AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

80TACD2026

Between

[redacted]

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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**Contents**

## 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 against a decision of the Respondent dated 12 January 2024, in relation to a Notification of Customs Debt in the agreed reduced amount of €93,020.62.

2. The Notification of Customs Debt was issued pursuant to Article 104 of the Union Customs Code (Regulation (EU) No 952/2013 of the European Parliament and the Council of 9 October 2013 laying down the Union Customs Code) ("the UCC").

3. The Notification of Customs Debt arose consequent to the Respondent opening a Post Clearance Intervention ("PCI"), in relation to the importation of motor vehicles by the Appellant which were the subject of claims under Great Britain ("GB") Preferential Origin ("PO") ("GBPO"). The customs duty related to the importation of 71 vehicles during the period 1 January 2021 to 31 June 2021 ("the relevant period"). By claiming GBPO, the customs duty rate on the importation of the vehicles was reduced to 0%.

4. Motor vehicles being imported from GB that qualify for PO attract a 0% rate of customs duty. Motor vehicles that are not entitled to GBPO attract various rates of duty, the most common being 10%. The Appellant contended that despite any entitlement to claim a benefit on the basis of GBPO, the Appellant was a customs representative only, not the importer and thus, had no liability for the said customs debt.

5. On 8 November 2023, the Appellant made a first stage appeal to the Designated Appeals Officer ("DAO") of the Respondent and on 12 January 2024, the DAO issued a decision to the Appellant refusing the Appellant's first stage appeal.

6. On 9 February 2024, the Appellant duly appealed the decision of the Respondent to the Commission by submitting a Notice of Appeal. On 18 June 2024, in accordance with section 949Q TCA 1997, the Appellant submitted a Statement of Case and on 17 June 2024, the Respondent submitted a Statement of Case. Furthermore, on 30 September 2024, in accordance with section 949S TCA 1997, the Appellant and the Respondent submitted their respective Outline of Arguments. The Commissioner has considered all of the documentation submitted in this appeal, including prehearing documentation submitted by the parties.

7. On 16 and 17 December 2024, a hearing of the appeal took place and on 1 April 2025, a determination issued in the Appellant's appeal. Subsequent to the determination being issued, in accordance with section 949AP TCA 1997 the Appellant notified the Appeal

Commissioner in writing to request that the Appeal Commissioner state and sign a case for the opinion of the High Court. A draft Case Stated was prepared and the parties were invited to make representations on the draft in accordance with section 949AQ TCA 1997.

8. However, on 7 August 2025, the Commission notified the parties that the Appeal Commissioner who had determined the Appellant's appeal had since vacated office, prior to the signing of the Case Stated. Therefore, in accordance with section 949AX TCA 1997 the Commission informed the parties that they may choose whether to have the appeal reheard by another Appeal Commissioner, adjudicated by another Appeal Commissioner in accordance with section 949U TCA 1997 or the remaining steps taken in the signing and stating of the Case Stated to the High Court. By correspondence dated 13 August 2025, the Appellant informed the Commission that he would like to choose the option of having the appeal reheard by another Appeal Commissioner. By correspondence also dated 13 August 2025, the Respondent requested that the Case Stated be signed, given that the process was at an advanced stage. Accordingly, as it was the Appellant's appeal and request for a Case Stated, the Commissioner acceded to the request that the Appellant's appeal be rescheduled for hearing by another Appeal Commissioner, in accordance with section 949AX TCA 1997.

9. The appeal proceeded by way of a new hearing that took place on 3 March 2026. The Appellant was represented by [redacted] ("the Appellant's Solicitor") and the Respondent was represented by senior counsel. The Appellant gave evidence at the hearing of the appeal, and the Respondent called four witnesses to give evidence at the hearing of the appeal. The Respondent's witnesses were as follows:

   (i) [redacted] ("the Respondent's witness 1");

   (ii) [redacted] ("the Respondent's witness 2");

   (iii) [redacted] ("the Respondent's witness 3").

   (iv) [redacted] ("the Respondent's witness 4")

10. The Appellant confirmed that he wanted the hearing to proceed in private. Therefore, this Determination will be redacted accordingly prior to its publication, in accordance with section 949AO of the TCA 1997.

**Background**

11. The Appellant is a customs declarant whose business includes lodging declarations for second hand vehicles being imported from the United Kingdom ("UK") into Ireland. The Appellant did not own the vehicles, trade in vehicles nor was he a commercial importer.

The Appellant was registered for customs and obtained his own Economic Operators Registration and Identification number ("EORI number")

12. In 2021, the Appellant established a company for the purpose of providing customs clearance services, in particular in relation to the importation of motor vehicles from the UK to Ireland. The Certificate of Incorporation from the Companies Registration Office submitted by the Appellant confirmed the company name as [redacted] ("the company") which was incorporated on 15 February 2021.

13. In 2021, the Appellant lodged customs declarations to the Respondent's Automated Import System ("AIS") in respect of imported vehicles, for which the Appellant claimed GBPO. The AIS is the Respondent's national electronic import system. The AIS handles the validation, processing, duty accounting and clearance of customs declarations. When submitting a customs declaration into the AIS, certain mandatory information must be completed in order for the goods to receive an import routing, to correctly calculate and account for any duty at import and for the goods to be cleared for import into the State.

14. In relation to the vehicles at issue, the Appellant completed customs formalities and declarations via the AIS. By claiming GBPO, the customs duty rate on the importation of the vehicles was reduced from 10% to 0%. The Commissioner has had the benefit of a list of the vehicle imports at issue, which was helpfully provided in the bundles of documentation submitted by the parties to this appeal.

15. The Respondent submitted that to aid efficient processing and to ensure that commercial trade is not unduly delayed, the Respondent does not always request supporting documents at the point of entry, but within three years of importation the Respondent is entitled to subject any import to an audit or documentary check. The classification of an import as "orange", "red" or "green" at the point and time of entry does not affect the entitlement to later subject the goods to a check or audit. It is the case that the vehicles, the subject of this appeal, were "green" routed at the point of import in 2021, but the green routing of goods was not dependent upon a check having been made and verified at the point of entry.

16. On 25 January 2021, subsequent to the Appellant lodging customs declarations to the AIS, the Respondent issued correspondence to the Appellant notifying him that it had opened a PCI in relation to the importation of the vehicles and certain selected import declarations up to and including 19 January 2021. Thereafter the PCI was expanded to include import declarations up to and including 30 June 2021. The Respondent submitted that the Appellant was afforded a reasonable opportunity to provide the necessary documentation to support his claims for GBPO on the motor vehicles, but he failed to do

so. In addition, the Appellant failed to provide empowerment documentation in relation to his assertion that he was acting as a customs representative on behalf of the importers, being the garages and/or motor dealers.

