heading 2205 of the CN.

52.26. Counsel for the Respondent directed the Appellant's representative to Heading 2208 of the CN which states "*Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% volume; spirits, liqueurs and other spirituous beverages*" and stated that the Respondent had classified the product in the subheading 2208 90 69 as "*other spirituous beverages*". Furthermore, counsel for

the Respondent confirmed that it was the Respondent's position that having regard to the CN Headings, the GIRs, and applying the *Siebrand* test, the product no longer had the objective characteristics of a wine, or anything akin to a Vermouth. The Appellant's representative confirmed that the product was akin to a Vermouth, because Vermouth was not akin to its original wine either, as it has herbal spice as the main essential character. He said that the Respondent has classified the product as a spiritous beverage in Heading 2208 of the CN, despite there being no "spirit" in the product. He said it cannot appropriately be placed in that category for classification purposes.

52.27. Counsel for the Respondent suggested to the Appellant's representative that that the product had the characteristics of something more akin to ██████████ which "*might be drunk neat or on ice or on the rocks...as a digestif for example and not something that would be consumed in the same way for example, as wine or vermouth might be*".<sup>4</sup> The Appellant's representative stated that there was nothing in the legislation that stated that there cannot be ██████████ in an aromatised wine-based product, and that the 2024 Regulation stipulates that when ██████████ ██████████ are used, it must be put on the labelling of the product. Counsel for the Respondent put it to the Appellant's representative that this was a novel product and was not "*from the consumer's perspective, that this is something more akin to a liqueur, or something that would be taken as a digestif*."<sup>5</sup> The Appellant's representative restated that the product was an aromatised wine product and he said that Vermouth has herbal spices, the Appellant's product had something else, in terms of flavours. Counsel for the Respondent suggested to the Appellant's representative that the examples of the products in the market, submitted with the Appellant's appeal such as a "cream fizz pina colada", "*was not something a consumer would pick off the shelf of an off-licence or a supermarket to drink as a wine or as vermouth*"<sup>6</sup>.

52.28. In response to a question from the Commissioner as to where the suggestion around consumer behaviour arose or alternatively, was supported, counsel for the Respondent stated that she was simply putting this to the witness as a proposition to agree or disagree with.

52.29. Counsel for the Respondent directed the Appellant's representative to the proposed labelling of the product and suggested that labelling of this kind was not

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<sup>4</sup> Transcript, Day 1, page 88

<sup>5</sup> Transcript, Day 1, page 89

<sup>6</sup> Transcript, Day 1, page 90

one that would typically be associated with a wine or a Vermouth drink. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

52.30. Counsel for the Respondent asked the Appellant's representative if he agreed that the organoleptic characteristics are the taste, smell and appearance of the product. The Appellant's representative stated that the requirement was to be objective and consider what was in the product. He stated that what was in the product, [REDACTED] an aromatised wine-based drink and that was an objective characteristic. Counsel for the Respondent put it to the Appellant's representative that the product as it appeared and with the proposed labelling that had been identified to the Respondent as part of the decision-making process, did not retain the appearance of a wine or a Vermouth like product. The Appellant's representative stated that the 2014 Regulation governing the product states that aromatised wine products lose the organoleptic properties of a wine, so as not to mislead the consumer.

52.31. Counsel for the Respondent directed the Appellant to the BTIs included in the documentation submitted in the appeal. It was put to the Appellant's representative that the German BTI was similar to the product in terms of alcohol content but classified in Heading 2208 of the CN. The Appellant's representative gave evidence that it was not similar, as the product the subject matter of the BTI had added distilled alcohol. It was put to the Appellant's representative that the Spanish BTI had no additional alcohol but had been classified in Heading 2208 90 69 of the CN. The Appellant's representative stated that the product appeared to have an abv of 5.5%, which automatically removed that product from Heading 2205 of the CN, because Heading 2205 of the CN requires a minimum abv of 7%. Counsel for the Respondent suggested that this was incorrect and that the reason proffered was not stated in the BTI. The Appellant's representative stated that it was obvious, given the requirement in Heading 2205 of the CN. Counsel for the Respondent stated that the Respondent disagreed and the Appellant's representative replied that the Respondent was disagreeing with a European Regulation that required 7% abv as a minimum.

52.32. In relation to the recent BTI dated August 2025, that was submitted by the Appellant's representative at the hearing of the appeal, counsel for the

Respondent put it to the witness that on the face of it, it appeared to be a Vermouth and was properly classified in Heading 2205 of the CN. The Appellant's representative stated that was correct. Counsel for the Respondent further suggested to the witness that there was no reference in the BTI to the addition of something akin to that in the product herein, such that there was nothing that would indicate that this product had any of the objective characteristics that would cause it to be disqualified under Heading 2205 of the CN. The Appellant's representative confirmed that it was properly classified and that was the reason for its submission by the Appellant in support of its appeal.

52.33. Counsel for the Respondent put it to the Appellant's representative that the test to be applied was as stated in the *Siebrand* decision. The Appellant's representative restated that the *Siebrand* decision applied to mixed products, and the court was considering a fermented fruit wine with a distilled spirit which was not the product under consideration herein.

52.34. The Appellant's representative submitted that the explanatory notes to Heading 2208 of the CN were very important wherein it states: "*The heading does not, however, include: "Vermouths, and other aperitives with a basis of wine of fresh grapes (heading 22.05)"*". He argued that sentence in itself ruled out Heading 2208 of the CN for classification of the product, because the Appellant was using a "*basis of wine of fresh grapes*" in the product. He said it was a very important sentence even though the Respondent placed no relevance on it and proceeded to classify the product in Heading 2208 of the CN.

52.35. The Appellant's representative argued that there was no legal precedent where an aromatised wine-based product was classified in Heading 2208 of the CN, based on its organoleptic characteristics, because the legislation states that it must be taken into account, the fact that the product was not supposed to have the organoleptic characteristics of a wine, if it was produced in accordance with the 2014 Regulation governing aromatised wines.

52.36. The Appellant's representative submitted that the DAO of the Respondent referred to "base alcohol" but it was a "base wine". He said that it was a clear aromatised wine and not a "base alcohol" and that the assessment carried out by the Respondent was clearly subjective rather than objective. The Respondent's expert witness stated that it was a "highly filtered base", without giving any due deference to the fact that filtration was legitimately permitted in accordance with Regulation 2014/670. He referred to organoleptic testing, but stated that no details



52.39. The Appellant's representative submitted that the product consists of an aromatised wine-based drink in the amount of [REDACTED] and thus, fermented wine of fresh grapes is the dominant portion of the product.

52.40. The Appellant's representative argued that a plant-based burger, looks and tastes like a meat-based burger. However, he said that due to the main ingredient being different, the plant-based burger is correctly classified as a vegetable under Heading 2106 of the CN and not as meat, which is Heading 1601 of the CN. In addition, he submitted that, "Linda McCartney's vegetarian sausages" are not just classified with the meat sausages because they have the appearance, colour and taste of a sausage, but instead they are classified correctly in the vegetable-based tariff heading. Furthermore, he submitted that dairy spreads and vegetable spreads can look and taste quite similar, but they have two different classification headings, such that dairy products would have classification in Heading 0405 of the CN, and the vegetable oil-based spreads would be classified in Heading 2003 of the CN. He said the Appellant also deserved classification in a separate category to "spirituous beverages".

#### *Respondent's evidence*

53. The Respondent's witness 1 gave evidence on behalf of the Respondent. The Commissioner sets out hereunder a summary of the evidence given by the Respondent's witness 1:-

53.1. The Respondent's witness 1 confirmed that she is a Higher Executive Officer in the Tariff Classification Unit of the Respondent, with responsibility for reviewing and approving BTIs that are published by the Unit. The Respondent's witness 1 confirmed that she was the decision maker in respect of the product's classification.

53.2. Reference was made to the Appellant's BTI application for the product. The Respondent's witness 1 testified that during the time of the application, she was provided with the aromatised wine base, [REDACTED]. [REDACTED] The Respondent's witness 1 confirmed that she had received a sample of the product and the labelling, and that the sample was sent to the State Laboratory for analysis, to determine the objective characteristics of the product.

53.3. The Respondent's witness 1 was directed to the BTI it issued in respect of the product, wherein it states: "*Justification of the classification of the goods*". The

witness confirmed that the justification was stated as "*GIR 1 & 6 Notes to Chapter 22 HSEN to Chapter 22 and to heading 2208.*" The Respondent's witness 1 relayed that GIR 1 was applied, which has on numerous occasions been interpreted in case law, that classification was determined by the objective characteristics and properties of the product, while taking into consideration the wording of the headings and the section and chapter notes. She said that was the primary rule. The Respondent's witness 1 gave evidence that based on the objective characteristics, as defined by the State Laboratory, she was in a position to classify the product according to the four-digit heading level. Then, she said, she addressed the subheading level, referring to GIR 6 and again, that was according to the wording of the subheadings and the relevant section and chapter notes.

- 53.4. The Respondent's witness 1 testified that the objective characteristics of the product were determined not to be that of Heading 2204 or Heading 2205 of the CN, due to the addition of a significant amount of the [REDACTED]. She said that it was her view that it had fundamentally altered the characteristics of the product, such that it no longer had the characteristics of a wine base, or of a product of Heading 2204 or Heading 2205 of the CN. For customs purposes, she confirmed that liqueurs are classified in Heading 2208 of the CN. The Respondent's witness 1 gave evidence that she took into consideration the principles established in the *Siebrand* decision to form the view that, the consequence of the addition of the significant amount of the [REDACTED] was that the characteristics of the product had been altered so much that it had now taken on the characteristics of a spirituous beverage for customs classification purposes.
- 53.5. The Respondent's witness 1 testified that [REDACTED] liqueurs are classified in Heading 2208 of the CN. She stated that for classification purposes [REDACTED] liqueurs are generally classified in Heading 2208 70 of the CN. However, due to the product having an abv of [REDACTED] it was determined that it could not be classified in Heading 2208 70 of the CN, but rather it would have to be classified in Heading 2208 90 of the CN under "*other spirituous beverages*", a residual subheading, as it was not appropriate to classify the product in any other heading of the CN.
- 53.6. The Respondent's witness 1 gave evidence that the HSEN is not legally binding but is an aid to interpretation. Reference was made to the HSEN to Heading 2208 of the CN wherein it states that: "*This heading does not, however, include:*

*Vermouths, and other aperitives with a basis of wine of fresh grapes.*" The Respondent's witness 1 stated that she would not have considered the product, a product of Heading 2205 of the CN, namely, a Vermouth or other aperitives with a basis of wine of fresh grapes. She stated that she referred to the sentence but had formed the opinion the product was a liqueur, based on its objective characteristics. [REDACTED]

- 53.7. The Respondent's witness 1 testified that having regard to the explanatory notes for Heading 2205 of the CN, she did not believe that the product was a "*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*", as it did not have the characteristics of fresh grapes flavoured with plants or aromatic substances, due to the addition of the [REDACTED] which had fundamentally altered the characteristics of the product.
- 53.8. In response to a question from the Commissioner whether the Respondent's witness 1 considered that wines covered by Heading 2205 of the CN included the list at point 1, wherein it stated *inter alia* that: "*beverages known as 'Marsala all'uovo'....and 'Crema di Marsala all'uovo', which are based on Marsala wine, and flavoured with egg yolks, almonds and other aromatic substances*", the Respondent's witness 1 stated that she would not be familiar with the quantities [REDACTED] that would be added to these products, but that the State Laboratory might be better placed to have an opinion on the characteristics of those types of products.
- 53.9. The Respondent's witness 1 stated that she based her opinion on the report, which determined that the product did not have the characteristics of Heading 2205 of the CN, but rather it had the characteristics of a [REDACTED]. The Respondent's witness 1 stated that the GIRs are based on the wording of the headings and the section and the chapter notes, not on the Explanatory Notes. She said that the explanatory notes are an aid to interpretation. She confirmed that she applied the principles established in the *Siebrand* decision and that it was [REDACTED] that was relevant to her decision making. She testified that she did not know how much

██████ was added to a “*Crema di Marsala*”, but that the product herein does not have the characteristics of an aromatic beverage due to the addition of the ██████████ and that was determined by the objective characteristics and properties of the product. She said that this test had been stated in both *Siebrand* decision and the *Olicom* decision.

53.10. The Respondent’s witness 1 gave evidence that it was determined that the objective characteristics of the product were no longer that of a fermented beverage and that it should therefore be classified as a ██████████ which was classified in Heading 2208 of the CN, and specifically, ██████████ ██████████ it was not classified in Heading 2208 90 70 of the CN, but rather, classified in Heading 2208 90 69 of the CN as an “other spirituous beverage”. The Respondent’s witness 1 relayed that the composition of the product was not in dispute, but it was a fact that the product had a significant amount, ██████████ ██████████, which had changed the character of the product such that it could no longer be considered as a product of a fermented base. She argued that the final product had lost all of the organoleptic characteristics of that of the base product. She stated that for classification purposes the Respondent was not bound by the 2014 Regulation. She said that the Respondent was legally bound by the CN and by the GIRs, but was not bound by the 2014 Regulation, and it was a fact that the product had been significantly altered ██████████ ██████████

53.11. The Respondent’s witness 1 stated that on receipt of the report from the State Laboratory, applying GIR 1, and based on objective characteristics and properties of the product, it was determined that the product did not have the objective characteristics of a beverage of Heading 2205 of the CN, based on the report.

53.12. Reference was made to the German BTI which the Respondent’s witness 1 testified was used as a precedent BTI, ██████████. She relayed that it was a precedent BTI that illustrated classification in Heading 2208 90 69 of an alcoholic mixed drink of wine, ██████████ ██████████ it was not classified in Heading 2208 70 of the CN, but in Heading 2208 90 69 of the CN. The Respondent’s witness 1 stated that whilst the Appellant had sought to distinguish the BTI based on the addition of distilled alcohol to the product, the Respondent considered it a precedent BTI for a product ██████████ ██████████ regardless of the base alcohol.

- 53.13. The Respondent's witness 1 testified that she had formed that opinion that the product was a [REDACTED] based on its objective characteristics, as analysed by the State Laboratory, [REDACTED]. [REDACTED] The Respondent's witness 1 agreed that these characteristics were not outlined in the report but stated that she had a conversation with the Respondent's expert witness to gain an understanding of the objective characteristics of the product, [REDACTED].
- 53.14. The Respondent's witness 1 confirmed that she had sent the product to the State Laboratory and as such, she did not pour the product, taste the product, smell the product or consider the consistency of the product herself as part of her decision-making process. She confirmed that she had no interaction with the product as she allowed the State Laboratory to perform the organoleptic testing of the product, the results of which are in the report.
- 53.15. The Respondent's witness 1 accepted that the information in relation to the organoleptic properties of the product, as per her discussion with the State Laboratory, were not in the report. She relayed again that the product [REDACTED]. [REDACTED]. [REDACTED].
- 53.16. Reference was made to the Spanish BTI submitted by the Respondent in support of its position. The Respondent's witness 1 stated that this was an example of a fermented wine-based product that was not classified in Heading 2204, 2205 or 2206 of the CN, but was classified in Heading 2208 of the CN, in particular under the same heading as the product in Heading 2208 90 69 of the CN. The Respondent's witness 1 testified that whilst she noted that the Appellant sought to distinguish the Spanish BTI on the basis of the overall abv of the product the subject of the BTI, was below the abv required for Heading 2205 of the CN, she stated that it was still capable of classification in Heading 2206 of the CN. However, she said that due to the additions to the product in the Spanish BTI, it was determined that the original characteristics had been lost and in accordance with the *Siebrand* decision, it had taken on the characteristics of a spirituous beverage. She said that it was a wine-based drink that has been classified as an "other spirituous beverage" with an overall alcohol content of 5.5% abv. The Respondent's witness 1 stated that the Appellant's argument was that due to the fact that the product had no distilled alcohol added to it, it could not be classified in Heading 2208 of the CN, but that she considered this as a precedent BTI where

it was a wine-based beverage with no additional alcohol, that had been classified in Heading 2208 90 69 of the CN.