17. On 31 March 2023, the Respondent issued correspondence to the Appellant setting out a summary of the results reached following its review of the selected import declarations. In addition, the Respondent also provided customs guidelines and procedures for the relevant period. In its correspondence, the Respondent stated that:

*"The following outlines a summary of the results reached following my review of the selected import declarations, in addition to customs guidelines and procedures up to and including 30/06/2021.*

*Based on my review I estimate a customs debt of to be outstanding, as per attached spreadsheet. A detailed breakdown for each vehicle is contained in the spreadsheet.*

*There is a total of Eighty-Five (85) Vehicles identified where Customs Duty of 10% is deemed due. Seventy-seven (77) of these have been imported claiming UK Preferential Origin (Preference Code 300) while seven (7) have been imported claiming Returned Goods Relief (RGR - Preference Code 100).*

*I note that there is no MRN provided for* [redacted] *although you have provided an invoice for this vehicle.*

*For the imports claiming preferential origin the preference has been claimed using U116 - Statement on Origin. However, the supporting documentation submitted for these declarations has been deemed insufficient to prove entitlement to the preference. For the imports claiming RGR the supporting documentation submitted for these declarations has been deemed insufficient to prove entitlement to the relief.*

*As outlined in the attached spread sheet the reasons for rejecting your claim for Preferential Origin/RGR are as follows:*

- *No documents received.*
- *Statements on Origin are post-dated.*
- *In the case of vehicles claiming RGR, proof of initial date of export from the EU to the UK has not been supplied.*
- *Documents to support the Statements on Origin as per Article 59 of the EU UK TCA have not been received.*

- *In some cases, two sets of the same invoices have been received the first ones do not have a Statement on Origin while the second set, received later, have Statements on Origin on them.*
- *For* [redacted] *the Statement on Origin is not dated, and no vehicle details or invoice number is included.*
- [redacted] *no MRN and no supporting documents received*

*The rules of origin are very specific, as are the regulations regarding retention of all documents relating to import declarations. I have deemed that the documents submitted by you to support the claims for UK Preferential Origin/RGR to be insufficient in detail. For UK Preferential Origin to be accepted, a detailed breakdown of the component parts and their origin is required. For Returned Goods Relief proof of the date the vehicles left the EU for the UK is required. The following is an outline of these regulations and I have included links to more detailed documents in relation to the EU-UK TCA.*

*<u>Representative Status</u>*

*At a meeting in Revenue House,* [redacted] *on 11/11/2022 you were asked to clarify whether you were a direct or indirect representative for the Importers. You first stated that you were an indirect representative. However, when HEO* [redacted] *explained the difference between direct and indirect representation you then stated you were a direct representative. On being asked whether you were in possession of any agreements with the importers to allow you to represent them you stated that paperwork was already submitted to [the Respondent] as you would be unable to act on the importer's behalf otherwise.*[redacted] *again asked you if you had signed documents of empowerment from the importers in your possession and you again stated that paperwork was already submitted to [the Respondent] as you would be unable to act on the importer's behalf otherwise. You then agreed to forward a copy of any such documents to* [redacted]

*On the 14/11/2022 you confirmed via email that you did not have the signed authorisation form to act as a direct representative and that you did not complete the type of representation on the declaration*

*……[i]n accordance with the principles of the right to be heard, please submit to me, any comments, or disagreements that you may have on the above findings within 30 days. Any response should be supported by documented evidence.*

*Following the conclusion of Right to be Heard procedure, if a debt is established then interest and penalties may be chargeable under Article 114.2 of the Union Customs Code*."

18. By undated correspondence, the Appellant requested a right to be heard. On 17 August 2023, the Respondent issued correspondence to the Appellant stating that it had determined that the correct decision in line with legislation had been made during the PCI and the claims made in the declarations covered in the PCI intervention "*remain unproven and therefore the liability is deemed to be due and [the Appellant], is deemed to be the accountable party as outlined in this and previous correspondence issued by [the Respondent].*"

19. On 31 August 2023, the Appellant replied to the Respondent's correspondence stating *inter alia* that:

> *"Under no circumstances can [the Appellant] be liable in a personal capacity because the trade as a customs agent was conducted by a company. This also extends to pre incorporation trade undertaken on behalf of the company prior to formation.*
>
> *The company was an agent of the importers and this agency was more than adequately disclosed. The expectation of a specific format of empowerment cannot create personal liability where it is apparent that the person is acting as an agent.*
>
> *……………*
>
> *Basic principles of legitimate expectations, constitutional fair procedures, Customer Service Charter, article 41 and article 47 EU Charter of fundamental rights requirements as to fair administration and fair procedures requires that [the Respondent] accept the retrospective statement on origin in the context of early day Brexit trading where there was an honest mistake. Our client has attempted to procure information from motor manufacturers but this is not available to him. Equality of arms and fair procedures requires that Revenue undertake the verification procedure in the EU UK TCA.*
>
> *Therefore the purported holding of our clients to liability is against best practice and invalid and the matter should be dealt with as a verification in accordance with the EU UK TCA*
>
> *Given that the entry declaration box identifying the debtor was not completed (the sine qua non of a declaration) the declarations were not legally acceptable; and should*

*have been rejected as a matter of law (incomplete declarations). They were void ab initio.*

*…………...*

*In accordance with the settled jurisprudence of the CJEU, the relevant declarations can be subsequently amended to show the true position at the time of importation regarding - The declarant and debtor. - The claims to preferential origin. The binding CJEU jurisprudence applicable may be summarised as follows ; Case C97/19 , Pfeifer & Langen GmbH & Co. KG v Hauptzollamt Köln; ECLI:EU:C:2020:5*

*……………………*

*Under the UK EU TCA it is the importer who is mandated by overriding international law to make preferential claims to origin and is solely responsible for the validity and accuracy of such claims. This applies to imports from the UK and there can be no indirect representation involving claims to origin. Consequently, the agency involved had , as a matter of law and fact, to be direct.*

*Therefore, the importer only can be liable. The EU UK TCA does not provide for any role for a declarant.*

*All goods in United Kingdom at the moment of exit from the European Union were exported within the meaning of Article 203.Based on the avoidance of double taxation, which is an established general principle of the law the provisions of the Returned Goods Relief provisions apply . To that end, the provisions on which the RGR turn have to be read mutatis mutandis, and in the light of their underpinning principle, namely the avoidance The additional duty demands are a flagrant violation to of the EU (and international) principle against double taxation. In that direction , the Revenue Commissioners ; Appeal Commissioners; High Court; Court of Appeal; and the Supreme Court are bound by a decision by the ECJ outlawing double duties in an EU customs context holding that it was totally at variance with the very concept of a Customs Union.*

*Therefore, all goods in the UK at 11pm on 31 December 2020 qualify for returned goods relief."*

20. On 9 October 2023, correspondence issued from the Respondent to the Appellant outlining its findings in the PCI. The findings of the PCI were that 71 vehicles covered by the PCI were not entitled to claim GBPO, as the Appellant had failed to provide sufficient evidence to prove the entitlement to GBPO. The correspondence stated *inter alia* that:

*“…………………….*

*Summary of Key Points*

*I have addressed in detail each of the key points above. However, I will address each key point as follows (Your arguments are synopsised in italics):*

1) *Under no circumstances can [the Appellant] be liable.*

   *This argument is rejected under Article 19 of the Code: Persons who fail to state that they are acting as a customs representative shall be deemed to be acting in their own name and on their own behalf.*