53.17. The Respondent's witness 1 testified that the most recent BTI submitted by the Appellant in support of its appeal appeared to be classified properly, [REDACTED]

53.18. The Respondent's witness 1 was cross examined on her evidence by the Appellant's representative. It was put to the witness that if GIR 1 was applied there would be no need to consider GIR 6. The Respondent's witness 1 stated that GIR 6 had to be considered for the subheadings. The Respondent's witness 1 was asked if she considered Heading 2205 of the CN and she stated that based on the objective characteristics of the product, it was never a product of Heading 2205 of the CN, as she did not consider the product to match the description therein, as it had the characteristics of a [REDACTED]

53.19. It was put to the Respondent's witness 1 by the Appellant's representative that the product did fit the descriptions in the Heading of 2205 of the CN, as a wine of fresh grapes flavoured with aromatic substances. The Respondent's witness 1 stated that due to the addition of [REDACTED], the product has taken on the characteristics of a [REDACTED]. It was put to the Respondent's witness 1 by the Appellant's representative that nowhere in any legislation did it state that it was not permitted to add [REDACTED] that it was an aromatic substance and it was perfectly legal to add that. She stated that the Respondent was not bound by those Regulations for classification purposes and it was a fact that the addition of the [REDACTED] significantly altered the classification, such that it was no longer a product of Heading 2205 of the CN. The Appellant's representative suggested to the witness that the product was not a [REDACTED] because it cannot be categorised as a [REDACTED]. The Respondent's witness 1 repeated that it had the characteristics of a [REDACTED]

53.20. It was put to the Respondent's witness 1 that the *Siebrand* decision had no application to the product herein, as the product at issue in that decision was a mixed product, unlike the product herein. The Respondent's witness 1 stated that she did not agree and that the principles established in *Siebrand* are applicable to this appeal.

54. The Respondent's expert witness gave evidence on behalf of the Respondent. The Commissioner sets out hereunder a summary of the evidence given by the Respondent's expert witness:-

54.1. The Respondent's expert witness confirmed that he is a chemist by profession, holds an honours degree and a diploma in chemistry and is employed as a Chemist Grade 2 in the State Laboratory, which is the equivalent to an Assistant Principal Officer in the Civil Service. He stated that his role is to oversee a very small unit, which looks at the customs and excise classifications of various products that are referred by the Respondent. He gave evidence that he has over 17 years' experience in customs and excise and for over ten years he has been working at European level with the Customs Code Committee which deals with conflicting issues like this around the tariff classification of goods. He said that he is also Ireland's delegate to the World Customs sub-Scientific Committee, which engages in similar work on the classification of goods.

54.2. The Respondent's expert witness confirmed that whilst the report was signed by the Respondent's witness 2, he worked with the team supporting them in arriving at their classification. He confirmed that the report came to him for final sign off and he ensured that the final 10-digit code was satisfactory in terms of the classification.

54.3. The Respondent's expert witness testified that his analysis involved carrying out a distillation to check the total abv of the product, which was [REDACTED] in accordance with what the Appellant had submitted. He confirmed that this was not in the report provided to the Appellant. The Respondent's expert witness confirmed that the results of his findings were captured in an internal system known as a Laboratory Information Management System. He confirmed that he carried out sugar analysis testing which involved a different instrument that determined, in a known weight or volume of a sample what the total sugar concentration was in the sample. He said that he did not have the results of the sugar analysis testing for the product, but that he thought it was in or around [REDACTED]

54.4. The Respondent's expert witness said that he carried out the organoleptic testing. He relayed that this involved a physical inspection of the product, such as how it was presented in its bottle. Then, he said he poured the sample with the Respondent's witness 3. He stated that he considered the colour, smell and taste of the product. He said that he was trying to determine if it was a product that had

the characteristics of a product in Heading 2205 of the CN or a product in Heading 2208 of the CN namely, a liqueur type product.

- 54.5. The Respondent's expert witness gave evidence that he concluded that the product was a [REDACTED] liqueur type product and he said that the reason why he came to that conclusion was that he routinely handled [REDACTED] liqueurs for the Department of Agriculture, and that he had nearly 17 years of experience with handling lots of [REDACTED] liqueur type products. He relayed that he considered the legal definition of a [REDACTED] liqueur, which was found in Regulation 787/2019 and the HSEN, which described a basic liqueur type product, which was a product with alcohol that may have sugar, flavouring, colour and [REDACTED]. He said that on the basis of this he was satisfied that the product was typical of what he would have seen in his career, but that he did consider the information the Appellant had provided, including the patent where the Appellant had said that it was attempting to produce a product that was very similar to a [REDACTED].
- 54.6. The Respondent's expert witness gave evidence that he was satisfied that the product was a liqueur, [REDACTED] abv required in the definition of a [REDACTED] a liqueur. He said that he was not satisfied that the product was a product in Heading 2205 of the CN. He relayed that his experience with products in Heading 2205 of the CN is that akin to the heading, namely Vermouth or other wines that are flavoured with botanicals or other aromatic substances. He stated that he does not consider [REDACTED].
- [REDACTED] Thus, he said, he concluded that the product was a liqueur type product and not suitable at all for classification in Heading 2205 of the CN, [REDACTED].
- 54.7. The Respondent's expert witness continued, that if the product had an alcoholic base that was entirely of neutral distilled spirit, the product would still be identical as he was not classifying the product on its alcoholic base, as products are classified having regard to the end product. He stated that it was his opinion that the [REDACTED] was just an alcoholic base, albeit a fermented one and that its role was to provide the alcohol in the product, but that the characteristics of the product came from the additional substances added to it.

- 54.8. The Respondent's expert witness testified that the smell, taste and colour of the product was that of a [REDACTED] liqueur product. He said the [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 54.9. The Respondent's expert witness said that the viscosity [REDACTED]  
[REDACTED]. He opined that it did not maintain the character of a flavoured wine with other botanicals or other aromatics and that the wine was just a vehicle for the alcoholic base and should not come into discussion at all, it was the alcohol that was in the product. He said that the product tasted like a [REDACTED] liqueur, and he was not influenced by the labelling.
- 54.10. The Respondent's expert witness was asked if he was aware of any difference in the consumption of a drink like Vermouth compared to a drink which was like a [REDACTED]. He stated that they are very different drinks and consumed differently. He said that whilst he was not an expert on the consumption of drinks, or what they are used for, a liqueur was not something that you would be "going to a bar"<sup>7</sup> for.
- 54.11. The Respondent's expert witness was cross examined by the Appellant's representative. It was put to the Respondent's expert witness that the Appellant had still not received a report with the Respondent's findings. The Respondent's expert witness said that there was no report completed but a communication of a tariff classification opinion on the product. He said that the laboratory results were not shared.
- 54.12. The Respondent's expert witness was asked what other products in Heading 2205 of the CN were compared with the product. The Respondent's expert witness stated that the products that he would be considering would be perhaps wines that were flavoured with botanicals or flowers, as seen in Europe, and a wine that had something added to it, like botanicals or aromatics that would enhance the flavour of it. [REDACTED]

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<sup>7</sup> Transcript, Day 1, page 177



Seltzers. He stated that these products are classified in Heading 2208 of the CN as "other spirituous beverages", despite the base alcohol being from a fermented source.

54.15. The Respondent's expert witness was recalled on Day 2 of the hearing of the appeal to give evidence in respect of the preparation of a further additional report dated 16 October 2025. He stated that the Respondent's Classification Unit contacted him and requested that the sensory properties of the product in question be considered in parallel with an [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

54.16. He gave evidence that the first thing he considered was a list of the ingredients and how the product was made. He said he then considered what the objective characteristics of the product were, namely was it a wine, a spirit, a beer or a [REDACTED] liqueur. He said that he then considered the colour, taste and smell. The Respondent's expert witness was cross examined on day 2, and asked did he follow the procedure in the UK decision in *Cedric Hart Jones v The Commissioners For Her Majesty's Revenue and Customs* [2009] UKFTT 154 (TC) ("the *Richard Cedric Hart Jones* decision") wherein a trained panel was used for tasting the product or did he use a trained tasting panel in the State Laboratory. The Respondent's expert witness confirmed that this was not done.

55. The Respondent's witness 2 gave evidence on behalf of the Respondent. The Commissioner sets out hereunder a summary of the evidence given by the Respondent's witness 2:-

55.1. The Respondent's witness 2 confirmed that she is a Chemist Grade 3 within the Customs and Excise section of the State Laboratory and that her role is to carry out classifications of different products. She confirmed that she holds a degree in physics and chemistry and has worked with the State Laboratory for two years.

She stated that prior to that role, she was employed with Dublin City Council and has been working in a laboratory for over 20 years.

55.2. The Respondent's witness 2 testified that when she received the file, she assessed the paperwork and the BTI that came with the information. She stated that when she received a sample of the product, she reviewed it, opened it and looked at it to decide what type of analysis was required to be carried out. She gave evidence that she had abv testing carried out on the sample to verify the Appellant's declared [REDACTED] and also sugar content testing was carried out, which she believed [REDACTED] but did not have the exact figure.

55.3. In relation to organoleptic testing, the Respondent's witness 2 gave evidence that it involved considering the taste, smell and viscosity of the product and determining what were the main characteristics in the product. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

The Respondent's witness 2 gave evidence that it was her opinion that the product had no characteristics of a wine or a fermented beverage but had the full characteristics of a [REDACTED] liqueur. Hence, it was ruled out of Heading 2205 of the CN straightaway using GIRs 1 and 6. She said that looking at the product itself, she would always determine the characteristics of the product from the end product, not what it started as. She said that the characteristics of the product were taken out of aromatic wines and classified into a different category altogether, because when looking at the product itself, it was [REDACTED]

[REDACTED].

The Respondent's witness 2 gave evidence that there was nothing about the product that matched the description of an aromatic wine of Heading 2205 of the CN and it was moved to Heading 2208 of the CN as a [REDACTED] liqueur, but as it could not be classified in Heading 2208 70 of the CN, the appropriate place for classification of the product was Heading 2208 90 of the CN. The Respondent's witness 2 gave evidence that the product tasted and smelled like an alcoholic [REDACTED].

55.4. The Respondent's witness 2 gave evidence that after reviewing the different regulations and the product itself she excluded it from Heading 2205 of the CN,

as the end product did not match any of the products that are listed in the 2014 Regulation. It did not look or taste like a wine or aromatic wine. Rather she said, it had the full characteristics of a [REDACTED] liqueur and the only place that it could be classified was Heading 2208 of the CN, but as it was ruled out of Heading 2208 70 of the CN due to its [REDACTED] abv, it was classified in Heading 2208 90 69 00 of the CN as an “other spirituous beverages”.

55.5. The Respondent’s witness 2 was cross examined on her evidence by the Appellant’s representative and confirmed that the sugar content of the product [REDACTED].

56. The Respondent’s witness 3 gave evidence on behalf of the Respondent. The Commissioner sets out hereunder a summary of the evidence given by the Respondent’s witness 3:-

56.1. The Respondent’s witness 3 confirmed that she is an Executive Officer in the Classification Unit of the Respondent and her main role is processing BTI applications and reaching decisions, which would then be sent to the HEO for approval.

56.2. The Respondent’s witness 3 gave evidence that when the BTI application was received it was assigned to her. She stated that she reviewed the application form and the information that was provided. She testified that she determined that a sample of the product should be requested, because for alcoholic products it would be standard procedure that the products would be analysed. She relayed that once she received the sample, she forwarded it to the State Laboratory, along with the supporting evidence and documentation. She gave evidence that the BTI decision was reached once the opinion was received from the State Laboratory and having considered and taking into account the supporting evidence, the GIRs, the chapter notes, the explanatory notes and the *Siebrand* decision.

56.3. The Respondent’s witness 3 gave evidence that it was determined that the product, [REDACTED] no longer had the objective characteristics of a product of Heading 2205 of the CN, namely of an aromatised wine type product, so it was ruled out of that heading. She stated that she then considered Heading 2208 of the CN as the product was identified as being akin to a [REDACTED] liqueur. She testified that she considered Heading 2208 70 of the CN which was where [REDACTED] liqueurs would be classified, but due to the abv of the product being [REDACTED] so

she moved to the next heading, which was Heading 2208 90 of the CN and that was where the product was classified as "Other spirituous beverages".

- 56.4. There was no cross examination of the witness by the Appellant's representative. In response to questioning from the Commissioner, the Respondent's witness 3 stated that she did not taste the product despite being the initial decision-maker. She said that the decision was based on the outcome of the testing from the State Laboratory and the opinion provided, which she stated assisted her with forming the BTI decision. She said that she determined the characteristics of the product through advice from her colleagues in the State Laboratory and that the report supported the decision and her basis for excluding the product from Heading 2205 of the CN, which was the envisaged code. She confirmed that the advice she received was that the product no longer had the characteristics of the base wine product. She relayed that from a classification perspective it was the end product that was being classified, not the base product, [REDACTED] [REDACTED] took away the characteristics of the base wine, the consequence of which was that the end product was excluded from Heading 2205 of the CN.

#### *Respondent's submissions*

57. The Commissioner sets out hereunder a summary of the submissions made by counsel for the Respondent both at the hearing of the appeal and in the documentation submitted in support of its appeal:-

- 57.1. Heading 2205 of the CN pertains by its title to: "*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*" and it is the Respondent's submission that the Appellant's product does not come within that heading. Rather, the product was properly classified in Heading 2208 of the CN, which is the heading that pertains to: "*Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 % vol; spirits, liqueurs and other spirituous beverages.*" In particular, it was classified in Heading 2208 90 69 of the CN as an "*other spirituous beverage*".
- 57.2. The first port of call for determining classification is the GIRs. In this appeal, the Respondent applied GIR 1 and had regard to the Headings 2205 and 2208 of the CN. By virtue of the wording in the headings, the product was appropriately classified in Heading 2208 of the CN and not in Heading 2205 of the CN. It was with reference to GIR 1 and GIR 6 that the Respondent classified the product in Heading 2208 90 69 of the CN. The product was not classifiable in Heading 2205 of the CN.

- 57.3. The product has clearly lost the organoleptic characteristics of a wine of fresh grapes, which had been flavoured with plants or aromatic substances. By virtue of that the appropriate heading for classification purposes was Heading 2208 90 69 of the CN, which is the subheading which pertains to "*Other spirituous beverages*". The Respondent classified the product as an "*other spirituous beverage*" because even though it was made from a fermented wine base, due to the manner in which it had been processed and flavoured, it no longer had the characteristics of a wine or a wine type beverage, but it had the characteristics of an "*other spirituous beverage*". The evidence adduced was that the product now had the characteristics of a liqueur by virtue of its colour, taste, smell, appearance and viscosity.
- 57.4. The HSEN are interpretative aids; they are not binding in nature. The HSEN for Heading 2208 of the CN including 2208 90, which is "Other" states: "*This heading covers whatever their alcoholic strength*". That was an important point, [REDACTED]  
[REDACTED]  
[REDACTED] it was capable of classification as a liqueur under Heading 2208 70 of the CN.
- 57.5. In relation to the paragraph that states: "*The heading does not, however, include: Vermouths, and other aperitives with a basis of wine of fresh grapes*", the Respondent does not consider that it was classifying a product of Heading 2205 of the CN, because it was not a product that retained the characteristics of a wine of fresh grapes which has been flavoured with plants or aromatic substances.
- 57.6. The caselaw from the Court of Justice of the European Union ("CJEU"), has routinely held that when considering customs classification, it is the objective characteristics of the product that is the decisive criteria for the purposes of classification. This is particularly important in a case like this where the product, which is derived from a fermented base, but which has changed so much due to processing and additions, that it no longer bears those characteristics. Reference was made to the following judgments of the CJEU which set out the test for classification generally: Case C114/80 *Dr. Ritter GmbH & Co. v Oberfinanzdirektion Hamburg* ECLI:EU:C:1981:79; Case C-459/93 *Hauptzollamt Hamburg-St. Annen v Thyssen Haniel Logistic GmbH* ECLI:EU:C:1995:160; Case C-288/99 *VauDe Sport GmbH & Co. KG v Oberfinanzdirektion Koblenz* ECLI:EU:C:2001:262; Case C124/03 *Artrada (Freezone) NV and others v Rijksdienst voor de keuring van Vee en Vlees* ECLI:EU:C:2004:674; Case

C250/05 *Turbon International GmbH v Oberfinanzdirektion Koblenz* ECLI:EU:C:2006:384; The *Olicom* decision; Joined Cases C-362/07 and C-363/07 *Kip Europe SA and others v Administration des douanes — Direction générale des douanes et droits indirects* ECLI:EU:C:2008:432; Case C403/07 *Metherma GmbH & Co. KG v Hauptzollamt Düsseldorf* ECLI:EU:C:2008:657; the *Siebrand* decision.