2) *(a) The company was an agent of the importers.*

   *This argument is rejected as [the Appellant] has not provided copies of agreements of any kind to prove that it was the Company, [the company], that has responsibility.*

   *(b) Therefore, our client the company is not liable, is an agent only and any liability rests with the importers.*

   *This argument is rejected under Article 19 of the Code.*

3) *Article 41 and Article 47 EU Charter of fundamental rights.*

   *This argument is rejected as all imported vehicles in this period are being examined as part of this Post Clearance Check. [The Respondent] is making the same request from all Declarants for supporting documents in relation to Preferential Origin claims. [The Appellant] is being afforded the same opportunities as all other Declarants to provide supporting documents for his claims.*

4) *Declarations are null and void*

   *This argument is rejected as [the Appellant], EORI [the Appellant], is recorded as the declarant on all the customs declarations in this intervention on AIS. It is [the Appellant] who completed the declarations. The responsibility for the accuracy of the information rests with the declarant, in this case [the Appellant].*

   *Customs declarations are legally binding returns, similar to any other return made to [the Respondent].*

   *The responsibility for the accuracy of the information rests with the declarant, in this case [the Appellant].*

*5) Case C97/19, Pfeifer & Langen GmbH & Co. KG v Hauptzollamt Köln; ECLI:EU:C:2020:574.*

*This judgement supports Revenues case in this instance as [the Appellant] is not in possession of empowerment documents as verified in his email of 14th of November 2022.*

*Judgment of 12 October 2017, Tigers, C 156/16, EU:C:2017:754, paragraph 30). [The Appellant] has not provided sufficient evidence to support the claim for preferential origin.*

*6) Under the UK EU TCA it is the importer who is mandated by overriding international law to make preferential claims and The EU UK TCA does not provide for any role for a declarant.*

*The primary legislation is the UCC of which Article 5 of the Code defines "declarant" as the person lodging a customs declaration. [The Appellant], EORI [the Appellant], lodged the declarations and is recorded as the declarant on all the Customs Declarations in this intervention on AIS.*

*7) All goods in United Kingdom at the moment of exit from the European Union were exported within the meaning of Article 203.*

*All goods not under customs supervision in the UK lost their union status at 11pm on 31st December 2020. The vehicles did not lose their customs status in accordance with article 203 of the UCC at the end of the transition period and article 154 of the UCC has no application to the vehicle importations under review.*

<u>Findings</u>

> *Based on these findings, and in accordance with Article 102 of the Union Customs Code, I am now reminding you that [the Respondent] has identified a customs debt of €98,659.64 including interest to date and that this amount is now deemed due. It should be noted that interest will continue to accrue until the debt is discharged. A notification of customs debt will follow this correspondence.*

*If you are not in agreement with this decision you have the right to lodge a first stage appeal to Revenue".*

21. On 11 October 2023, the Respondent issued to the Appellant a Notification of Customs Debt, which notified the Appellant that it had established a customs debt in the amount of €93,924.00.

22. Subsequent to the correspondence dated 11 October 2023, the Appellant provided further documents to support a claim of Returned Goods Relief ("RGR") for one of the vehicles. The evidence was accepted by the Respondent and an amended Debt Notification letter issued on the same date, 11 October 2023, notifying the Appellant that the Respondent was establishing an updated total customs debt in the amount of €93,020.62.

23. On 31 October 2023, the Appellant discharged the customs debt due to the Respondent.

24. On 8 November 2023, the Appellant lodged a first stage appeal to the DAO of the Respondent.

25. On 12 January 2024, correspondence issued from the Respondent notifying the Appellant that the DAO had determined that he was satisfied with the decision made by the Respondent's case officer and the Appellant's appeal was not upheld.

26. Thereafter, as set out in the Introduction section to this Determination, the Appellant duly appealed to the Commission by submitting his Notice of Appeal. The Appellant appeals the decision of the DAO dated 12 January 2024, which upheld the Respondent's correspondence dated 9 October 2023 stating that the Appellant was personally liable for the customs duty in respect of the declarations made on the AIS in relation to the vehicles at issue for the relevant period. The Appellant submitted that the debt has been paid under protest, solely in order to prevent the accumulation of interest and penalties and to protect the Appellant, and the company's good name and commercial standing. Therefore, repayment of the amount of the customs debt paid by the Appellant is sought, together with statutory interest.

27. The Appellant submitted that the appeal concerns the validity of a customs debt claimed by the Respondent to be due from the Appellant personally, arising from import declarations made in the relevant year. The Appellant's grounds of appeal, as set out in his Notice of Appeal, are as follows:

"……………

1. *The appellant is not liable in respect of any customs debt, because he acted at all times as director and an employee, on behalf of the company. The only entity ever trading as a customs agent was the company. The imposition of the customs debt on*

*the appellant in his personal capacity purports to set aside the separate corporate existence of the company, without any basis in law or in fact.*

2. *The company acted as agent and direct representative of each of the importers, and insofar as any custom debt or liability arose in respect of the subject matter of the appeal, it is the liability of the importers only. The company was clearly at all times a customs agent and not a principal. Numerous authorisations and other information are and were held by Revenue showing this position beyond all doubt.*

   *The clients and customers of the company were the principals of the company which was their customs agent in relation to all relevant declarations and proceedings. They were also the declarant within the meaning of UCC, being the persons on whose behalf the declarations were made.*

   *Even if a liability for a customs debt arose it is the liability of the importers and not a liability of the company their direct agent, and a fortiori not a liability of the appellant a director and employee of the company*

3. *A taxing statute or directly applicable EU legislation must clearly and expressly charge tax by its terms on the citizen as a matter of fundamental Irish Constitutional law. There is no such basis here. The appellant and the company were and are clearly agents as a matter of Irish and EU law. The company is and was described as a customs agent. Revenue held specific authorisations from the principals, their customers.*

   *Revenue has purported to make an administrative requirement regarding the format of empowerment of the declarant (even assuming it is applicable in fact), a substantive basis for charging the appellant (who is merely a director an employee of the company) with a ruinous personal tax debt, in circumstances where the appellant and company were clearly customs agents of their principals. This is invalid as there is no statutory basis for this charge to tax*

4. *The purported imposition of the customs debt in the circumstances is contrary to the guarantee of good administration in Article 41, the guarantee of fair procedures in Article 47, of the Charter of Fundamental Rights of the European Union and is contrary to fair procedures and legitimate expectations in Irish law and protected by the Irish Constitution, for the reasons mentioned below.*

   *………………...*

5. *EU Charter of Fundamental Rights and fundamental principles of European Union law, as well as overriding requirements as to fair procedures require where an intervention is made, require Revenue, where there is prima facie evidence of origin by way of the retrospective statements on origin, to rely on the same or if it requires further proof of origin (even if this is permissible) , to use all its powers for this purpose, to determine the position as to origin including but not limited to its powers to request HMRC under the provisions in the EU TCA in that regard, to require the relevant manufacturers to provide particulars of the true position which is not available to the appellant.*

   *…………………*

6. *Insofar as declarations the subject of the appeal do not include the declarant's details then they are void, being contrary to article 77 of the Union Customs code (UCC). They should not have been accepted by the automated imported system. There is no self-assessment under the UCC.*