57.7. There was reference made by the Appellant to the difference between the product in the *Siebrand* decision and the product herein. Whilst there are a number of distinguishing facts, such as the classification sought was in Heading 2206 of the CN, the GIRs applied were different due to the product being a mixed product, and there was an addition of a spirit type alcohol to the product, the judgment is nonetheless of assistance. Reference was made to paragraphs 24, 25, 26 and 27 of the judgment wherein it states that:

- "24. *In that regard, it is appropriate to bear in mind settled case-law, in accordance with which, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and in the section or chapter notes.*
25. *The notes preceding the chapters of the Common Customs Tariff, in common, moreover, with the explanatory notes drawn up, as regards the CN, by the Commission and, as regards the HS, by the World Customs Organisation, may be an important aid to the interpretation of the scope of the various headings but do not have legally binding Force.*
26. *It must be pointed out that, according to the HS explanatory note relating to heading 2206 of the CN, the addition of alcohol to beverages coming under that heading does not preclude such beverages from retaining that classification provided that they retain the character of products coming under the heading, namely that of fermented beverages.*
27. *However, it is apparent from the order for reference that the beverages at issue in the main proceedings have lost the taste, smell and appearance of a beverage produced from a particular fruit or natural product, that is to say a fermented beverage. Such products cannot be classified in heading 2206 of the CN."*

57.8. The *Siebrand* decision is considered to be a landmark decision. Whilst all of the previous cases have set out the test to be applied in customs classification, being the objective characteristics of the product being the decisive criterion, *Siebrand* was in the context of a beverage, albeit dealing with a different heading of the CN. The CJEU found that in circumstances where a beverage had lost the taste, smell and appearance of a beverage produced from a particular fruit or natural product, that was to say a fermented beverage, it could no longer be classified in Heading 2206 of the CN. Reference was made to paragraph 39 of the judgment wherein it states that:

"39. *It follows from this that the essential characteristics of beverages such as those at issue in the main proceedings correspond overall to those of a product coming under heading 2208 of the CN.*"

57.9. Reference was made to the decision of the CJEU in *Paderborner*. The decision issued after the *Siebrand* decision. The case concerned a type of malt beer base. Reference was made to paragraph 37 of the judgment where the Court states that:

"37. *In any event, the 'malt beer base' is not obtained purely and simply by fermentation but is thereafter subjected to ultrafiltration. As a result of this additional treatment, the product in question, which is produced from brewed beer, loses the objective properties and characteristics particular to beer. It does not look like beer and it also does not have the bitter taste specific to beer. According to the information provided by the referring court, the 'malt beer base' is a colourless, clear liquid which smells of alcohol and has a slightly bitter taste and an alcoholic strength by volume of 14 %, which is used to produce a mixed drink marketed under the designation 'Salitos Ice'. These objective properties and characteristics do not correspond to those of beer coming under heading 2203 of the CN but do, by contrast, correspond to those of ethyl alcohol under heading 2208 or are, in any event, akin to those properties and characteristics.*"

57.10. *Paderborner* was an example of the CJEU considering a product that had been created solely with a fermented base and with no distilled alcohol added to it, yet by virtue of the manner in which it had been processed, and what had been added to it, it was classifiable under Heading 2208 of the CN as it no longer had the

objective characteristics of a product suitable for classification in Heading 2203 of the CN.

57.11. The *Richard Cedric Hart Jones* decision was similar to the *Siebrand* decision because it involved the combination of a distilled alcohol with the fermented beverage, whereas in the *Paderborner* decision, had no additional distilled alcohol added to the product. In the *Richard Cedric Hart Jones* decision, a dispute arose as to whether the Appellant's product, a Black Cherry Liqueur, should be classified in Heading 2206 of the CN as a fermented beverage or in Heading 2208 of the CN as a spirituous beverage. The Tribunal applied the *Siebrand* decision and found that the two principal constituents of the Appellant's product were a base wine (fermented liquor) and ethanol (spirituous liquor), which enabled the product to be classified under two potential headings, namely Heading 2206 and 2208 of the CN. General Rule 3(b) required the Tribunal to consider which of those two constituents gave the product its essential character. The Tribunal's found that the objective characteristics of the product demonstrated that the spirituous liquor element defined the essential characteristic of the product and that it had the objective characteristics of a liqueur, which is named in Heading 2208 of the CN.

57.12. BTI decisions of other Customs Authorities or countries are relevant to the Respondent's assessment of a product, because the Respondent must ensure that it is following what is happening in other countries at EU level, in the interest of legal certainty. Therefore, it must have regard to other BTIs as part of its decision-making process. Reference was made to the German and Spanish BTI. The recent German BTI decision submitted by the Appellant does not appear to be anything other than a Vermouth or other wine of fresh grapes flavoured with fruit or other aromatic substances and thus, a correct decision.

57.13. An abundance of evidence points towards the product being classifiable in the manner in which it was classified by the Respondent. It considered the product by virtue of its objective characteristics, as it was presented to the Respondent. The product was made up of a clear, highly filtered base, and even taking the base on its own, it did not have the characteristics of a wine, let alone a [REDACTED], which was what the product was made of. The product had added to that [REDACTED] [REDACTED] The end result was a product more akin to a liqueur than to something that could be characterised as an aromatised wine in Heading 2205 of the CN. The Appellant's

expert witness, having assessed the product by smell, taste, appearance and viscosity, stated that it was very similar to [REDACTED]

[REDACTED] Rather, he stated that the product looks, smells and tastes like a type of [REDACTED] liqueur. Furthermore, he made the observation, that the alcoholic base was just that, even though it was fermented, its role was to provide the alcohol in the product. Hence, the Respondent considered that the product was more like a [REDACTED] liqueur not as contended for by the Appellant, that the product should be classified as a fermented beverage.

57.14. The Appellant was provided with the report from the State Laboratory and there was no analytical report. The report is an assessment of the product's organoleptic properties and the objective characteristics of the product. The product has taken on the characteristics of a spirituous beverage. Liqueurs are classified in Heading 2208 70 10 of the CN when they have an abv of 15% or more. As the product has an abv of [REDACTED], it was classified in Heading 2208 90 69 of the CN. The product has taken on the characteristics of a product of Heading 2208 of the CN and has been classified accordingly.

57.15. The Regulations, in particular the 2014 Regulation, are irrelevant to the classification of the product in the CN. The examples of aromatised wine-based drinks that are included in the 2014 Regulation are completely different products compared to the Appellant's product. The addition of [REDACTED] fundamentally alters the nature of the product and means that the product has taken on the characteristics of a [REDACTED] liqueur. The addition of [REDACTED]

[REDACTED] The 2014 Regulation states "*Addition of such substances confers on the final product organoleptic characteristics other than wine*". However, this does not change the fact that the Appellant's product had the characteristics of a [REDACTED] liqueur.

57.16. The Appellant refers to Patent S2007/0442 in its Statement of Case. The patent has no bearing on the classification of the product. According to the patent register, this patent relates [REDACTED]

[REDACTED].

**Material Facts**

58. Having considered the evidence adduced and the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

58.1. The Appellant is [REDACTED] [REDACTED] [REDACTED].

58.2. The Appellant employs [REDACTED]

58.3. The Appellant's business is [REDACTED] [REDACTED]

58.4. [REDACTED] [REDACTED]

58.5. [REDACTED] [REDACTED] [REDACTED]

58.6. The Appellant was granted [REDACTED]

58.7. On 29 July 2024, the Appellant made an application to the Respondent for classification of the product in Heading 2205 10 10 of the CN.

58.8. On the 13 September 2024, a sample of the product was requested by the Respondent and sent to the State Laboratory for analysis.

58.9. On the 5 November 2024, the product sample was sent to the State Laboratory for analysis. The product provided to the Respondent contained the following ingredients:-

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

58.10. That the product contained the ingredients and quantities, set out in the preceding paragraph, was not in dispute between the parties.

58.11. The aromatised wine-based drink [REDACTED] the product was made in compliance with the 2014 Regulation which defines and sets out specific requirements for aromatised wine-based drinks.

- 58.12. The addition of [REDACTED] to the aromatised wine-based drink was in compliance with both the 2014 and 2024 Regulation.
- 58.13. The 2014 Regulation permits flavouring from [REDACTED] in an aromatised wine-based drink.
- 58.14. It was incorrect of the Respondent's witness 2 to testify that the addition of [REDACTED] was not in compliance with the 2014 Regulation. She stated that nowhere in the 2014 Regulation did it permit the addition of [REDACTED]
- 58.15. On 13 December 2024, the Tariff Classification Unit of the Respondent issued a BTI decision classifying the product in Heading 2208 90 69 of the CN as "*other spiritous beverages*".
- 58.16. A liqueur must have had an abv in excess of 15%.
- 58.17. [REDACTED].
- 58.18. The product had an abv of [REDACTED] which was one of its objective characteristics.
- 58.19. The product contained no distilled alcohol.
- 58.20. The product contained wine made from fermented fresh grapes.
- 58.21. The aromatised wine-based drink which consisted of [REDACTED] of the product was produced in a manner not dissimilar to the aromatised wine in a Vermouth, such that Vermouth is an aromatised wine with additional alcohol and flavourings.
- 58.22. Vermouth is an aromatised wine, and the characteristic taste has been obtained by the use of appropriate substances of *Artemisia* species.
- 58.23. The product was an aromatised wine-based drink to which [REDACTED] had been added to the product.
- 58.24. [REDACTED] flavouring foodstuff.
- 58.25. The addition of egg yolk and sugar to aromatised wine, such as in Marsala all'uovo creates a sweet and creamy aromatised wine [REDACTED]
- 58.26. Aromatised wine products vary in taste from the extra dry to sweet.
- 58.27. The aromatised wine-based drink is made from a wine of fresh grapes that have been subjected to a fermentation process.

58.28. The addition of flavourings to aromatised wines and aromatised wine-based drinks, confer on the final product organoleptic characteristics other than those of wine.

58.29. The products described in the words of Heading 2205 of the CN are aromatised wine type beverages.

58.30. The product was an aromatised wine-based drink, [REDACTED]  
[REDACTED] in compliance with the 2014 Regulation, [REDACTED]  
[REDACTED]

## Analysis

### *Burden of proof*

59. The appropriate starting point for the analysis of the issues in this appeal 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 paragraph 22, Charleton J. stated that:

*“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”.*

60. The law regarding the burden of proof and the reasons for it has been reaffirmed in recent subsequent judgments, such as *McNamara v Revenue Commissioners* [2023] IEHC 15, *Quigley v Revenue Commissioners* [2023] IEHC 244 and *J.S.S., J.S.J., T.S., D.S. and P.S. v A Tax Appeal Commissioner* [2025] IECA 96.

61. However, it is important to state that when an appeal relates to the interpretation of the law only, Donnelly J. and Butler J. clarified the approach to the burden of proof, in their joint judgment for the Court of Appeal in *Hanrahan v The Revenue Commissioners* [2024] IECA 113. At paragraphs 97-98, the Court of Appeal held that:

*“97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake.....*

*98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the*

*Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation....."*

62. The Commissioner is obliged to consider the application of words used in tax and customs legislation as to their plain and ordinary meaning, in context. There is a long line of jurisprudence establishing the principles of statutory interpretation and the Commissioner considers it salutary to recall the principles governing the interpretation of legislation. The proper approach to statutory interpretation was recently restated by the Supreme Court in *Heather Hill Management Company v An Bord Pleanála* [2022] IESC 43 ("*Heather Hill*"). Mr Justice Murray, writing for the Supreme Court, highlighted that the literal and purposive approaches to statutory interpretation are not hermetically sealed. The words of the section are the first port of call in its interpretation.
63. In addition, there are a number of terms and words that are important to define in formulating a decision in this appeal. It is important for the Commissioner to understand and set out the ordinary meaning of those words and the meaning of the words defined by legislation both in this jurisdiction and the EU.
64. The judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 considered case law relating to what circumstances a word should be given a special meaning, in particular a word or phrase which was directed to a particular trade, industry or business. Mr Justice McKechnie observed at paragraph 69 that:

*".....there is the case, cited by both parties of Inspector of Taxes v. Kiernan [1981] I.R. 117. It is a case of general importance, where the Court was called upon to determine whether the word "cattle" in s. 78 of the Income Tax Act 1967, could be read as including "pigs". Henchy J. in his judgment made three points of note. The first of these he stated as follows:*

*"A word or expression in a given statute must be given meaning and scope according to its immediate context, in line with the scheme and purpose of the particular statutory pattern as a whole, and to an extent that will truly effectuate the particular legislation or a particular definition therein."*

*The learned judge went on to discuss when and in what circumstances a word should be given a special meaning, in particular a word or phrase which was directed to a particular trade, industry or business. At pp. 121 and 122 he quoted the words of Lord Esher M.R. in Unwin v Hanson [1891] Q.B. 115 at 119, who said :-*

*“If the Act is one passed with reference to a particular trade, business or transaction, and words are used which everybody conversant with that trade, business or transaction, knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.”*

65. As Mr Justice O'Donnell noted in the Supreme Court in the judgment in *Bookfinders Limited v The Revenue Commissioners*, at paragraph 77 that:

*“It is not unusual that ordinary everyday activities which are easily recognisable in life can appear almost comically clumsy and convoluted when sought to be described in technical or formal language.”*

66. This appeal concerns the classification of an alcoholic beverage for customs duty purposes. The issue in this appeal is whether the product should be appropriately classified in Heading 2205 or Heading 2208 of the CN. The Appellant contended that the product was an aromatised wine-based drink, a fermented beverage consisting of a wine of fresh grapes, with the addition of [REDACTED]. Hence, it should appropriately be classified in Heading 2205 of the CN as a “*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*”.

67. However, the Respondent disagreed on the basis that the aromatised wine base, having undergone what it described as an “ultrafiltration” process, and with the addition of the [REDACTED] no longer retained the objective characteristics of a wine of fresh grapes. Hence, it concluded that the product had taken on the objective characteristics of a [REDACTED] liqueur, and whilst it submitted that the product did not have the requisite abv of 15% to be classified as a [REDACTED] liqueur in Heading 2208 of the CN, it should be classified specifically in Heading 2208 90 69 of the CN, as “*other spiritous beverages*”.

68. Aside from the suitability of Heading 2205 of the CN, it must first be considered whether the Respondent was correct to classify the product as “*other spiritous beverages*” in Heading 2208 90 69 of the CN. If the Commissioner finds that the Respondent incorrectly classified the product, then the Commissioner must proceed to consider the

appropriateness of the heading for which the Appellant contends, namely Heading 2205 of the CN.

69. The Commissioner in determining this question has considered the full suite of case law and legislative provisions referred to by the parties *inter alia* in the Book of Authorities submitted by both parties, the Outline of Arguments and submissions of both parties, the Respondent's expert report and the correspondence that ensued between the parties, including the decision of the Respondent's DAO. Where a case or document is not referenced in the Commissioner's analysis, it should not be taken as having not been considered by the Commissioner. Furthermore, the Commissioner has considered the product itself and in doing so, has considered its organoleptic properties, such as the colour, taste, smell and viscosity of the product. [REDACTED]

[REDACTED] What the Commissioner must consider in this appeal, for the purposes of customs classification, are the objective characteristics of the product (see: C-403/07 *Metherma GmbH & Co. KG v. Hauptzollamt Düsseldorf* EU:C:2008:657 and Case C-459/93 *Hauptzollamt Hamburg-St. Annen v Thyssen Haniel Logistic GmbH* ECLI:EU:C:1995:160.)