   *There have been no valid declarations and decision rendered under UCC on foot thereof. The consequences include but are not limited to the right to make corrective declarations based on the retrospective statements on origin.*

7. *The position in respect of the subject of the interventions and this appeal in relation to claiming preferential origin are governed by the EU UK Trade and Cooperation Agreement. These EU UK TCA provisions take precedence over the corresponding provisions of the UCC in this context. The required procedure and statement on origin is set out in the EU UK TCA*

   *……………...*

8. *The provisions of Article 203 UCC, "returned goods relief" apply in this case to vehicles which were in free circulation in the United Kingdom on 31 December 2020 at 11pm. Such vehicles had been produced in the EU or had been lawfully imported into the EU being a member of the European Union before that point.*

   *…………………*

9. *A number of the MRNs included in the customs debt claimed relate to cars over 30 years' old and a 1920 car in one case. The appropriate VAT relief and Customs relief / code in respect of the same was not included in the original MRNs. Revenue in the course of these proceedings refused to permit corrective MRNs to be made. For the reasons aforesaid and without limiting the foregoing grants corrective MRNs may be*

*made in respect of the same to include relief from duty VAT and any Vehicle Registration Tax incorrectly applied in consequence thereof. For the reasons aforesaid and without prejudice to any other grounds raised herein the appellant is entitled to make declarations in respect thereof claiming such relief and exemption*."

**Legislation and Guidelines**

28. The legislation relevant to this appeal is as follows:

29. Article 5 of the Union Customs Code (Regulation (EU) No 952/2013 of the European Parliament and the Council of 9 October 2013 laying down the Union Customs Code) ("the UCC") provides:-

*Definitions*

*"customs formalities" means all the operations which must be carried out by a person and by the customs authorities in order to comply with the customs legislation;*

*"customs declaration" means the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied;*

*"declarant" means the person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re export declaration or a re-export notification in his or her own name or the person in whose name such a declaration or notification is lodged;*

*"customs debt" means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force*;

30. Article 15 of the UCC provides:-

*Provision of information to the customs authorities*

*1. Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time-limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.*

*2. The lodging of a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification by a person to the customs authorities, or the submission of* *an application for an authorisation or any other decision, shall render the person concerned responsible for all of the following:*

*(a) the accuracy and completeness of the information given in the declaration, notification or application*

*(b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application*

*(c) where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations*

*The first subparagraph shall also apply to the provision of any information in any other form required by, or given to, the customs authorities.*

*Where the declaration or notification is lodged, the application is submitted, or information is provided, by a customs representative of the person concerned, as referred to in Article 18, that customs representative shall also be bound by the obligations set out in the first subparagraph of this paragraph*.

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

*Customs representative*

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

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

32. Article 19 of the UCC provides:-

*Empowerment*

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

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

3. *The customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented. In specific cases, the customs authorities shall not require such evidence to be provided*.

4. *The customs authorities shall not require a person acting as a customs representative, carrying out acts and formalities on a regular basis, to produce on every occasion evidence of empowerment, provided that such person is in a position to produce such evidence on request by the customs authorities*.

33. Article 46 of the UCC provides:

*Risk management and customs controls*

1. *The customs authorities may carry out any customs controls they deem necessary. Customs controls may in particular consist of examining goods, taking samples, verifying the accuracy and completeness of the information given in a declaration or notification and the existence, authenticity, accuracy and validity of documents, examining the accounts of economic operators and other records, inspecting means of transport, inspecting luggage and other goods carried by or on persons and carrying out official enquiries and other similar acts*.

34. Article 48 of the UCC provides:

*Post-release control*

*For the purpose of customs controls, the customs authorities may verify the accuracy and completeness of the information given in a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification, and the existence, authenticity, accuracy and validity of any supporting document and may examine the accounts of the declarant and other records relating to the operations in respect of the goods in question or to prior or subsequent commercial operations involving those goods after having released them. Those authorities may also examine such goods and/or take samples where it is still possible for them to do so.*

*Such controls may be carried out at the premises of the holder of the goods or of the holder's representative, of any other person directly or indirectly involved in those operations in a business capacity or of any other person in possession of those documents and data for business purposes.*

35. Article 51 of the UCC provides:

*Keeping of documents and other information*

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

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

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

36. Article 61 of the UCC provides:

*Proof of origin*

*1. Where an origin has been indicated in the customs declaration pursuant to the customs legislation, the customs authorities may require the declarant to prove the origin of the goods.*

*2. Where proof of origin of goods is provided pursuant to the customs legislation or other Union legislation governing specific fields, the customs authorities may, in the event of reasonable doubt, require any additional evidence needed in order to ensure that the indication of origin complies with the rules laid down by the relevant Union legislation.*

*3. Where the exigencies of trade so require, a document proving origin may be issued in the Union in accordance with the rules of origin in force in the country or territory of destination or any other method identifying the country where the goods were wholly obtained or underwent their last substantial transformation*.

37. Article 64 of the UCC provides:-

*Preferential origin of goods*

1. *In order to benefit from the measures referred to in points (d) or (e) of Article 56(2) or from non-tariff preferential measures, goods shall comply with the rules on preferential origin referred to in paragraphs 2 to 5 of this Article. Page 503 Page 8 of 26 2. In the case of goods benefiting from preferential measures contained in agreements which the Union has concluded with certain countries or territories outside the customs territory of the Union or with groups of such countries or territories, the rules on preferential origin shall be laid down in those agreements.*

*……………..*

38. Article 77 of the UCC provides:-

*Release for free circulation and temporary admission*

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

   *(a) release for free circulation, including under the end-use provisions;*
   *(b) temporary admission with partial relief from import duty.*

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

3. *The declarant shall be the debtor. In the event of indirect representation, the person on whose behalf the customs declaration is made shall also be a debtor. Where a customs declaration in respect of one of the procedures referred to in paragraph 1 is drawn up on the basis of information which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor.*

39. Article 79 of the UCC provides:-

*Customs debt incurred through non-compliance*

1. *For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:*

   *(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, their removal from customs supervision, or the movement,*

*processing, storage, temporary storage, temporary admission or disposal of such goods within that territory;*

*(b) one of the obligations laid down in the customs legislation concerning the end use of goods within the customs territory of the Union;*

*(c) a condition governing the placing of non-Union goods under a customs procedure or the granting, by virtue of the end-use of the goods, of duty exemption or a reduced rate of import duty.*

*2. The time at which the customs debt is incurred shall be either of the following:*

*(a) the moment when the obligation the non-fulfilment of which gives rise to the customs debt is not met or ceases to be met;*

*(b) the moment when a customs declaration is accepted for the placing of goods under a customs procedure where it is established subsequently that a condition governing the placing of the goods under that procedure or the granting of a duty exemption or a reduced rate of import duty by virtue of the end-use of the goods was not in fact fulfilled.*

*3. In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:*

*(a) any person who was required to fulfil the obligations concerned;*

*(b) any person who was aware or should reasonably have been aware that an obligation under the customs legislation was not fulfilled and who acted on behalf of the person who was obliged to fulfil the obligation, or who participated in the act which led to the non-fulfilment of the obligation;*

*(c) any person who acquired or held the goods in question and who was aware or should reasonably have been aware at the time of acquiring or receiving the goods that an obligation under the customs legislation was not fulfilled.*

*4. In cases referred to under point (c) of paragraph 1, the debtor shall be the person who is required to comply with the conditions governing the placing of the goods under a customs procedure or the customs declaration of the goods placed under that customs procedure or the granting of a duty exemption or reduced rate of import duty by virtue of the end-use of the goods.*

*Where a customs declaration in respect of one of the customs procedures referred to in point (c) of paragraph 1 is drawn up, and any information required under the customs legislation relating to the conditions governing the placing of the goods under that customs procedure is given to the customs authorities, which leads to all or part of the import duty not being collected, the person who provided the information required to draw up the customs declaration and who knew, or who ought reasonably to have known, that such information was false shall also be a debtor*.