*The test for classification in the CN*

70. The parties were in agreement that the decisive criterion for the classification of goods for customs purposes is, in general, to be sought in their characteristics and objective properties as defined in the wording of the relevant headings of the CN and in the notes of the sections and chapters (see for example the *Olicom* decision; Joined Cases C-362/07 and C-363/07 *Kip Europe and Others*, the *Siebrand* decision). The Commissioner is satisfied that the jurisprudence of the CJEU has firmly established the test to be applied for the classification of goods for customs purposes, being the objective characteristics of the product.
71. In addition, the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties.
72. Furthermore, the Commissioner is satisfied that for the purpose of interpreting the CN, it has been consistently held that the notes which head the chapters of the CN and the HSEN are important means for ensuring the uniform application of the CN and as such, may be regarded as useful aids to its interpretation (see the *Olicom* decision; Case C-486/06 *Van Landeghem*; and Case C-403/07 *Metherma GmbH & Co. KG v. Hauptzollamt Düsseldorf* EU:C:2008:657).

*The objective characteristics of the product*

73. The Appellant's representative helpfully provided evidence as to the product's purpose and how the product was created. It is evident to the Commissioner that the Appellant's representative was extremely knowledgeable of the alcohol beverages industry, and he displayed an in-depth knowledge of the industry and its products, throughout the hearing of the appeal. Moreover, the Commissioner noted that the Appellant's representative was knowledgeable of the applicable EU Regulations that pertained to alcoholic beverages, which he discussed throughout the appeal hearing.

74. It is evident from the evidence adduced and the documentation submitted in this appeal that the product's ingredients were not in dispute. The product at issue is an aromatised wine-based drink, made in accordance with the 2014 Regulation. The Appellant's representative submitted documentation and gave evidence to this effect. In particular, the technical bulletin submitted supports the evidence adduced and the correspondence dated 9 September 2024, from the Appellant to the Respondent sets out in detail the description of the goods, the ingredient recipe and the production process. This was not disputed by the Respondent. Rather, the Respondent posited that the product was a [REDACTED] liqueur having regard to its organoleptic properties and hence, should be classified as "*other spiritous beverages*" in Heading 2208 of the CN. The Commissioner observes that the product's ingredients are [REDACTED]

[REDACTED] It was apparent to the Commissioner that the aromatised wine base, which was made from fermented wine of fresh grapes, was the dominant ingredient in the product. Fermented wine of fresh grapes was also the dominant ingredient in the aromatised wine base as per the technical bulletin submitted by the Appellant in support of its appeal. However, the addition of the [REDACTED]. The Commissioner notes that the 2014 Regulation states that "*the addition of such substances confers on the final product organoleptic characteristics other than wine.*" Significant importance was placed on this sentence by the Appellant.

75. The Commissioner notes that the Appellant's representative described in detail the aromatised wine-based drink that was used in the product. [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Of note, no distillation of the wine took place. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].<sup>8</sup>

76. The Commissioner notes the technical bulletin submitted by the Appellant in its Book of Documents and which was submitted to the Respondent in support of its BTI application and classification of the product in Heading 2205 of the CN. It stated that the aromatised wine base was an [REDACTED] and confirmed that the “*product is produced in compliance with EU Regulation 251/2014*” The Commissioner observes that the technical bulletin stated that the product was comprised of the following: [REDACTED]  
[REDACTED].
77. However, the Respondent submitted that the aromatised wine-based drink, having undergone what counsel for the Respondent described as “an ultrafiltration process”, and the addition of [REDACTED], no longer had the objective characteristics of a wine of fresh grapes. Hence, the Respondent concluded that the product had taken on the objective characteristics of a [REDACTED] liqueur, and whilst it did not have the requisite abv of 15% to be classified in Heading 2205 of the CN as a [REDACTED] liqueur, it nevertheless should be classified in Heading 2208 of the CN, specifically in Heading 2208 90 69 of the CN, as “*other spiritous beverages*”. The Respondent submitted that it considered the Appellant’s preferred heading, being Heading 2205 of the CN, but discounted it early on in favour of Heading 2208 of the CN. A sample of the aromatised wine-based drink used in the product was requested by the Respondent and sent to the State Laboratory for analysis. It is evident from the submissions and evidence of the Respondent’s witnesses, that from the outset it placed significant reliance on the fact that it considered that the product, with the addition of [REDACTED], resembled a [REDACTED] liqueur and not a wine of fresh grapes that was capable of classification in Heading 2205 of the CN as a “*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*”.

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<sup>8</sup> Transcript Day 2, page 13

78. The Commissioner notes that the Oxford English Dictionary (“OED”) defines the word “Organoleptic” as “Of, relating to, or involving the use of sense organs or senses, esp. of smell and taste.” The Commissioner heard evidence from the Respondent’s expert witness from the State Laboratory that organoleptic testing was carried out and that he formed the opinion that the product was a [REDACTED] liqueur. The Respondent’s expert witness testified that the smell, taste and colour of the product was that of a [REDACTED] liqueur. He said the [REDACTED] texture of the product reminded him of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED], in his opinion, was just a vehicle for the alcoholic base and should not come into discussion at all, as it was the alcohol that was in the product. He said that the product tasted like a [REDACTED] liqueur and he was not influenced by the labelling.
79. The Commissioner notes that the State Laboratory report states that “Based on the information provided, in our opinion it appears that classification under subheading 2208 90 69 00, is appropriate on this occasion. We note the end product does not have any characteristics of a wine of 2204 or 2205.” Furthermore, the Commissioner notes both the reference made and the reliance on the Respondent’s manual, to reach that decision. In particular the report references its reliance on page 6, Section 2.7 (ii) of the Respondent’s manual which states: “Whether the particular organoleptic characteristics of the products correspond to those of products classified in CN code 2208. The taste can constitute an objective characteristic or property of a product. If the addition of water and other substances (such as syrup, various aromas and colourings, and, [REDACTED] [REDACTED]), results in losing the taste, smell and appearance of a beverage produced from a particular fruit or natural product, that is to say a fermented beverage of CN code 2206, classification in CN code 2208 takes place and the product falls within the “spirits” category for the purposes of Alcohol Products Tax.”
80. The Commissioner notes that Heading 2206 of the CN is referenced. However, Heading 2206 of the CN was not relevant to this appeal, as the product was not a mixed beverage. The Commissioner considers that the only relevance it had to this appeal was to illustrate that the CN had a particular heading that accommodated other fermented beverages, such as cider, perry mead and sake, and mixed fermented beverages.

81. The Commissioner observes from the evidence of the Respondent's witnesses 1 and 3, that they did not carry out themselves, organoleptic testing on the product, but rather their evidence was that they relied on the report from the State Laboratory and a conversation with the Respondent's expert witness to come to their decision as to the appropriate BTI. This was despite the witnesses testifying that they were the decision makers, in respect of the product and the appropriate classification of that product.
82. Of note, was the evidence of the Appellant's representative that the product was made in compliance with the 2014 Regulation and the 2024 Regulation EU supplementing the 2014 Regulation as regards specific rules for the indication and designation of ingredients for aromatised wine products. The Respondent argued strongly that the Regulations have no bearing on the classification of the product. Counsel for the Respondent submitted that what was important when approaching the classification of a product, was the test as set out in the *Siebrand* decision, namely the objective characteristics of the product and it was of no relevance whatsoever that the permitted ingredients in an aromatised wine-based drink, are in accordance with the 2014 Regulation.
83. However, the Commissioner does not agree with the Respondent's submission in that regard and considers that the Regulations are an important aid to the Commissioner to assist her with her understanding of the objective characteristics of the product. This is so, because the Regulations specify what ingredients are permitted in an aromatised wine-based product. Moreover, certain of the Regulations define the words "*spirit*", "*wine*" and "*Liqueur*" and make reference to the CN. The Commissioner will deal with the legislation and Regulations pertaining to the meaning of "*spirit*", "*wine*" and "*Liqueur*" in due course in her Determination. Both wine and spirits are excisable products. The Commissioner will also consider the Respondent's manual which also purports to define these words. However, the Commissioner intends first to set out the pertinent Articles of the 2014 Regulation, which dictate the ingredients permitted in an aromatised wine-based drink.

#### *The 2014 Regulation*

84. The Appellant's representative submitted that the product was produced in compliance with the 2014 Regulation. There was no dispute by the Respondent that this was so. Rather, the Respondent argued the irrelevance of the 2014 Regulation to the question of classification. Having heard the evidence and submissions of the Appellant's representative and having considered Article 3 of the 2014 Regulation, the Commissioner is satisfied to accept that the product was made in compliance with the 2014 Regulation. [REDACTED] are specifically permitted

in accordance with the 2024 Regulation. However, the Commissioner is satisfied that the wording of the 2014 Regulation would also permit the addition [REDACTED], by the use of the [REDACTED] in Annex 1 of the 2014 Regulation, [REDACTED]

85. The Commissioner has considered the 2014 Regulation and notes that Article 1 entitled “*Subject matter and scope*” provides that:

*“This Regulation lays down rules on the definition, description, presentation and labelling of aromatised wine products as well as on the protection of geographical indications of aromatised wine product.”*

86. Furthermore, the Commissioner notes Article 3 of the 2014 Regulation entitled “*Definition and classification of aromatised wine products*”, at paragraph 1, which provides that:

*“Aromatised wine products are products obtained from products of the wine sector as referred to in Regulation (EU) No 1308/2013 that have been flavoured. They are classified into the following categories:*

*(a) aromatised wines;*

*(b) aromatised wine-based drinks;*

*(c) aromatised wine-product cocktails.”*

87. As per the evidence of the Appellant’s representative, the product is an aromatised wine-based drink and thus, the Commissioner notes that paragraph 3 of Article 3 is relevant and provides that:

*“Aromatised wine-based drink is a drink:*

*(a) obtained from one or more of the grapevine products defined in points 1, 2 and 4 to 9 of Part II of Annex VII to Regulation (EU) No 1308/2013, with the exception of wines produced with the addition of alcohol and ‘Retsina’ wine;*

*(b) in which the grapevine products referred to in point (a) represent at least 50 % of the total volume;*

*(c) to which no alcohol has been added, except where Annex II provides otherwise;*

*(d) to which colours may have been added;*

*(e) to which grape must, partially fermented grape must or both may have been added;*

*(f) which may have been sweetened;*

*(g) which has an actual alcoholic strength by volume of not less than 4,5 % vol. and less than 14,5 % vol.”*

88. The Commissioner has also reviewed Annex I and Annex II of the 2014 Regulation. Annex I deals with permitted flavouring and sweetening of aromatised wines. In relation to the permitted flavouring, the Commissioner notes the following:

“ *(a) The following products are authorised for the flavouring of aromatised wines:*

*(i) natural flavouring substances and/or flavouring preparations as defined in Article 3(2)(c) and (d) of Regulation (EC) No 1334/2008;*

*(ii) flavourings as defined in Article 3(2)(a) of Regulation (EC) No 1334/2008, which:*

*— are identical to vanillin,*

*— smell and/or taste of almonds,*

*— smell and/or taste of apricots,*

*— smell and/or taste of eggs; and*

*(iii) aromatic herbs and/or spices and/or flavouring foodstuffs.*

*(b) The following products are authorised for the flavouring of aromatised wine-based drinks and aromatised wine product cocktails:*

*(i) flavouring substances and/or flavouring preparations as defined in Article 3(2)(b) and (d) of Regulation (EC) No 1334/2008; and*

*(ii) aromatic herbs and/or spices and/or flavouring foodstuffs.*

*Addition of such substances confers on the final product organoleptic characteristics other than those of wine.*” [underline added]

89. The Appellant’s representative directed the Commissioner to the following words in Annex I under the heading “technical definitions, requirements and restrictions”: “*Addition of such substances confers on the final product organoleptic characteristics other than those of wine.*” He argued that this wording was critical, as it was a requirement of an

aromatised wine-based drink that the final product's organoleptic characteristics are other than those of wine. This he said, was crucial as it means that an aromatised wine-based product does not look, taste or smell like a wine, due to the addition of the flavourings to the aromatised wine base and that it is "*a requirement of an EU Regulation*" that the organoleptic properties of the product are different to those of wine. Nevertheless, he said that this does not mean that the product is not an "*other wine of fresh grapes flavoured with plants or aromatic substances*" to satisfy Heading 2205 of the CN.

90. The Commissioner notes that Annex I also refers to permitting the addition of the following: "*sweetening, alcohol such as distilled spirit, additives and colouring, water and carbon dioxide*". In particular, the Commissioner observes that paragraph (b)(ii) permits "*flavouring foodstuffs*" as a product authorised for flavouring aromatised wine-based drinks.
91. The Commissioner notes that Annex II provides for "sales denominations and descriptions of aromatised wine-based drinks" and sets out the following list: (1) Aromatised wine-based drink, (2) Aromatised fortified wine-based drink, (3) Sangría/Sangria, (4) Clarea (is obtained from white wine under the same conditions as for Sangría/Sangria), (5) Zurra (addition of brandy or wine spirit to Sangría/Sangria and Clarea), (6) Bitter soda, (7) Kalte Ente (sparkling wine with the addition of natural lemon substances or extracts), (8) Glühwein (cinnamon and/or cloves), (9) Viiniglögi/Vinglögg/Karštas vynos (cinnamon and/or cloves), (10) Maiwein (addition of Galium odoratum (L.) Scop. (Asperula odorata L.), plants or extracts), (11) Maitrank (Galium odoratum (L.) Scop. (Asperula odorata L.) plants have been macerated or to which extracts thereof have been added with the addition of oranges and/or other fruits, possibly in the form of juice, concentrated or extracts, and with maximum 5 % sugar sweetening), (12) Pelin (herbs), (13) Aromatizovaný dezert (dessert spices mixture).
92. Thus, having considered the product and the Regulations, the Commissioner is satisfied that the product bears the objective characteristics of an aromatised wine-based drink, that complies with the 2014 Regulation, with the addition of [REDACTED]. Moreover, the Commissioner is satisfied that [REDACTED] was made from a wine of fresh grapes that had been subjected to a fermentation process. This was confirmed by the technical bulletin submitted by the Appellant. This, the Commissioner considers, was an important objective characteristic of the product, and confirmed that the product had not gone through any process of distillation nor was there an addition of distilled alcohol to the product, another important characteristic that was required to be considered.

Furthermore, the product had an abv of [REDACTED] which is an important objective characteristic of the product in terms of classification in the CN.