40. Article 104 of the UCC provides:-

*Entry in the accounts*

*1. The customs authorities referred to in Article 101 shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that Article. The first subparagraph shall not apply in cases referred to in the second subparagraph of Article 102(1).*

*2. The customs authorities need not enter in the accounts amounts of import or export duty which, pursuant to Article 103, correspond to a customs debt which could no longer be notified to the debtor.*

*3. Member States shall determine the practical procedures for the entry in the accounts of the amounts of import or export duty. Those procedures may differ according to whether, in view of the circumstances in which the customs debt was incurred, the customs authorities are satisfied that those amounts will be paid*.

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

*Time of entry in the accounts*

*1. Where a customs debt is incurred as a result of the acceptance of the customs declaration of goods for a customs procedure, other than temporary admission with partial relief from import duty, or of any other act having the same legal effect as such acceptance, the customs authorities shall enter the amount of import or export duty payable in the accounts within 14 days of the release of the goods. However, provided that payment has been guaranteed, the total amount of import or export duty relating to all the goods released to one and the same person during a period fixed by the customs authorities, which may* *not exceed 31 days, may be covered by a single entry in the accounts at the end of that period. Such entry in the accounts shall take place within 14 days of the expiry of the period concerned.*

*2.* *Where goods may be released subject to certain conditions which govern either the determination of the amount of import or export duty payable or its collection, entry in the accounts shall take place within 14 days of the day on which the amount of import or export duty payable is determined or the obligation to pay that duty is fixed. However, where the customs debt relates to a provisional commercial policy measure taking the form of a duty, the amount of import or export duty payable shall be entered in the accounts within two months of the date of publication in the Official Journal of the European Union of the Regulation establishing the definitive commercial policy measure.*

*3.* *Where a customs debt is incurred in circumstances not covered by paragraph 1, the amount of import or export duty payable shall be entered in the accounts within 14 days of the date on which the customs authorities are in a position to determine the amount of import or export duty in question and take a decision.*

*4.* *Paragraph 3 shall apply with regard to the amount of import or export duty to be recovered or which remains to be recovered where the amount of import or export duty payable has not been entered in the accounts in accordance with paragraphs 1, 2 and 3, or has been determined and entered in the accounts at a level lower than the amount payable.*

*5.* *The time-limits for entry in the accounts laid down in paragraphs 1, 2 and 3 shall not apply in unforeseeable circumstances or in cases of force majeure*.

42. Article 150 of the UCC provides:-

*Choice of a customs procedure*

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

43. Article 154 of the UCC provides:-

*Loss of customs status of Union goods*

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

(a) *where they are taken out of the customs territory of the Union, insofar as the rules on internal transit do not apply;*

(b) *where they have been placed under the external transit procedure, a storage procedure or the inward processing procedure, insofar as the customs legislation so allows;*

(c) *where they have been placed under the end-use procedure and are either subsequently abandoned to the State, or are destroyed and waste remains;*

(d) *where the declaration for release for free circulation is invalidated after release of the goods*.

44. Article 162 of the UCC provides:

*Content of a standard customs declaration*

*Standard customs declarations shall contain all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared*.

45. Article 163 of the UCC provides:-

*Supporting documents*

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

2. *Supporting documents shall be provided to the customs authorities where Union legislation so requires or where necessary for customs controls.*

3. *In specific cases, economic operators may draw up the supporting documents provided they are authorised to do so by the customs authorities*.

46. Article 173 of the UCC provides:-

*Amendment of a customs declaration*

1. *The declarant shall, upon application, be permitted to amend one or more of the particulars of the customs declaration after that declaration has been accepted by customs. The amendment shall not render the customs declaration applicable to goods other than those which it originally covered.*

2. *No such amendment shall be permitted where it is applied for after any of the following events:*

   (a) *the customs authorities have informed the declarant that they intend to examine the goods;*

   (b) *the customs authorities have established that the particulars of the customs declaration are incorrect;*

   (c) *the customs authorities have released the goods.*

3. *Upon application by the declarant, within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration may be permitted after release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned*.

47. Article 203 of the UCC *inter alia* provides:-

*Scope and effect*

1. *Non-Union goods which, having originally been exported as Union goods from the customs territory of the Union, are returned to that territory within a period of three years and declared for release for free circulation shall, upon application by the person concerned, be granted relief from import duty. The first subparagraph shall apply even where the returned goods represent only a part of the goods previously exported from the customs territory of the Union.*

2. *The three-year period referred to in paragraph 1 may be exceeded in order to take account of special circumstances.*

3. *Where, prior to their export from the customs territory of the Union, the returned goods had been released for free circulation duty-free or at a reduced rate of import duty because of a particular end-use, relief from duty under paragraph 1 shall be granted only if they are to be released for free circulation for the same end-use. Where the end-use for which the goods in question are to be released for free circulation is no longer the same, the amount of import duty shall be reduced by any amount collected on the goods when they were first released for free circulation. Should the latter amount exceed that levied on the release for free circulation of the returned goods, no repayment shall be granted.*

4. *Where Union goods have lost their customs status as Union goods pursuant to Article 154 and are subsequently released for free circulation, paragraphs 1, 2 and 3 shall apply*.

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

*Proof of the customs status of Union goods for motorised road vehicles*

*(Article 153(2) of the Code)*

1. *In the case of motorised road vehicles registered in a Member State which have temporarily left and re-entered the customs territory of the Union the customs status of Union goods shall be considered proven where they are accompanied by their registration plates and registration documents and the registration particulars shown on those plates and documents unambiguously indicate that registration.*

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

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

*Information required*

*(Article 203(6) of the Code)*

1. *The declarant shall make the information establishing that the conditions for relief from import duty have been fulfilled available to the customs office where the customs declaration for release for free circulation is lodged.*

2. *The information referred to in paragraph 1 may be provided by any of the following means:*

   *(a) access to the relevant particulars of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;*

   *(b) a print out, authenticated by the competent customs office, of the customs or re-export declaration on the basis of which the returned goods were originally exported or re-exported from the customs territory of the Union;*

*(c) a document issued by the competent customs office, with the relevant particulars of that customs declaration or re-export declaration;*

*(d) a document issued by the customs authorities certifying that the conditions for the relief from import duty have been fulfilled (information sheet INF3).*

*3. Where information available to the competent customs authorities establishes that the goods declared for release for free circulation were originally exported from the customs territory of the Union and at that time fulfilled the conditions for being granted relief from import duty as returned goods, the information referred to in paragraph 2 shall not be required.*

*4. Paragraph 2 shall not apply where goods may be declared for release for free circulation orally or by any other act. Nor shall it apply to the international movement of packing materials, means of transport or certain goods admitted under specific customs arrangements unless where provided otherwise*.