93. The question arises therefore, what was the appropriate customs classification for the product with the following objectives characteristics: it contained [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] such that it no longer resembled a wine; it had not undergone a process of distillation; it had no distilled or ethyl alcohol added to it; it had an abv of [REDACTED]

#### *The 2019 Regulation*

94. Before proceeding to consider Heading 2208 of the CN, the Commissioner considers it useful to set out the EU Regulation and the rules applicable to “spirit” drinks. Regulation (EU) 2019/787 of 17 April 2019 (“the 2019 Regulation”) on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008. S.I. No. 198 of 2023 is stated to give full effect to the 2019 Regulation. The Commissioner notes that Article 2 entitled “Definition of and requirements for spirit drinks” provides that:

*“For the purposes of this Regulation, a spirit drink is an alcoholic beverage which complies with the following requirements:*

*(a) it is intended for human consumption;*

*(b) it possesses particular organoleptic qualities;*

*(c) it has a minimum alcoholic strength by volume of 15 %, except in the case of spirit drinks that comply with the requirements of category 39 of Annex I;*

*(d) it has been produced either:*

*(i) directly by using, individually or in combination, any of the following methods:*

*— distillation, with or without added flavourings or flavouring foodstuffs, of fermented products,*

— the maceration or similar processing of plant materials in ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks or a combination thereof,

— the addition, individually or in combination, to ethyl alcohol of agricultural origin, distillates of agricultural origin or spirit drinks of any of the following:

— flavourings used in accordance with Regulation (EC) No 1334/2008,

— colours used in accordance with Regulation (EC) No 1333/2008,

— other authorised ingredients used in accordance with Regulations (EC) No 1333/2008 and (EC) No 1334/2008, L 130/6 EN Official Journal of the European Union 17.5.2019  
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— sweetening products,

— other agricultural products,

— foodstuffs; or

(iii) by adding, individually or in combination, to it any of the following:

— other spirit drinks,

— ethyl alcohol of agricultural origin,

— distillates of agricultural origin,

— other foodstuffs;

(e) it does not fall within CN codes 2203, 2204, 2205, 2206 and 2207;

(f) if water, which may be distilled, demineralised, permuted or softened, has been added in its production:

(i) the quality of that water complies with Council Directive 98/83/EC (15) and Directive 2009/54/EC of the European Parliament and of the Council (16); and

(ii) the alcoholic strength of the spirit drink, after the addition of the water, still complies with the minimum alcoholic strength by volume provided

*for in point (c) of this Article or under the relevant category of spirit drinks as set out in Annex I.*

95. The Commissioner notes that Annex 1 of the 2019 Regulation lists the categories of spirits as follows: 1. Rum; 2. Whisky or whiskey; 3. Grain spirit; 4. Wine spirit (produced by distillation); 5. Brandy or Weinbrand; 6. Grape marc spirit or grape marc; 7. Fruit marc spirit; 8. Raisin spirit or raisin brandy; 9. Fruit spirit; 10. Cider spirit, perry spirit and cider and perry spirit; 11. Honey spirit; 12. Hefebrand or lees spirit; 13. Beer spirit; 14. Topinambur or Jerusalem artichoke spirit; 15. Vodka; 16. Spirit (supplemented by the name of the fruit, berries or nuts) obtained by maceration and distillation; 17. Geist (supplemented by the name of the fruit or the raw materials used); 18. Gentian; 19. Juniper-flavoured spirit drink; 20. Gin; 21. Distilled gin; 22. London gin; 23. Caraway-flavoured spirit drink or Kümmel; 24. Akvavit or aquavit; 25. Aniseed-flavoured spirit drink; 26. Pastis; 27. Pastis de Marseille; 28. Anis or janeževc; 29. Distilled anis; 30. Bitter-tasting spirit drink or bitter; 31. Flavoured vodka; 32. Sloe-aromatised spirit drink or pacharán; 33. Liqueur; 34. Crème de (supplemented by the name of a fruit or other raw material used); 35. Sloe gin; 36. Sambuca; 37. Maraschino, marrasquino or maraskino; 38. Nocino or orehovec; 39. egg liqueur or advocaat or avocat or advokat (The minimum alcoholic strength by volume of egg liqueur or *advocaat* or *avocat* or *advokat* shall be 14 %.); 40. Liqueur with egg; 41. Mistrà; 42. Väkevä glögi or spritglögg; 43. Berenburg or Beerenburg; 44. Honey nectar or mead nectar.
96. The Commissioner observes that in accordance with Article 2 of the 2019 Regulation, in order for a beverage to be a “spirit drink” it generally must have a minimum abv of 15%, with the exception of “*egg liqueur or advocaat or avocat or advokat shall be 14%*”. The Commissioner has also considered the Finance Act 2003, S.I. No. 379/2004 - Alcohol Products Tax Regulations, 2004 (“the 2004 Regulation”) and the Respondent’s Tax and Duty Manual. The Commissioner will proceed to consider the Respondent’s manual first herein.

*The Respondent’s manual*

97. The Respondent’s manual is not a document that is binding in nature, but it referable as guidance produced by the Respondent. The manual was referred to as part of the decision of the DAO of the Respondent. The Commissioner observes at paragraph 2.2 it states:

*“2.2 Classification (Excise) Alcohol products are classified as follows:*

- *Spirits,*
- *Beer,*
- *Wine,*
- *Other Fermented Beverages, and*
- *Intermediate Beverages.”*

98. The Commissioner is satisfied that having considered the judgments in *Siebrand* and *Paderborner*, the product in *Siebrand* is classified as “Other Fermented Beverages” and the product in *Paderborner* is classified as “Intermediate Beverages” for the purposes of classification as excise alcohol products, as per the Respondent’s manual. Of note, is the statement that:

*“Excise classification is intrinsically linked with customs classification and Revenue officers should always establish if a BTI (Binding Tariff Information) customs classification has been determined for the product.”*

99. Of further note is paragraph 2.2.7 entitled “New Products” and paragraph 2.2.7.1 entitled “*Siebrand* CJEU Decision C-150/08”, wherein it states that:

*“New products*

.....

*Officers should be in a position to classify most alcohol products by referring to:*

.....

*The “Siebrand” CJEU decision, for products containing a mixture of fermented and distilled alcohol product, see paragraph 2.2.7.1.*

.....

*2.2.7.1 Siebrand CJEU Decision C-150/08*

*In the case of products containing a mixture of fermented and distilled alcohol product, the officer may need to consider the product in the context of the judgement given in the Siebrand CJEU case C-150/08. The effect of the judgement is that certain alcohol-based beverages, which previously were classified under heading 2206 of the CN (Combined Nomenclature), must now be classified under heading 2208.”*

100. The Commissioner notes the clear references to *Siebrand* and its application to products containing a mixture of fermented and distilled alcohol products. In this appeal, the

question of classification does not arise in respect of a product containing a mixture of fermented and distilled alcohol, but rather a product containing an aromatised wine-based drink, produced from a fermented wine of fresh grapes only, with no additional distilled alcohol. The Commissioner is satisfied that the only additions to the aromatised wine-based drink [REDACTED]

[REDACTED] The product has no mixture of fermented and distilled alcohol.

*The Finance Act 2003*

101. Returning to the Finance Act 2003, in particular Part 2 which is entitled “Excise” and Chapter 1 which is entitled “Alcohol Products Tax”. In this jurisdiction, section 73(1) of the Finance Act 2003 as amended, entitled “Interpretation”, provides *inter alia* for the meaning of the following words:

*“cider and perry” means a beverage exceeding 1.2% vol but not exceeding 15% vol, obtained from the fermentation of apple or pear juice and without the addition of—*

*(a) any other alcoholic beverage, or*

*(b) any other beverage or substance which imparts colour or flavour and which, by such addition in the opinion of the Commissioners significantly alters the character of the product;*

*“denature” means to mix an alcohol product with any substance so as to render the mixture unfit for human consumption and includes to methylate and cognate words shall be construed accordingly;*

*“intermediate beverage”, subject to section 74 , means any beverage other than beer, wine, or other fermented beverage, the alcoholic content of which is at least partly of fermented origin and which—*

.....

*“other fermented beverage”, subject to section 74 , means a beverage other than beer and wine exceeding 1.2% vol which –*

*(a) has an alcoholic content which is entirely of fermented origin and does not exceed 15% vol, or*

.....

*and includes any mixture, exceeding 1.2% vol, of such beverage with any non-alcoholic beverage;*

*“spirits” means any product which exceeds 1.2% vol and which is—*

- (a) distilled ethyl alcohol*
- (b) an alcoholic beverage the full alcohol content of which is the result of a process of distillation,*
- (c) any other product falling within CN Code 2207 or 2208, even when such product forms part of a product which is not an alcohol product, or*
- (d) any beverage exceeding 22% vol,*

*and includes any such product which contains a non-alcoholic product, whether in solution or not;*

.....

*“Wine”, subject to section 74, means any beverage exceeding 1.2% vol the alcoholic content of which is entirely of fermented origin –*

- (a) obtained from the total or partial fermentation of grapes or the must of fresh grapes*
- (b) not exceeding 15% vol, or in the case of still wine produced without enrichment, not exceeding 18% vol,*

*and includes such wine flavoured with plants or aromatic extracts and grape must in fermentation or with fermentation prevented or arrested otherwise than by the addition of spirits;*

102. Likewise, section 74 of the Finance Act 2003, entitled *“Qualification to meanings given to certain alcohol products”*, is of assistance in interpreting the meaning of the various alcohol products. Section 74(1) states that:

*“Only a product which is classified –*

- (a) under CN Code 2203, or which is a mixture of such product with any non-alcoholic drink covered by CN Code 2206, is beer,*
- (b) under CN Code 2204 or 2205, is wine,*
- (c) under CN Code 2204, 2205 or 2206, is an other fermented beverage or intermediate beverage.”*

*S.I. No. 379/2004 - Alcohol Products Tax Regulations, 2004*

103. The Commissioner notes that SI No 379/2004 – Alcohol Products Tax Regulations 2004 (“the 2004 Regulation”) provides for “denatured spirits” which means spirits denatured in accordance with these Regulations. Section 73(1) of the Finance Act 2003, entitled “Interpretation” provides that “denature” means to mix an alcohol product with any substance so as to render the mixture unfit for human consumption. Undenatured alcohol refers to an alcohol product which has not been denatured. Furthermore, the Commissioner notes that Part 3 of the 2004 Regulation provides for distillation periods, distillation processes and distillation methods.

104. The Commissioner considers it useful at this juncture to address the words “Undenatured ethyl alcohol” which are referenced in the wording in Heading 2208 of the CN. The HSEN is of assistance in interpreting the words of the heading. The HSEN for Heading 2208 of the CN states that: “[p]rovided their alcoholic strength by volume is less than 80% vol, the heading also covers undenatured spirits (ethyl alcohol and neutral spirits) which contrary to those at (A), (B) and (C) above are characterised by the absence of secondary constituents giving a flavor or aroma. These spirits remain in the heading whether intended for human consumption or for industrial purposes.” The CN Explanatory Notes also aid the interpretation of these words wherein it states that “[a]s regard undenatured spirits, it should be noted that they remain classified in this heading even if they have an alcoholic strength of 80% volume or higher whether or not the product is ready for consumption as a drink.”

105. Thus, having regard to the legislation both in this jurisdiction and EU legislation, the Commissioner is satisfied that the words “wine”, “spirits”, “intermediate beverage” and “other fermented beverage” are all words that are defined by legislation and have a certain meaning ascribed to them. The Commissioner observes that the Respondent’s manual is consistent in its definition and explanation of these terms or words. Hence, the Commissioner is satisfied that these defined words are important when it comes to considering the appropriate classification of alcoholic beverages.

*The intended use of the product*

106. The Commissioner notes that the Appellant’s representative described the product as a

██  
██  
██  
██  
██

[REDACTED]

107. The Commissioner is satisfied that the product is an alcoholic beverage with a basis of a wine of fresh grapes produced by fermentation. This was so, because the product consisted of [REDACTED] which was made in compliance with the 2014 Regulation (the technical bulletin submitted by the Appellant also confirmed this material fact), [REDACTED] to be enjoyed by consumers and that any evidence of its intended use cannot be put any further. The Commissioner considers that it was speculative only on the part of the Respondent, when counsel for the Respondent opined that this was not a drink that was “*comparable with taking a glass of wine or vermouth, that the product is something more akin to a liqueur, or something that would be taken as a digestif.*”<sup>9</sup> [REDACTED]

*Heading 2208 of the CN*

108. The first question that falls to be determined is whether the Respondent has properly classified the product in Heading 2208 of the CN. Heading 2208 of the CN is entitled “*Undenatured Ethyl alcohol of an alcoholic strength by volume of less than 80%; spirits, liqueurs and other spiritous beverages.*”

109. Chapter 22 of the CN is entitled “*Beverages, spirits and vinegar*”. The chapter notes to Heading 22 of the CN as they pertain to the relevant headings, namely Headings 2205 and 2008 of the CN, are few. However, the Commissioner observes the following relevant notes in Chapter 22 are as follows: “*8. Only vermouth and other wine of fresh grapes flavoured with plants or aromatic substances having an actual alcoholic strength by volume of not less than 7% vol shall be regarded as products of heading to 2205....*”

110. The Commissioner notes that the evidence adduced by the Respondent was that the decision was made that the product was akin to [REDACTED] liqueur, having regard to its organoleptic properties. It was the testimony of the Respondent’s witnesses that having regard to the *Siebrand* decision and the Respondent’s manual, as the product had lost the organoleptic properties of wine, it was more appropriately classified in Heading 2208

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<sup>9</sup> Transcript Day 1, page 89

of the CN. Furthermore, the Commissioner notes that the Respondent submitted that applying GIRs 1 and 6, the appropriate Heading for classification of the product was Heading 2208 90 69 of the CN. This was so, the Respondent submitted, as whilst the product was a [REDACTED] liqueur, the product did not meet the minimum abv of 15% required for classification as a liqueur in Headings 2207 70 10 and 2208 90 19 of the CN. Therefore, the Respondent concluded that it was appropriate to classify the product in the subcategory entitled “*other spiritous beverages*”, Heading 2208 90 69 of the CN. The Commissioner will address the minimum abv point in due course in the Determination.

### *The Siebrand decision*

111. In making its decision on classification, the Commissioner notes that the Respondent relied heavily on the *Siebrand* decision. However, in contrast, the Appellant argued that it was irrelevant to the product and the decision to be made in this appeal. That was so, the Appellant’s representative argued, because the product at issue in *Siebrand* was a mixed fermented beverage, being a beverage containing a mixture of fermented wine and distilled alcohol, which classification was being sought in Heading 2206 of the CN. The Commissioner observes that Heading 2206 of the CN pertains to “*Other fermented beverages (for example, cider, perry, mead, saké); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included.*” As set out above, the Commissioner notes that the products “cider and perry” are defined in section 73(1) of the Finance Act 2003.

112. It was the case that the Appellant sought classification for the product in Heading 2205 of the CN “*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*” and when asked by counsel for the Respondent why the Appellant did not seek classification in Heading 2206 of the CN, the Appellant’s representative relayed that due to the fact that the product was not a mixed fermented beverage, but was [REDACTED] an aromatised wine-based drink made from fermented wine of fresh grapes, Heading 2205 of the CN was a more appropriate description of the product. The Appellant’s representative argued that what was under consideration was a product, [REDACTED] [REDACTED] an aromatised wine. It was not a mixed product and contained no added distilled alcohol. Moreover, the product was produced in strict compliance with the specific requirements for an aromatised wine-based drink, as set out in the 2014 Regulation, and which at Annex 1 (i)(b) when referring to flavourings, herbs, spices and foodstuffs it states: “*Addition of such substances confers on the final product organoleptic characteristics other than those of wine.*”

113. The Commissioner notes the facts of the *Siebrand* decision are such that it concerned three alcoholic beverages called “Pina Colada”, “Whiskey Cream” and “Apfel Cocktail”. The beverages at issue were produced from a cider base to which distilled alcohol, water, sugar syrup, various aromas and colourings were added, and, in the case of Pina Colada and Whiskey Cream, a cream base was used. The three beverages had an abv of 14.5%, of which 12% was attributable to the distilled alcohol and 2.5% to the alcohol obtained by the fermentation of apple concentrate. The products were initially classified in Heading 2206 of the CN, but a decision was made to classify the products under Heading 2208 of the CN. *Siebrand* challenged the decision and the Supreme Court of the Netherlands hearing the action, referred two questions to the CJEU for a preliminary ruling. The two questions referred to the CJEU were as follows:

*“1. Can a beverage which contains a certain amount of distilled alcohol but which otherwise corresponds to the definition of heading 2206 of the [CN] be classified under that heading if the beverage in question is a fermented beverage which, as a result of the addition of water and particular ingredients, has lost the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product?”*

*2. In the event of a positive answer to Question 1, what criterion should govern the determination as to whether the beverage is nevertheless to be classified under heading 2208 of the CN on the ground that it contains distilled alcohol?”*

114. Having considered the questions and submissions of the parties, the court found that the product produced from cider had lost the taste, smell and appearance of cider, such that it no longer came within Heading 2206 of the CN. Rather, it came within Heading 2208 of the CN. The court opined that *“according to the HS explanatory note relating to heading 2206 of the CN, the addition of alcohol to beverages coming under that heading does not preclude such beverages from retaining that classification provided that they retain the character of products coming under the heading, namely that of fermented beverages.....it is apparent from the order for reference that the beverages at issue in the main proceedings have lost the taste, smell and appearance of a beverage produced from a particular fruit or natural product, that is to say a fermented beverage. Such products cannot be classified in heading 2206 of the CN”*. In circumstances where the product was a mixed product the CJEU considered GIR 2(b) and GIR 3(a).

115. At paragraphs 38, 39 and 40 of the judgment, the Commissioner notes that the court held that:

*“38. ....It is common ground that the objective characteristics and properties of products such as those at issue in the main proceedings, including the form,*

*colour and name under which they are marketed, correspond to those of a spirituous beverage.*

39. *It follows from this that the essential characteristics of beverages such as those at issue in the main proceedings correspond overall to those of a product coming under heading 2208 of the CN.*
40. *Taking the foregoing considerations into account, the answer to be given to the questions referred is that fermented alcohol-based beverages corresponding originally to heading 2206 of the CN, to which a certain proportion of distilled alcohol, water, sugar syrup, aromas, colourings and, [REDACTED] [REDACTED] have been added, resulting in the loss of the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product, do not come under heading 2206 of the CN but rather under heading 2208 thereof”.*

116. Having considered the judgment in *Siebrand* and the parties’ submissions on the relevance and application of same to this appeal, the Commissioner is satisfied that the judgment restates the test to be applied when considering the matter of classification of the product, which, as already stated, is to be sought in their objective characteristics and properties as defined in the wording of the relevant headings of the CN and in the section or chapter notes. It was not in dispute between the parties that the test was as set out therein, and as previously referred to in this Determination, the test is well established.

117. Aside from the test to be applied, the Commissioner is satisfied that the decision can be distinguished from the product in this appeal. Firstly, the product in *Siebrand* was a mixed product, with the addition of distilled alcohol; secondly, the distilled alcohol portion of the product in *Siebrand* was the main alcohol ingredient; and thirdly, whilst Heading 2206 of the CN dealt with mixed beverages obtained from fermentation, the HSEN for that heading, which aids the interpretation of the CN, states *inter alia* that: “*They remain classified in the heading when fortified with added alcohol or when the alcohol content has been increased by further fermentation, provided that they retain the character of products falling in the heading.*” Thus, the objective characteristics considered by the court, to classify the product in *Siebrand* in Heading 2208 of the CN, which heading the CJEU described as “distillates”, was that the product contained firstly, the addition of distilled alcohol and secondly, that it no longer retained the characteristics of products falling into Heading 2206 of the CN, which according to the guidance set out in the HSEN, was a feature necessary for classification therein. The CJEU held that “*the essential*

*characteristics of beverages such as those at issue in the main proceedings correspond overall to those of a product coming under heading 2208 of the CN”.*

118. Hence, the Commissioner considers that common sense would suggest that a mixed product, the majority of which was distilled alcohol rather than fermented alcohol and taking the explanatory notes as guidance, that the product did not retain its character of a fermented product, should be classified in the heading for distillates, namely Heading 2208 of the CN. However, the product in this appeal, was not a mixed fermented product, contained no distilled alcohol and the explanatory notes make no reference to products classified in Heading 2205 of the CN retaining the characteristics of a fermented product. In fact, the Commissioner notes that the explanatory notes for Heading 2208 of the CN make specific reference to the exclusion of certain products “*with a basis of wine of fresh grapes*” (HSEN) and “*alcoholic beverages obtained by fermentation*” (CN Explanatory Note). The Commissioner will consider these explanatory notes in due course in this Determination, but it is important to state that the Commissioner considers the explanatory notes to be important aids to interpretation of the CN.

#### *The Paderborner decision*

119. The Commissioner notes that the Respondent also relied on the decision of the CJEU in *Paderborner* where the court ruled that a malt beer base that has been clarified and then subjected to ultra-filtration must be classified in Heading 2208 of the CN. *Paderborner* argued that its malt beer base drink was a non-alcoholic beverage and refused to pay higher excise duty. The case was referred to the CJEU for ruling where it found in favour of the German Court that the product falls for classification in Heading 2208 of the CN. The Commissioner notes that the facts of the case are such that the malt beer base was produced from brewed beer with an abv of approximately 14%, which was clarified and then subjected to ultra-filtration, by which the concentration of ingredients such as bitter substances and proteins were reduced. The malt beer base also had an abv of 14% and was a colourless, clear liquid which had the smell of alcohol and a slightly bitter taste. The question for the CJEU was:

*“Is the [CN], ... to be interpreted as meaning that a product described as a ‘malt beer base’ with an alcoholic strength by volume of approximately 14%, obtained from brewed beer which has been clarified and then subjected to ultra-filtration, by which the concentration of ingredients such as bitter substances and proteins has been reduced, is to be classified under heading 2208?”*

120. *Paderborner* argued that the malt beer base, in so far as it consisted of beer obtained by fermentation and then subjected to a physical filtration process, must be classified under

Heading 2203 of the CN, as the fermentation process was the crucial factor governing tariff classification and the distillation necessary, as a production process, was lacking for purposes of classification in Heading 2208 of the CN. Furthermore, according to the HSEN relating to Heading 2208 of the CN, ethyl alcohol must be characterised by the “*absence of secondary constituents giving a flavour or aroma*”, whereas the malt beer base had a taste and therefore a flavour or aroma.

121. The test for classification, which was not in dispute in this appeal, was restated by the court at paragraphs 31 and 32 of the judgment. The court stated:

“31. *In that regard, it should be borne in mind that, according to settled case-law, in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and in the section or chapter notes (see, inter alia, Case C-142/06 Olicom [2007] ECR I-6675, paragraph 16, and Case C-370/08 Data I/O [2010] ECR I-4401, paragraph 29).*

32. *The explanatory notes drawn up by the Commission as regards the CN and by the WCO as regards the HS are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force (Olicom, paragraph 17, and Data I/O, paragraph 30).”*

122. At paragraph 33 of the decision, the court noted that it was apparent from the HSEN relating to Heading 2203 of the CN that beer must be considered to be an alcoholic beverage. Furthermore, having regard to the facts of the case, the CJEU found that even though the “malt beer base” was a liquid and was suitable for human consumption, in the sense that it was drinkable, it was not, as an intermediate product, primarily intended for human consumption. Thus, the fact that the product was not sold to consumers as an end product, it should not be considered an alcoholic beverage. At paragraphs 35 and 36 of the judgment, the CJEU made the following findings:

“34. *By contrast, the HS explanatory note relating to heading 2208 expressly states that that heading also covers ethyl alcohol, whether intended for human consumption or for industrial purposes. The fact that the ‘malt beer base’ is merely an intermediate product does not therefore lead to its exclusion from that heading.*

35. *While it is true that the explanatory notes to the CN relating to heading 2208 exclude from that heading alcoholic beverages obtained from fermentation, it*

*need only be noted, in this case, that this does not concern the 'malt beer base', in so far as it is an intermediate product, because, as has been indicated in paragraph 34 of the present judgment, it is not an alcoholic beverage."*

123. The Commissioner notes that the product in the *Paderborner* decision was found not to be an alcoholic beverage and thus, considers that an important distinguishing factor from the product herein. It was a material fact in the *Paderborner* decision that the product was an intermediate product, unlike the product herein, which is not an intermediate product. The Commissioner is satisfied that it is clear from the judgment that the CJEU placed emphasis on the fact that the product was not an alcoholic beverage and despite it being argued that the malt beer base was obtained by fermentation, the Court was satisfied that it was not an alcoholic beverage. Hence, it being an intermediate product and not intended for human consumption, the exclusion from Heading 2208 of the CN on the basis that it was an alcoholic beverage obtained from fermentation, did not apply. The Commissioner notes that counsel for the Respondent placed emphasis on paragraph 37 of the judgment, where the court opined that:

*"37. In any event, the 'malt beer base' is not obtained purely and simply by fermentation but is thereafter subjected to ultrafiltration. As a result of this additional treatment, the product in question, which is produced from brewed beer, loses the objective properties and characteristics particular to beer. It does not look like beer and it also does not have the bitter taste specific to beer. According to the information provided by the referring court, the 'malt beer base' is a colourless, clear liquid which smells of alcohol and has a slightly bitter taste and an alcoholic strength by volume of 14%, which is used to produce a mixed drink marketed under the designation 'Salitos Ice'. These objective properties and characteristics do not correspond to those of beer coming under heading 2203 of the CN but do, by contrast, correspond to those of ethyl alcohol under heading 2208 or are, in any event, akin to those properties and characteristics."*

124. The Commissioner observes that the Respondent's manual references the judgment in *Paderborner*, wherein at paragraph 2.2.7.2 of the Respondent's manual entitled "Malt Beer Base Case C-196/10" it states that:

*"The officer will need to consider the judgement in the Malt Beer Base Case C-196/10. This judgement stated that, for alcohol products produced from a fermented base, (in this case 'malt beer base' with an alcoholic strength by volume of 14%) and obtained from brewed beer, which has been clarified and then subjected to ultra-filtration, by*

*which the concentration of ingredients such as bitter substances and proteins has been reduced – such products must now be classified under heading 2208 of the combined nomenclature.*

*Officers should be aware that classification of products for excise purposes, which may be impacted by the Siebrand/Malt Beer Base decisions, should be dealt with on a case-by-case basis.”*

125. The Commissioner notes the submission by counsel for the Respondent that due to the fact that the product's aromatised wine base, during the manufacturing process, goes through an “ultrafiltration” process, the result was that the objective characteristics do not correspond to those of a wine of fresh grapes coming under Heading 2205 of the CN. The Commissioner notes that the evidence of the Appellant's representative was that the white wine goes through [REDACTED]. However, the Commissioner considers there is an important distinction between the judgment in *Paderborner* and the product the subject matter of this appeal. The product in *Paderborner* was an intermediate product and was not found to be a beverage. Whereas the product herein is the final product, a beverage consisting of [REDACTED] an aromatised wine-based drink, made from fermented wine of fresh grapes, [REDACTED].

126. Having considered all of the evidence, submissions and case law in this appeal, the Commissioner is not satisfied that the product corresponds to a product in Heading 2208 of the CN, as the product in this appeal did not have the addition of distilled alcohol nor can it be described as undenatured ethyl alcohol. Thus, the Commissioner concludes that the product is not capable of corresponding with products of Heading 2208 of the CN, as the product was not undenatured ethyl alcohol, nor was it a spirit or a liqueur or a spiritous beverage, having regard to the CN and the explanatory notes. It is a material fact that the product was lacking in distilled alcohol but contained only alcohol derived from the fermentation of fresh grapes i.e. wine. The product was also not capable of being classified as undenatured ethyl alcohol, due to the addition of the secondary constituents giving it flavour or aroma. This accords with both the CN Explanatory Note and the HSEN to Heading 2208 of the CN and the Regulations that pertain to ethyl alcohol. The Commissioner will now proceed to set out her reasons for finding that the product does not correspond to a product in Heading 2208 of the CN.

*The explanatory notes*

127. The explanatory notes drawn up as regards the CN, namely the CN Explanatory Note and the HSEN are important aids to the interpretation of the scope of the various tariff headings, but do not have legally binding force. The status of the explanatory notes was not disputed by the parties. Having regard to the CN Explanatory Note for Heading 2208 of the CN, used as an aid to interpret the heading, the Commissioner observes that it states that:

*“Spirits, liqueurs and other spirituous beverages of heading 2208 are alcoholic liquids generally intended for human consumption and are prepared:*

*- either directly by distilling (with or without added flavouring) natural fermented liquids such as wine or cider, or previously fermented fruit, marc, grain, or other vegetable products or*

*- by simply adding various aromatic substances, and sometimes sugar, to alcohol produced by distillation.”*

128. It is apparent to the Commissioner that the product does not align with the CN Explanatory Note as set out in the preceding paragraph, due to the absence of distillation. Furthermore, the CN Explanatory Note for Heading 2208 of the CN states that:

*“The various spirituous beverages are described in the HS Explanatory Note to heading 2208, third paragraph (1) to (18).”*

129. The Commissioner has considered the HSEN and observes that in congruence with the CN Explanatory Note to Heading 2208 of the CN it states that:

*“This heading covers, whatever their alcoholic strength:*

*(A) Spirits produced by distilling....*

*(B) Liqueurs and cordials, being spiritous beverages...(e.g., spirituous beverages produced by distilling, or mixing, ethyl alcohol or distilled spirits, with one or more of the following: fruits, flowers...),*

*(C) All other spirituous beverages not falling in any preceding heading of this Chapter.”*

130. Additionally, the HSEN states that “[i]n addition to undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% volume the heading includes inter alia: (1) Spirits obtained by distilling grape wine or grape marc...(2) Whiskies and other spirits obtained by distilling...(3) Spirits obtained exclusively by distilling fermented products...(4) Spirituous beverages known as gin or Geneva... (5)Vodka obtained by distilling...(6) Spiritous beverages (generally known as liqueurs), such as

*anissette....curaçao...kummel. (7) The liqueurs known as “cremes” because of their consistency or colour. They are generally of relatively low alcoholic content and very sweet (for example, cremes of cocoa, bananas, vanilla, coffee.) The heading also covers spirits consisting of emulsions of spirit with products such as egg yolk or cream. (9) Aquavit and other spiritous beverages obtained by distilling... (10) Spirits obtained by cider... (11) Arrack, spirits ... (12) Spirits obtained by distillation of the fermented juice of locust beans (13) Alcoholic beverages **other than** those with a basis of wine of fresh grapes which fall in **heading 22.05**. (14) Alcoholic lemonade (15) Fruit, nut or vegetable juices containing added alcohol... (16) spiritous beverages, sometimes referred to as food supplements... (17) Beverages formulated to stimulate wine by mixing distilled spirits with fruit or nut juice .... (18) Spirits obtained by distilled fermented sugar beet molasses.”*

131. The Commissioner is satisfied that having considered the opening paragraphs of the HSEN, the product does not correspond to the products described in (A), (B) or (C). It is not “Spirits” produced by distillation (A), nor is it “Liqueurs”, being “*spiritous beverages*” and which words appear to be explained by the following words in parenthesis “*produced by distilling, or by mixing, ethyl alcohol or distilled spirits...*” (B) (this explanation would concur with the CN Explanatory Note which describes “*spiritous beverages*” as being produced by distilling), nor is it (C), having regard to those explanations of the words “*spiritous beverages*”. The Commissioner is satisfied that the product is not derived from distillation and thus, having regard to the explanatory notes to aid the Commissioner’s interpretation of products in Heading 2208 of the CN, the product is not a spiritous beverage.

132. The Respondent argued that number [REDACTED]  
[REDACTED]  
[REDACTED] was important, and which supported classification of the product in Heading 2208 of the CN. Whilst this was posited by counsel for the Respondent the section does reference that the heading also covers [REDACTED]  
[REDACTED]. The Commissioner notes the reference to the word “spirit” again. The product contains no “spirit”, having regard to the word “spirit” as set out at (A) in the HSEN to Heading 2208 of the CN. Moreover, the Respondent agreed that the product was not a liqueur, having regard to the requirement that a liqueur has an abv of 15% or more, which the product does not have.<sup>10</sup> The Commissioner notes that the HSEN states “*The*

<sup>10</sup> Transcript, Day 1, pages 140 & 182

*heading covers, whatever their alcoholic strength*” with reference to (A), (B) and (C). The Commissioner is satisfied that what is important to take from the HSEN is that it was not the abv that was critical to the classification of the product in Heading 2208 of the CN, but the description of the product and as stated, the product cannot be described as a “*spirit*” or “*other spiritous beverages*” having regard to the explanatory notes to Heading 2208 of the CN.

133. The Appellant argued that number (13) “*Alcoholic beverages other than those with a basis of wine of fresh grapes which fall in heading 22.05*” was instructive, wherein it refers to alcoholic beverages other than those with a basis of wine of fresh grapes which fall into Heading 2205 of the CN. The Appellant stated that this clearly delineates that products with a basis of wine of fresh grapes should not be classified in Heading 2208 of the CN, but rather in Heading 2205 of the CN. Furthermore, the Commissioner notes that the HSEN is also of assistance in this regard, and which the Commissioner considers important as an aid to interpreting the headings in this appeal, where it states that:

“*[t]he Heading does not, however, include:*

*(a) Vermouths, and other aperitives with a basis of wine of fresh grapes (heading 22.05).”*

134. The CN Explanatory Note also concurs on this point, where it states that “*[t]his heading does not cover alcoholic beverages obtained by fermentation headings 2203 00 to 2206 00*.” This sentence is congruent with the sentence in the HSEN for Heading 2208 of the CN. Thus, it appears to the Commissioner that both aids to interpretation are clear in their terms that alcoholic beverages obtained by fermentation and/or with a basis of wine of fresh grapes are not covered by Heading 2208 of the CN. Of note also, was that the court in the *Paderborner* decision recognised that the HSEN excluded beverages obtained from fermentation from Heading 2208 of the CN and at paragraph 35 of the judgment the court opined that “*[w]hile it is true that the explanatory notes to the CN relating to heading 2208 exclude from that heading alcoholic beverages obtained from fermentation, it need only be noted, in this case, that this does not concern the ‘malt beer base’, in so far as it is an intermediate product, because .....it is not an alcoholic beverage.*”..