50. Article 38 of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ("the Agreement") provides:-

*Definitions*

*(d) "importer" means a person who imports the originating product and claims preferential tariff treatment for it*

…………

*(f) "non-originating material" means a material which does not qualify as originating under this Chapter, including a material whose originating status cannot be determined*;

51. Article 54 of the Agreement provides:-

*Claim for preferential tariff treatment*

*1. The importing Party, on importation, shall grant preferential tariff treatment to a product originating in the other Party within the meaning of this Chapter on the basis of a claim by the importer for preferential tariff treatment. The importer shall be responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirements provided for in this Chapter*.

2. *A claim for preferential tariff treatment shall be based on:*

   *(a) a statement on origin that the product is originating made out by the exporter; or*

   *(b) the importer's knowledge that the product is originating.*

*3. The importer making the claim for preferential tariff treatment based on a statement on origin as referred to in point (a) of paragraph 2 shall keep the statement on origin and, when required by the customs authority of the importing Party, shall provide a copy thereof to that customs authority.*

52. Article 55 of the Agreement provides:

*Time of the claim for preferential tariff treatment*

*1. A claim for preferential tariff treatment and the basis for that claim as referred to in Article 54(2) shall be included in the customs import declaration in accordance with the laws and regulations of the importing Party.*

*2. By way of derogation from paragraph 1 of this Article, if the importer did not make a claim for preferential tariff treatment at the time of importation, the importing Party shall grant preferential tariff treatment and repay or remit any excess customs duty paid provided that:*

   *(a) the claim for preferential tariff treatment is made no later than three years after the date of importation, or such longer time period as specified in the laws and regulations of the importing Party;*

   *(b) the importer provides the basis for the claim as referred to in Article 54(2); and*

   *(c) the product would have been considered originating and would have satisfied all other applicable requirements within the meaning of Section 1 of this Chapter if it had been claimed by the importer at the time of importation. The other obligations applicable to the importer under Article 54 remain unchanged.*

53. Article 56 of the Agreement provides *inter alia* that:-

*Statement of Origin*

*1. A statement on origin shall be made out by an exporter of a product on the basis of information demonstrating that the product is originating, including,* *information on the originating status of materials used in the production of the product. The exporter shall be responsible for the correctness of the statement on origin and the information provided.*

*2. A statement on origin shall be made out using one of the language versions set out in Annex 7 in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product. The exporter shall be responsible for providing sufficient detail to allow the identification of the originating product. The importing Party shall not require the importer to submit a translation of the statement on origin.*

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

54. Article 58 of the Agreement provides:-

*Importers Knowledge*

*1. For the purposes of a claim for preferential tariff treatment that is made under point (b) of Article 54(2), the importer's knowledge that a product is originating in the exporting Party shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this Chapter.*

*2. Before claiming the preferential treatment, in the event that an importer is unable to obtain the information referred to in paragraph 1 of this Article as a result of the exporter deeming that information to be confidential information or for any other reason, the exporter may provide a statement on origin so that the importer may claim the preferential tariff treatment on the basis of point (a) of Article 54(2).*

55. Article 59 of the Agreement *inter alia* provides:-

*Record-keeping requirements*

*1. For a minimum of three years after the date of importation of the product, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep:*

*(a) If the claim was based on a statement on origin, the statement on origin made out by the exporter; or*

(b) *If the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements for obtaining originating status.*

2. *An exporter who has made out a statement on origin shall, for a minimum of four years after that statement on origin was made out, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status*.

56. Article 61 of the Agreement *inter alia* provides:-

*Verification*

1. *The customs authority of the importing Party may conduct a verification as to whether a product is originating or whether the other requirements of this Chapter are satisfied, on the basis of risk assessment methods, which may include random selection. Such verifications may be conducted by means of a request for information from the importer who made the claim referred to in Article 54, at the time the import declaration is submitted, before the release of the products, or after the release of the products*

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

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

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

…………….

57. Article 62(2) of the Agreement provides:

*Administrative cooperation*

*………………*

2. *If the claim for preferential tariff treatment was based on a statement on origin, as appropriate after having first requested information in accordance with Article 61 of the TCA (1) and based on the reply from the importer, the customs authority of the importing Party conducting the verification may also request information from the customs authority of the exporting Party within a period of two years after the importation of the products, or from the moment the claim is made pursuant to point (a) of Article 55(2) if the customs authority of the importing Party conducting the*

*verification considers that additional information is necessary in order to verify the originating status of the product or to verify that the other requirements provided for in this Chapter have been met. The request for information shall include the following elements:*

*(a) the statement on origin;*

*(b) the identity of the customs authority issuing the request;*

*(c) the name of the exporter;*

*(d) the subject and scope of the verification; and*

*(e) any relevant documentation.*

*In addition, the customs authority of the importing Party may request the customs authority of the exporting Party to provide specific documentation and information, where appropriate.*

…………………..

58. Article 63 of the TCA provides:

*Denial of preferential tariff treatment*

*1. Without prejudice to paragraph 3, the customs authority of the importing Party may deny preferential tariff treatment, if:*

*(a) within three months after the date of a request for information pursuant to Article 61(1):*

*(i) no reply has been provided by the importer;*

*(ii) where the claim for preferential tariff treatment was based on a statement on origin, no statement on origin has been provided; or*

*(iii) where the claim for preferential tariff treatment was based on the importer's knowledge, the information provided by the importer is inadequate to confirm that the product is originating;*

*(b) within three months after the date of a request for additional information pursuant to Article 61(5):*

*(i) no reply has been provided by the importer; or*

(ii) *the information provided by the importer is inadequate to confirm that the product is originating;*

*………………..*

59. Guidance Note – Withdrawal of the United Kingdom and EU Rules in the Field of Customs (23 December 2020) ("the Commission Guidance Note").

**Evidence and Submissions**

*Appellant's evidence*

60. The Appellant gave evidence at the hearing of the appeal. The Commissioner sets out hereunder a summary of the evidence adduced:-

60.1. The Appellant testified that he is a Director and employee of the company which he stated commenced business on 1 January 2021. He confirmed that he began commencement of the business in November 2020, when he noticed an advertisement that 10,000 customs agents would be required after the UK left the European Union ("Brexit"). He stated that due to the COVID-19 pandemic there was very little human interaction taking place, such that everything was conducted online which slowed matters down. He relayed that matters such as contacting the Respondent, his accountant and certain organisations took longer than normal as did the completion of matters such as obtaining a VAT number.