*Siebrand and Paderborner distinguished*

135. The Commissioner considers that both the product in *Siebrand*, it being a mixed product, the GIRs applied and the HSEN being specific in terms of Heading 2206 of the CN and the character of the product being retained, are important distinguishing factors in this appeal. Heading 2206 of the CN applies to mixed fermented beverages, unlike the

product herein, and the CJEU was required to consider a product that was not a product the basis of which was only made from fresh grapes, but a product that was a fermented beverage mixed with distilled alcohol. The distilled alcohol was the majority of the alcoholic content of the beverage. It was for this reason also that the GIRs applied were different to this appeal, another distinguishing factor in determining the objective characteristics of the product. Hence, the Commissioner agrees with the Appellant that the *Siebrand* decision had no application to this appeal, aside from restating the classification test to be applied. In addition, the Commissioner considers that the court in *Paderborner* was considering a product that was not a beverage or intended for human consumption and it was on that basis that it was considered suitable for classification in Heading 2208 of the CN, which covers undenatured ethyl alcohol whether intended for human consumption or industrial purposes. This was also another important distinguishing factor from this appeal.

136. Of notable importance, the court in *Siebrand* stated that in essence the question it must consider was whether fermented alcohol-based beverages to which a certain proportion of distilled alcohol had been added, came within Heading 2206 of the CN as fermented beverages or in Heading 2208 of the CN as distillates. The Commissioner notes the use of the word “distillates” by the court when describing Heading 2208 of the CN. The product herein was not a distillate, because it was not produced by distillation and it had no distilled alcohol added to it. This, the Commissioner considers was the first error the Respondent made when classifying the product. The second error was its application of *Siebrand* to the product herein, on the basis that the product had lost its objective characteristics, namely that of a wine, to afford it classification in Heading 2205 of the CN. That is not a consideration in Heading 2005 of the CN, but rather an express consideration in Heading 2206 of the CN, as per the HSEN for Heading 2206 of the CN. The product was an aromatised wine and as stated aromatised wines produced in accordance with the 2014 Regulation lose the objective characteristics of wine. The Commissioner considers that the Respondent’s third error was to conclude that this was a [REDACTED] liqueur, yet not capable of classification in Heading 2208 of the CN due to the product not having an abv of 15% or more but nonetheless should be classified as “*other spiritous beverages*”. As per the HSEN, liqueurs are classified in Heading 2008 of the CN “*whatever their alcoholic strength*”. The test for classification in the CN is that the decisive criterion is to be sought in the objective characteristics and properties of the product, as defined by the wording of the relevant Heading of the CN. The Commissioner is satisfied that the critical objective characteristic of a product capable of classification in Heading 2208 of the CN is that it is produced by distillation. The Commissioner makes this finding

having regard to the wording of the Heading 2208 of the CN, the explanatory notes, the Regulations and legislation already referred to in the Commissioner's analysis in this Determination.

*The decision of the DAO of the Respondent*

137. The Commissioner notes that the DAO of the Respondent stated in his decision dated 15 January 2024 that:

“.....

*I believe that the Siebrand ruling outlines that classification of a product is based on whether the base product has kept its characteristics in the end product. This was correctly considered in relation to this BTI.....*

*.....following review of the Alcohol Products Tax and Reliefs manual, Section 2.2.7.1 (ii) excludes your product from headings 2204 and 2205 “Whether the particular organoleptic characteristics of the products correspond of those products classified in CN code 2208. The taste can constitute an objective characteristic or property of a product. If the addition of water and other substances (such as syrup, various aromas and colourings and [REDACTED]) results in losing the taste, smell and appearance of a beverage produced from a particular fruit or natural product, that is to say a fermented beverage of CN code 2206, classification in CN code 2208 takes place and the product falls within the “spirits” category for the purposes of Alcohol Products Tax.”*

*From examination of the supporting documents and the State Laboratory report, I am of the opinion that the product is [REDACTED] made from an alcoholic wine base.... I note HSEN note C (7) to heading 2008 states “[REDACTED]*

*[REDACTED]*

138. That “classification of a product is based on whether the base product has kept its characteristics in the end product” was not the test to be applied for classification of the product. Furthermore, the product was not “essentially a [REDACTED] liqueur” nor can the product be classified as a liqueur having regard to the legal meaning of the word “liqueur”. The Commissioner notes the evidence of the Respondent's witness 1 wherein she stated that as the product was not capable of classification as a liqueur due to its abv, the product was classified as “other spiritous beverages”. The Commissioner will address reliance on the German BTI in due course in this Determination. The product herein was not a mixed product of Heading 2206 of the CN, containing both fermented and distilled alcohol. Thus,

the decision of the Respondent's DAO and the reliance on the Respondent's manual, Section 2.2.7.1 (ii) to exclude the product from Heading 2205 of the CN was incorrect, in addition to the incorrect test to be applied to the classification of goods in the CN.

139. The Commissioner is satisfied from the evidence adduced that the Respondent having sent the product to the State Laboratory for organoleptic testing, formed its opinion on the basis of the report of the State Laboratory that this product was a [REDACTED] liqueur. The Commissioner notes the evidence of the Respondent's witness 2 that *"[a]fter reviewing all the different regulations, reviewing the product itself, I had excluded it from heading 2205. The end product did not match any of the products that are listed in the Regulation 251/2014. It didn't look like a wine or taste like a wine any more, or aromatic wine I will say. It has the full characteristics of a [REDACTED] liqueur and the only place that it could go is 2208 and again, ruling it out of 2208 70 as a [REDACTED] liqueur because of its [REDACTED] abv, the only place that it could go was 2208 90 69 00 into the other spirituous beverages."*<sup>11</sup>

140. In its Outline of Arguments the Respondent submitted that as a Contracting Party to the HS Convention, Ireland is obliged, under Article 3, paragraph 1(a)(ii): *"not to modify the scope of the Sections, chapters, headings or subheadings of the Harmonised System"* and stated that this means that classification decisions cannot be taken which involve the expansion of a particular heading or code beyond that provided. The Commissioner is satisfied that classification of the product in Heading 2208 90 69 of the CN, would amount to the Respondent *"expanding the heading or code beyond what is provided"*. The Commissioner is satisfied the Respondent erred in its decision when it stated that the *"Siebrand ruling outlines that classification of a product is based on whether the base product has kept its characteristics in the end product"*. As stated, the *Siebrand* decision can be distinguished on the basis of it being a mixed product and that the HSEN for Heading 2206 of the CN referred to a product retaining the characteristics of a fermented product.

141. Thus, the Commissioner is satisfied that classification of the product in Heading 2208 90 69 entitled *"other spirituous beverages"* was incorrect. The objective characteristics of the product are such that it contained an aromatised wine-based drink [REDACTED] [REDACTED] which was made from fermented wine of fresh grapes, [REDACTED], [REDACTED], in accordance with the 2014 Regulation. This was not in dispute nor was it in dispute that the product contained no distilled alcohol. The Commissioner is satisfied that having regard to GIR 1, that classification shall be determined according to the terms of the

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<sup>11</sup> Transcript Day 1, page 193

headings and any relative section or chapter notes, the Respondent misapplied the law and that classification in Heading 2208 of the CN as “*Undenatured ethyl alcohol of an alcoholic strength of less than 80% vol; spirits, liqueurs and other spiritous beverages*” was incorrect. Furthermore, the Commissioner is satisfied that the Respondent erred when it decided that the product, not capable of being a liqueur and applying GIR 6, was capable of classification in Heading 2208 90 69 as “*other spiritous beverages*”.

142. Having regard to the legislation, submissions and evidence adduced in support of this appeal, and having considered the objective characteristics of the product, namely that it consisted of ██████ of an aromatised wine-based drink, ██████ ██████ the product at issue herein was not a “*spiritous beverage*”, but rather a product made from a wine of fermented fresh grapes. The Respondent accepted that the product cannot be classified as a liqueur, but erred in terms of the reasons why, namely that the products abv was not greater than 15%. As stated, the HSEN for Heading 2008 of the CN states “[t]his heading covers, **whatever their alcoholic strength**”. In fact, the Respondent erred in its failure to recognise that Heading 2208 of the CN is a heading reserved for ethyl alcohol and distillates, namely products containing distilled alcohol and specifically excludes products made from a basis of wine of fresh grapes/fermentation.

143. Applying the test for classification, that classification of goods must be based primarily on their objective characteristics and properties, as defined in the wording of the CN headings and section or chapter notes, it is clear to the Commissioner that having regard to the objective characteristics of the product herein, it does not align to the wording of Heading 2208 of the CN for the following reasons:

143.1. it is not Undenatured Ethyl alcohol, spirits, liqueurs, and other spiritous beverages;

143.2. it is not a ██████ liqueur as it contains no distilled alcohol, as is envisaged by Heading 2208 of the CN;

143.3. the explanatory notes, namely the HSEN and the CN Explanatory Note, which are an aid to interpretation, clearly absent products with a “*basis of wine of fresh grapes*” and “*alcoholic beverages obtained by fermentation*” from classification in Heading 2208 of the CN;

143.4. having regard to the Finance Act 2003 and the Regulations on the interpretation of the word “spirit”, it is clear that Heading 2208 of the CN is intended to cover beverages obtained by distillation. In fact, the court in *Siebrand* described the heading as “the distillates”.

144. The classification of goods must be based primarily on their objective characteristics and properties, as defined in the wording of the CN headings and section or chapter notes. The Respondent's task in classification under GIR 1 was to consider the objective characteristics of the product and its intended use. Moreover, when considering the CN Explanatory Note and the HSEN, the Commissioner considers that they are a consistent aid to interpretation. Taking both into consideration as an aid to interpreting the heading, the only conclusion that can be formed is that Heading 2208 of the CN is reserved for Spirits, Liqueurs and other spirituous beverages, produced by distillation. The Heading also includes, as stated, Undenatured Ethyl alcohol, which was not the product herein. Thus, the heading is not for classification of products, the basis of which are a wine of fresh grapes produced by fermentation. The Commissioner finds that the Respondent incorrectly classified the product in Heading 2208 of the CN for the reasons set out in the preceding paragraphs.

145. As the Commissioner has found that the Respondent was incorrect to classify the product in Heading 2208 of the CN, having regard to its objective characteristics, the Commissioner will now proceed to consider the heading contended for by the Appellant, namely Heading 2205 of the CN; "*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*".

#### *Heading 2205 of the CN*

146. As set out earlier in the Determination, Heading 2205 of the CN is reserved for classification of products with the objective characteristics of a "*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*".

147. The Commissioner is satisfied that GIR 1 requires the Commissioner to limit her consideration to the terms of the heading, and any relative section or chapter notes and that the decisive criterion for the classification of goods for customs purposes is in general to be sought in the objective characteristics and properties of the goods. However, the Commissioner may have regard to the explanatory notes in interpreting the scope of the headings. There was no section, or chapter notes which assisted with the classification of the Appellant's product. There are relevant explanatory notes for both the HS and the CN for Heading 2205 of the CN, which the Commissioner has consulted to assist her with her interpretation of Heading 2205 of the CN. Although as stated, the explanatory notes are an aid to interpretation only and not binding. Moreover, specificity is important when GIR 6 is being considered, as it relates to the sub-headings.

148. The labelling that was presented to the Respondent [REDACTED]  
[REDACTED]





*the annex of 251/2014, where it's totally permissible to change the character, the organoleptic character away from wine and that is clearly set out in the regulations about the aromatised wine products".*<sup>15</sup> The Commissioner noted the exchange between counsel for the Respondent and the Appellant's representative in relation to the objective characteristics of the product and the Commissioner considers it useful to set out the exchange hereunder, in circumstances where the Appellant's representative argued that the product was not a wine, but an aromatised wine, which Heading 2205 of the CN provides for, having regard to the words in that heading:

*"Q....so vermouth is specifically classified under 2205, it's not classified as a wine, it's classified under 2205?"*

*A. Oh it is 2205, it is, yeah.*

*Q. So there is a specific one for wine, which is 2204?"*

*A. Yeah, but we're not going, we're an aromatised one, which is a totally different category altogether.*

*Q. But when you say, when you draw the correlation between vermouth and wine I'm just trying to point out that 2204 is for wine; 2205 is for vermouth?"*

*A. Yeah, 2205 is for vermouth and other wines of fresh grape.*

*Q. Well other wines, let's just be specific about it, other wine of fresh grapes flavoured with plants or aromatic substances?"*

*A. Correct, which is the same as, is exactly what we're doing."*<sup>16</sup>

152. Counsel for the Respondent suggested to the Appellant's representative that the objective characteristics of the product were no longer that of a wine, or anything akin to a Vermouth. The Commissioner notes the response of the Appellant's representative was that: *"It is akin to a vermouth because vermouth is not akin to the original wine either, it has herbal spice as the main essential character of that, so we're in the same category. And you note very easily that it's a spirituous, you're putting us into the spirituous category there, there's no spirit in our product."*<sup>17</sup>

153. As already referred to in this Determination, part of the Respondent's argument was that the product was not something that would be, *"from a consumer's perspective, comparable with taking a glass of wine or vermouth, that this is something more akin to*

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<sup>15</sup> Transcript Day 1, pages 85 & 86

<sup>16</sup> Transcript, Day 1, page 86

<sup>17</sup> Transcript, Day 1, page 88

*a liqueur, or something that would be taken as a digestif*". Aside from that statement lacking any supporting evidence of consumer behaviour, the Commissioner notes that the Appellant's representative stated in response that: "*It's an aromatised wine product and vermouth has herbal spices, we have something else, ...We have other flavours in it.*"<sup>18</sup>Counsel for the Respondent suggested to the Appellant's representative that "*your product as it appears, as it smells and with the proposed packaging that you've identified to Revenue as part of the decision-making, it doesn't at all retain the appearance of a wine or a vermouth-based like product?*" The Appellant's representative gave evidence that "*[t]he regulations governing our product says that it must lose the essential character of the wine so as not to mislead the consumer*".<sup>19</sup>The Commissioner considers that speculation both from the Respondent's counsel and expert witness was unhelpful when determining the objective characteristics of the product and the intended use of the product.

154. The Commissioner notes that the two principal constituents of the product are [REDACTED] aromatised wine-based drink [REDACTED]. The aromatised wine base, as set out heretofore in this Determination was comprised [REDACTED].<sup>20</sup>This was confirmed by the technical bulletin submitted by the Appellant. The Commissioner has considered the product "Vermouth". Vermouth is an aromatised wine.<sup>21</sup> The product at issue herein was an aromatised wine-based drink. Both Vermouth and the product are made in accordance with the 2014 Regulation. This, the Commissioner considers, is a material fact of importance in this appeal, in circumstances where the Respondent has sought to argue that the product no longer resembled a wine of fresh grapes due to "ultrafiltration", as it was incorrectly described by counsel for the Respondent. Vermouth and the product are both aromatised wines but differ in that the product had the addition of [REDACTED] rather than "*Artemisia species*" which is the flavouring associated with Vermouth.<sup>22</sup>The Respondent referred to the product as having a [REDACTED]<sup>23</sup>, [REDACTED]<sup>24</sup> and that it had "*changed significantly from a wine obtained from dried grapes*".<sup>25</sup> Moreover, the Respondent's expert witness opined that [REDACTED] not

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<sup>18</sup> Transcript, Day 1, page 89

<sup>19</sup> Transcript, Day 1, page 94

<sup>20</sup> Article 3, 2014 Regulation

<sup>21</sup> 2014 Regulation, Annex II (3) Vermouth

<sup>22</sup> 2014 Regulation, Annex II (3) Vermouth

<sup>23</sup> Transcript, Day 1, page 192

<sup>24</sup> Transcript, Day 1, page 192

<sup>25</sup> Transcript, Day 2, page 43

an aromatic, [REDACTED]

[REDACTED].<sup>26</sup> The Appellant's representative strongly disagreed and argued that [REDACTED]  
[REDACTED]

155. The Respondent sought to argue that the process of filtration means that the product no longer resembled a wine of fresh grapes. The Respondent's expert witness used the words "highly filtered". The Commissioner does not accept this argument, nor does it mean that if it were so, it would be a product capable of classification in Heading 2208 of the CN. The product herein has not been subjected to any distillation process as per the Commissioner's findings in this Determination. This, the Commissioner considers, is illustrative of the misunderstanding of the product at issue in this appeal. The process of filtration in respect of aromatised wine-based products is permitted in accordance with the 2014 Regulation.