60.2. The Appellant gave evidence that he issued a flyer to every garage in the State informing them that he was commencing business as a customs agent, dealing with motor vehicles only. The Appellant testified that during establishment of the company, he spoke to his accountant who advised him to set up a limited liability company and in order to register the company he had to submit certain documentation and the name of the company to the Companies Registration Office ("CRO"). The Appellant gave evidence that the company was incorporated on 15 February 2021, and he referred to the documentation submitted to support the company's incorporation. In addition, he stated that he had to register for tax and set up a company bank account, which was also difficult he said, given the pandemic. The Appellant testified that he had a company bank account in March 2021 and had a company VAT number by end of March 2021. The Appellant confirmed that in the interim between when the company commenced trading and the company bank account was opened, a bank account in his own name was opened which he called [redacted] ("the pre company name"), and which he used to lodge funds that were received by the company. In addition, he confirmed that he was paying the Respondent from that account, until 22 March 2021.

60.3. The Appellant testified that his clients would contact him by email and enclose invoices which he would use to enter details into the AIS. He relayed that it was his clients who would inform him whether the vehicles were the subject of a claim of GBPO or RGR or whether duty had to be paid. He testified that his role as declarant was to put the information into the software package which interacted with the Respondent's computer system to clear the vehicles. He said that this meant that the imported vehicles would be "green routed" and accepted into the State, so that the vehicles could then be the subject of VRT applications. He confirmed that the ultimate goal was for the clients to put Irish number plates on the vehicles to sell them on to their own clients. The Appellant stated that the invoices reference the pre company name from January 2021, until the company was incorporated in March 2021. The Appellant confirmed that he had no involvement in the ownership of the vehicles.

60.4. The Appellant testified that very quickly he was the subject of an audit by the Respondent due to various mistakes made on the declarations, and that he had used his own EORI number naively. He said that a full VAT audit took place and the Respondent went through every bank account. He submitted that he had not imported or sold vehicles, despite the Respondent seeking a cash book from him. The Appellant testified that he was mistaken in respect of the legislation that governs GBPO, such that there would be a statement on origin or importer's knowledge with the garages. He said that he had intended to use the code U117, importer's knowledge for the vehicles, but having spoken with the Respondent's helpdesk, which he said assisted him greatly, he used U116, which was the statement on origin requirement, as he was told that for importer's knowledge he would have to show the make-up of the vehicles and its parts, where it came from and how much it cost, and that it was going to be difficult to establish these matters. He relayed that he was also informed that RGR was not possible, and that the only vehicles entitled to RGR were vehicles that had been in the UK for less than three years. The Appellant testified that his reading of the requirement for a statement on origin was that a statement on origin was required when the Respondent requested it, such as at the time of an audit. He said that when the Respondent did request the statements on origin, they were provided within two weeks. However, he gave evidence that the Respondent's response was that the statements on origin were too late, and that the Respondent could not accept them because they had to be in existence when the vehicles were being imported.

60.5. The Appellant referred to the details he entered into the AIS and confirmed that he did not tick the box on the AIS to confirm that he was acting as a representative. He testified that the box should have been ticked either to confirm that he was acting as a direct or indirect representative. He confirmed that he did not tick the box, as he presumed that the default was that he was the direct representative of the importers. He gave evidence that as per the previous system, no box was required to be ticked, and the default was a direct representative. He relayed that despite the box not being ticked on the declarations on the AIS the declarations were accepted by the Respondent. He stated that it was his view that the declarations should have been rejected by the Respondent if there was no indication made as to representation status.

60.6. The Appellant testified that he attended a meeting with the Respondent's witness 1 and he produced the Trader Account Number ("TAN") authorisations in respect of the importers, to show that he was acting in the capacity of a direct representative of the garages. However, he stated that the Respondent would not accept the TAN authorisations, but required evidence of empowerment as per the authorised form on the Respondent's system. The Appellant gave evidence that he had an oral agreement with the garages to import the vehicles, and the garages were responsible for all of the information that they sent to him in respect of the imported vehicles. The Appellant submitted that whilst he had made payment to the Respondent of the amount of the customs debt at issue, he did take steps to contact the garages but was told by the garages that the Respondent should contact them, if required. The Appellant stated that it was the consignees that appeared on the declarations, who gave him their EORI numbers, who were the importers, not the Appellant.

60.7. The Appellant was cross examined on his evidence by counsel for the Respondent. The Appellant was asked whether the documentation referred to in his evidence and described as the import declarations, was the information that was presented to the Respondent. The Appellant confirmed that the declarations referred to were not the documents submitted to the Respondent, but that all other information was correct on the declarations that he was referring to, but for the information in Box 14/1 which dealt with representation status. It was put to the Appellant that in the box entitled "Declarant 3/18" there was reference to an EORI which was the Appellant's EORI number. He confirmed that this was his own personal EORI number on the import declarations. Furthermore, it was put to the Appellant that in the box entitled "Declarant 3/17" his own name and address appeared, which the Appellant confirmed was correct. It was put to him again that at the box entitled "Person Paying Customs Duty 3/46" was his own personal EORI number. The Appellant confirmed that this was correct. He also confirmed that on a particular declaration he had used his own name as importer, as the import was a vintage vehicle for a private individual.

60.8. It was put to the Appellant by counsel for the Respondent that by claiming GBPO on the declarations, it meant that a 0% rate of duty applied and this allowed for the almost immediate release into free circulation of the imported vehicles. The Appellant agreed. The Appellant confirmed that he relied on U116, which was a statement on origin to support the claim for GBPO. Counsel for the Respondent suggested to the Appellant that the name of the declarant on its system was never given as the pre company name or the company name, and the Appellant confirmed that was correct and that it was also correct that in respect of all the vehicles at issue it was the Appellant's own EORI number that was used on the declarations made on the AIS. The Appellant disputed that he was the importer and stated that it was "*black and white on the AIS*" who the actual importer was. It was put to the Appellant by counsel for the Respondent that one of the issues in this appeal was the fact that he had named himself as the declarant.

60.9. The Appellant confirmed that RGR was never claimed in respect of the imported vehicles at issue in this appeal and that all of the declarations made were based on GBPO and on a statement on origin. The Appellant was cross examined by counsel for the Respondent in respect of the documentation that was exchanged between him and the Respondent during the PCI and prior to the Appellant's appeal. The Appellant confirmed that he had familiarised himself with the guidance documentation before commencing business. It was put to the Appellant by counsel for the Respondent that he was asked whether he was in possession of any agreements with the importers to allow him to represent them, but had stated to the Respondent that the "*paperwork was already submitted to [the Respondent] as you would be unable to act on the importers' behalf otherwise*". The Appellant did not dispute that he had stated that. Furthermore, it was put to the Appellant that he was asked to furnish any further documentation that he had and that he provided to the Respondent the TAN authorisations. The Appellant confirmed that was the situation and stated that the TAN authorisations made it perfectly clear that he was acting as a customs representative on behalf of the importers. It was put to the Appellant by counsel for the Respondent that the Respondent's position was that if he had produced evidence of empowerment or documentation to that effect, then the Respondent would have allowed the declarations to be amended to reflect that position. The Appellant stated that this was not the impression that he had consequent to the meeting with the Respondent, and his view was that the Respondent was demanding that empowerment be in the prescribed form only. It was put to the Appellant that this was disputed by the Respondent, and that it had requested the Appellant to provide evidence of empowerment at the time, such as a written contract between him and the importers. The Appellant stated that he had understood that the TAN authorisations were evidence of empowerment and the agreement that he had with the importers to import the vehicles on their behalf.