156. The Commissioner notes that classification in Heading 2205 of the CN is reserved for "Vermouth", which the Commissioner has considered in the preceding paragraph, and she has concluded that Vermouth was comparable to the product, such that both are an aromatised wine. Heading 2205 of the CN is also reserved for "*other wine of fresh grapes flavoured with plants or aromatic substances.*" The product is not flavoured with plants; thus, the Commissioner considers that the relevant words for consideration are the words "aromatic substances". The Commissioner has found as a material fact in this appeal that the product was made from a wine of fresh grapes, having regard to its ingredients, namely that of the aromatised wine-based drink being produced in compliance with the 2014 Regulation. The Commissioner notes that the 2014 Regulation, as set out previously in this Determination, permits certain flavouring of aromatised wine or an aromatised wine-based drinks. These include *inter alia* aromatic herbs and/or spices and/or flavouring foodstuffs. In addition, in accordance with Article 6 of the 2014 Regulation, aromatised wines may be "sweet" in taste.

157. The Commissioner has considered the HS and CN Explanatory Note to Heading 2205 of the CN as set out previously in this Determination, but considers it useful to restate the notes again, as the explanatory notes are an aid to interpretation. The HSEN for Heading 2205 of the CN provides *inter alia* that: "*This heading includes a variety of beverages (generally used as aperitives or tonics) made with wine of fresh grapes of heading 22.04, and flavoured with infusions of plant substances (leaves, roots, fruits, etc.) or aromatic substances.....*" The CN Explanatory Note for Heading 2205 of the CN provides that: "*wines covered by this heading and described in the HS Explanatory Note to heading*

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<sup>26</sup> Transcript, Day 1, page 173

2205 include: beverages known as ‘Marsala all’uovo’, ‘Marsala alla mandorla’ and ‘Crema di Marsala all’uovo’ which are based on Marsala wine, and flavoured with egg yolks, almonds and other aromatic materials”. The explanatory notes do not define the words “aromatic substances”. The Commissioner also observes the use of the words “aromatic materials”.

158. The Commissioner notes the references in the CN Explanatory Note to beverages such as “Crema di Marsala all’uovo” which the Commissioner notes are flavoured with egg yolks. From open-source material the Commissioner observes that Marsala all’uovo is an aromatised wine with the addition of egg yolk and ingredients such as sugar, caramel and vanilla. The Commissioner is satisfied that the addition of egg yolk as an aromatic substance, it being a flavouring foodstuff, [REDACTED] also a flavouring foodstuff, as an “aromatic substance” or “aromatic materials”. Hence, having regard to the explanatory notes and the words “aromatic substances” the Commissioner is satisfied to accept the Appellant’s argument that [REDACTED] be considered an aromatic substance for the purposes of classification in Heading 2205 of the CN. This is in circumstances where it is clear from Heading 2205 of the CN and its explanatory notes that it is envisaged that Heading 2205 of the CN covers flavouring foodstuffs, such as egg yolk. The Commissioner is satisfied that the Respondent failed to consider the significance of the addition of egg yolk to aromatised wine as being a comparator to the addition of [REDACTED] product in this appeal.

159. Applying the test for classification and considering the objective characteristics of the product, the Commissioner is satisfied that the product is an aromatised wine-based drink with the addition of [REDACTED]  
[REDACTED]  
[REDACTED] Whilst the product did not have the organoleptic properties of a wine of fresh grapes that was not a requirement of Heading 2205 of the CN. Following a perusal of the products intended to be captured in Heading 2205 of the CN, as set out in the explanatory notes and the products in the wording of the Heading of 2205 of the CN, it is clear to the Commissioner that Heading 2205 of the CN is intended for classification of aromatised wines and products of a similar nature i.e. products made from a wine of fresh grapes flavoured with plants or aromatic substances. As the Commissioner has found, the product “Vermouth” is itself an aromatised wine, as is “Marsala all’uovo”. The Commissioner is satisfied that the objective characteristics of the product are such that it corresponds with the words of Heading 2205 of the CN to be classified therein.

160. The Commissioner is satisfied that having regard to the totality of the evidence and submissions in this appeal, the products objective characteristics are such that it was made from a wine of fresh grapes and flavoured with aromatic substances, namely [REDACTED]. The Commissioner is satisfied that the product, [REDACTED] does not preclude it from classification in Heading 2205 of the CN. The Commissioner notes from open-source material that both Vermouth itself is a sweetened product and Marsala all'uovo has a sweet creamy consistency and flavour, with the addition of egg yolk. The 2014 Regulation permits the addition of sugar and of foodstuffs as aromatics. The Commissioner is satisfied that the product, being an aromatised wine-based drink, with the addition of its aromatic substances, namely [REDACTED], falls appropriately into the Heading 2205 of the CN.

161. The Commissioner is further satisfied that this finding concurs with the HS and CN Explanatory Notes which are aids to interpretation. Moreover, in circumstances where the aromatised wine is produced in compliance with the 2014 Regulation, it specifically envisages that an aromatised wine loses the organoleptic characteristics of a wine of fresh grapes. Heading 2205 of the CN has no requirement as to a product's organoleptic properties, classification of a product is based on its objective characteristics, as the CJEU has established in a multitude of cases. The Commissioner finds that the product was an aromatised wine-based drink, akin to products such as Vermouth and Marsala all'uovo and should appropriately be classified in Heading 2205 of the CN.

#### *BTI decisions*

162. It is clear from the evidence that the Respondent reviewed certain previous BTIs to seek out comparators to the product, to assist with its decision as to where the product should be classified appropriately. The Respondent placed significant emphasis on previous BTIs that it stated were relevant in terms of consistency of classification and comparators of products. The Commissioner has considered the Respondent's reliance on previous BTIs.

163. The Commissioner has considered the German BTI which the Respondent relied on when making its decision as to classification of the product in Heading 2208 of the CN. The DAO of the Respondent relied on it in making his decision. He stated that "*BTI...issued by Germany for a similar product has a classification under heading 2208*". The Commissioner considers that the German BTI was not a comparator or similar to the product herein, as the product of the German BTI had the addition of distilled alcohol. Hence, it was not capable of being a comparator to the product, as the product herein

had no addition of distilled alcohol, and the Respondent was incorrect to place any reliance on the BTI in terms of classification of the product.

164. In relation to the Spanish BTI, the Commissioner notes that the product was described as a wine-based flavoured drink with a natural orange and cardamom aroma, with a light orange colour and orange juice flavour, spices and menthol notes, with bubbles and 5.5% abv. The Respondent relied on the Spanish BTI as a comparator as it was a wine-based flavoured drink classified in Heading 2208 of the CN. The Appellant sought to distinguish the BTI on the basis that the product, with an abv of 5.5%, was never capable of classification in Heading 2205 of the CN which requires a minimum abv of 7% to be classified therein. The Commissioner notes that the CN Explanatory Note states that “[p]roducts having an actual alcoholic strength by volume of less than 7% vol fall in heading 2206 00”. The Commissioner was presented with no other explanation why the product, the subject of the Spanish BTI, being described as an aromatised wine, was not classified in Heading 2206 of the CN, but rather was classified in Heading 2208 of the CN. Hence, in the absence of further information the Commissioner can only conclude that the Spanish BTI could be of no assistance to the Respondent in terms of classification of the product and did not support the position that the product herein should, hence, be classified in Heading 2208 of the CN.

165. The Commissioner has also considered the most recent BTI submitted by the Appellant in support of its appeal, dated August 2025. The Commissioner notes that the product is a flavoured wine-based beverage, with an abv of 7.1%, the wine content is at least 51% and it was classified in Heading 2205 of the CN. The Respondent argued that on the face of the BTI it implied that the product was correctly classified as it was a wine-based drink but that there was limited information to conclude otherwise. The Appellant argued that it was a product similar to the product herein and that it supported the Appellant’s appeal for classification in Heading 2205 of the CN. Whether it was a comparator or not, the Commissioner notes that it was a BTI that classified a flavoured wine-based beverage with a 7% abv in Heading 2205 of the CN. The Commissioner has been presented with no detailed evidence of the flavourings in the product the subject of the BTI.

166. Therefore, the Commissioner is satisfied that the BTI decisions submitted in this appeal are of little assistance to the Commissioner in respect of a comparator for classification of the product.

### *Conclusion*

167. 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, or a decision of the

Respondent was incorrect. Having considered the totality of the submissions in this appeal, including the evidence of the Appellant and the documentation submitted in support of its appeal, the Commissioner is satisfied that the Appellant has shown on balance that the BTI decision issued by the Respondent, was incorrect.

168. The Commissioner is satisfied that classification of the product in Heading 2208 90 69 entitled "*other spiritous beverages*" was incorrect. The objective characteristics of the product are such that it contained an aromatised wine-based drink [REDACTED] in accordance with the 2014 Regulation. Furthermore, the product had an abv [REDACTED]. This was not in dispute nor was it in dispute that the product contained no distilled alcohol.

169. The Commissioner is satisfied that having regard to GIR 1, that classification shall be determined according to the terms of the headings and any relative section or chapter notes, the Respondent misapplied the law and that classification in the Heading 2208 of the CN as "*Undenatured ethyl alcohol of an alcoholic strength of less than 80% vol; spirits, liqueurs and other spiritous beverages*" was incorrect. Furthermore, the Commissioner is satisfied that the Respondent erred when it decided that the product, not capable of being a liqueur, and applying GIR 6 was capable of classification in Heading 2208 90 69 of the CN as "*other spiritous beverages*".

170. Having regard to the legislation, submissions and evidence adduced in support of this appeal, and having considered the objective characteristics of the product, namely that the product consisted [REDACTED] an aromatised wine-based drink with the addition of [REDACTED] the Commissioner is satisfied that the product at issue herein was not a "*spiritous beverage*", but rather an aromatised wine-based drink, made from a wine of fermented fresh grapes. The Respondent accepted that the product cannot be classified as a liqueur, but erred in terms of the reasons why, namely that the abv was not greater than 15%. In fact, the Respondent erred in its failure to recognise that Heading 2208 of the CN is a heading of the CN reserved for ethyl alcohol and distillates, namely products containing distilled alcohol.

171. The product herein is not a distillate, because it is not produced by distillation and it has no distilled alcohol added to it. This, the Commissioner considers is the first error the Respondent made when classifying the product. The second error was its application of the *Siebrand* decision to the product herein, on the basis that the product had lost its objective characteristics, namely that of a wine, to afford it classification in Heading 2205 of the CN. That was not a consideration in Heading 2205 of the CN, but rather an express

consideration in Heading 2206 of the CN, as per the HSEN for Heading 2206 of the CN. As stated, aromatised wines produced in accordance with the 2014 Regulation lose the objective characteristics of wine. The Commissioner considers that the Respondent's third error was to conclude that this was a [REDACTED] liqueur, yet not capable of classification in Heading 2208 of the CN due to the product not having an abv of 15% or more but nonetheless should be classified as "*other spiritous beverages*". As per the HSEN, liqueurs are classified in Heading 2208 of the CN "*whatever their alcoholic strength*". The Commissioner is satisfied that the critical objective characteristic of a product for classification in Heading 2208 of the CN is that it contains alcohol produced by distillation. The product herein contains no distilled alcohol.

172. Applying the test for classification and considering the objective characteristics of the product, the Commissioner is satisfied that the product is an aromatised wine-based drink [REDACTED]. The product itself was [REDACTED] aromatised wine-based drink, with [REDACTED]. Whilst the product did not have the organoleptic properties of a wine of fresh grapes, that was not a requirement of Heading 2205 of the CN for classification therein.

173. The Commissioner is satisfied that having regard to the totality of the evidence and submissions in this appeal, the product's objective characteristics are such that it was made from a wine of fresh grapes and favoured with aromatic substances, namely [REDACTED]. The Commissioner is satisfied that the product, having [REDACTED] did not preclude it from classification in Heading 2205 of the CN. The Commissioner is satisfied that the product being an aromatised wine-based drink, with the addition of its aromatic substances, namely [REDACTED] falls appropriately into the Heading 2205 of the CN.

174. The Commissioner is further satisfied that this finding concurs with the HS and CN Explanatory Notes which are aids to interpretation. In circumstances where the aromatised wine was produced in compliance with the 2014 Regulation, it specifically envisages that an aromatised wine loses the organoleptic characteristics of a wine of fresh grapes. Heading 2205 of the CN has no requirement as to a product's organoleptic properties. Classification of a product is based on its objective characteristics, as the CJEU has established in a multitude of cases. The Commissioner finds that the product was an aromatised wine-based drink and should appropriately be classified in Heading 2205 of the CN.

175. In conclusion and having considered all of the evidence, documentation and submissions in this appeal, the Commissioner finds that the Appellant has discharged the burden of proof and has shown that the Respondent was incorrect in its decision to classify the product in Heading 2208 90 69 of the CN as “*other spiritous beverages*”. The Commissioner is satisfied that applying the well settled interpretive criteria identified by the CJEU with regard to classification in the CN, and in accordance with GIRs 1 and 6 for the interpretation of the CN, the product should be afforded a classification in the Heading 2205 of the CN, based on its objective characteristics. The product is an aromatised wine-based drink and is capable of classification as “*Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances*” in Heading 2205 of the CN.

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176. The Commissioner notes that the Appellant submitted that it did not receive a copy of the State Laboratory report from the Respondent, despite request. The Appellant’s representative stated that a copy of the report was received in July 2025, with the Respondent’s Outline of Arguments in this appeal, but that the Appellant had not received the report otherwise nor did it receive a copy of the report detailing the analysis on its product. The Appellant’s representative stated that the Appellant made a Freedom of Information request to the Office of the Information Commissioner in respect of the refusal of the Respondent to furnish the report to the Appellant. The Appellant’s representative posited that the Appellant had a right to understand the decision-making process of the Respondent, in terms of its product and the classification of that product in the CN.

177. It is important to state that the Commissioner has no supervisory jurisdiction over the Respondent, nor does the Commissioner have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent in its dealings with taxpayers. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997. Moreover, the Commissioner’s jurisdiction “*is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA*”, as per *Lee v The Revenue Commissioners* [2021] IECA 18.

178. Thus, the Commissioner is satisfied that she cannot consider allegations of procedural errors or unfairness on the part of the Respondent. Any such allegations could only be addressed by way of judicial review proceedings in the High Court. The Commissioner notes that the Appellant did not request that the Commissioner issue a direction in

accordance with section 949E TCA 1997, that the Respondent furnish the Appellant with a copy of the report and/or any other information relating to the technical examination of the product. It would have been open to the Commissioner to consider such an application, as was confirmed in the judgment of Ms Justice Phelan in the High Court in *Michael Quigley v The Revenue Commissioners and the Tax Appeal Commission* [2023] IEHC 244, wherein she held that in the interests of the orderly and fair conduct of the hearing, it is appropriate that a Commissioner issue a direction that further information be provided.

### **Determination**

179. As such and for the reasons set out above, the Commissioner determines that the Appellant has succeeded in its appeal and has shown that the decision of the Respondent to classify the product in Heading 2208 90 69 of the CN, was incorrect.

180. Therefore, for the reasons set out above, the Commissioner finds that the appropriate heading for classification of the product is Heading 2205 10 10 of the CN, having regard to the objective characteristics of the product.

181. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

### **Notification**

182. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

183. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

*Claire Millrine*

Claire Millrine  
Appeal Commissioner  
4 March 2026

**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.**