60.10. The Appellant agreed that it was the importers that had provided the TAN authorisations to the Respondent and not the Appellant. Counsel for the Respondent relayed to the Appellant that a TAN authorisation was "*a customs clearance agent standing authority allowing customs clearance agents to request deferment against a trader's EORI/TAN*" and that it permitted payment against a trader's EORI or TAN and that it was simply a fiscal arrangement which did not constitute proof of empowerment. It was put to the Appellant that Respondent's eCustoms Helpdesk Notifications 02/2020 and 027/2020, both deal with representation and state *inter alia* that "*[w]hile there is no specific format laid down in the Code in relation to such authority, [the Respondent] would expect that the authority would be in accordance with the specimens attached to this Notice. It should be noted that a letter from an importer that simply authorises the agent to use the importer's Customs & Excise (TAN) account would not generally be regarded as sufficient authority for this purpose*". The Appellant stated that an EORI number had to be used and he was in the process of establishing the company which did not have an EORI number at that time.

60.11. It was put to the witness that there were two issues in this appeal, the first being that despite a request from the Respondent for evidence of empowerment, none was forthcoming and if it had been, then the Respondent would have permitted an amendment the declarations, and the second issue was the fact that there was no statement on origin documentation produced that was not postdated after the time of import. The Appellant agreed with the summation by counsel for the Respondent.

60.12. It was put to the witness that his evidence was that he did not have written agreements with the importers. He stated that he did not have that paperwork, namely he did not have the empowerment paperwork signed in the manner in which the Respondent required. It was further put to the Appellant that it was not the case that the Respondent required its form to be completed, but that it was offering an alternative to that, such as signed agreements with the importers to import the vehicles. The Appellant testified that he did not consider that to be the position, as at all times in conversation with the Respondent he was asked for the form of empowerment, which is the form the Respondent had on its system. It was put to the Appellant by counsel for the Respondent that apart from the post-dated statements on origin, there were no other documents provided that were contemporaneous, either in relation to statement on origin at the time of import or evidence of empowerment. The Appellant agreed that this was the position.

60.13. Counsel for the Respondent put it to the witness that it was recorded that he had agreed with the Respondent that it could contact the garages, but when the Respondent commenced contacting the garages it was asked to cease making contact. The Appellant stated that it was his recollection that he had asked to be informed before any contact was made. Counsel for the Respondent stated that the witness for the Respondent would give evidence that he was requested by the Appellant to stop.

60.14. Following re-examination by the Appellant's solicitor, the Appellant testified that he put his name on the declarations for three vintage cars, as private individuals were importing them into the State. The Appellant confirmed that he did so, because the importers did not have an EORI, so he used his own EORI number.

*Appellant's submissions*

61. The Commissioner sets out hereunder a summary of the submissions made by the Appellant's solicitor on behalf of the Appellant:-

61.1. The first ground of appeal is that the Appellant is a Director and employee of the company. The Appellant was not liable in respect of the customs debt because he acted solely as a director and employee on behalf of the company and never as a principal. The imposition of a customs debt on the Appellant personally purports to disregard the separate legal personality of the company, without any statutory basis in EU or Irish law. A company has a legal personality distinct from its directors and employees. There is no provision in the UCC or in Irish law which permits the Respondent to disregard that personality in order to impose a customs debt on a director or employee acting as a corporate customs agent.

61.2. Article 19 of the UCC governs the classification of representation, not the attribution of personal liability to company officers. It does not operate as a corporate veil piercing provision. The Appellant acted at all times as agent of the company, and the company acted as agent of the importers. Under settled principles of agency, an agent who acts on behalf of a disclosed principal does not incur personal liability, absent express agreement to the contrary and the principle applies with greater force to an employee director of an agent. The basic principle that an agent who acts on behalf of a principal is not personally liable is trite law. Reference was made to the judgment in *Gadd v Houghton & Co* [1876] 35 LT 222.

61.3. Reference was made to section 45 of the Companies Act 2014. Insofar as declarations were lodged prior to the company's incorporation, section 45 of the Companies Act 2014 applies. Section 45 of the Companies Act 2014 expressly provides that acts done on behalf of a company prior to incorporation may be ratified and upon ratification, the agent has no personal liability, absent an express agreement to the contrary.

61.4. The company ratified all pre incorporation trading by adopting the transactions in its accounts by including the trading in its corporation tax returns and by continuing the business without interruption following incorporation. Upon ratification, it was as if the company had been in existence at the time of the contract. Under the law of agency, only the company, and not the Appellant as the principal, was liable. This interpretation is confirmed by the wording of section 45(3) of the Companies Act 2014 which states that the agent is personally liable only prior to the ratification by the company of the act concerned. The Appellant never traded personally as a customs agent, nor did he ever intend to claim to do so. The company registered for employer PAYE on the Appellant's employment income. The accounts included pre-incorporation trading. The corporation tax return included pre-incorporation trading from 1 January 2021.

61.5. There is no requirement for an agent's appointment to be in writing nor for such written appointment to be produced to third parties. Such a proposition is contrary to common law and would cause ordinary business dealings and daily life to cease functioning. It is common law, and it is the most basic common law that somebody can be appointed verbally as an agent.

61.6. It is accepted by the Respondent that the company was a customs agent and there was no dispute of this fact in this appeal. Trade was carried out by the company in this case. Each importer retained the company to undertake import declarations and authorised the company to use their TAN accounts in the format published by the Respondent. The declarations show that the consignees were motor dealers and clearly principals and the Respondent did not contend that it was being misled as to the company being a customs agent. It was as plain as day, that the principals were the importers and not the company and there was no basis in law, or anything referred to for imposing liability on the company.

61.7. The use of the Appellant's EORI number during the interim period was an administrative necessity arising from the timing of the incorporation of the company and its tax registration. There was no statutory basis on which the mere inclusion of an EORI number can create a customs debt. To do so, would amount to imposing taxation by implication. The basis upon which the Respondent purported to make the Appellant liable was eCustoms Helpdesk Notification 027/2020. By its very terms it is not mandatory. It refers to the Respondent's expectation of the form of authority. The question of customers authorising the Appellant did not arise as they authorised the company. The Appellant's only connection to this matter was the entry of his EORI into the declarant box, together with the name of the company, in anticipation of the company being formed. The party named in words as declarant was the company. The company acted as agent and direct representative of the importer. Insofar as any customs debt arose in respect of the subject matter of the appeal it was the liability of the importers alone. The company acted at all times as a customs agent and not as a principal in its dealings with the Respondent. This was made clear on the face of the declarations and through the use of the TAN authorisations. As with common law and the general law of agency, the default position under the UCC is that liability lies with the importer/consignee and there is no provision which imposes a liability on a direct representative.

61.8. Article 19 of the UCC does not specify the form which authorisation must take. It permits customs authorities to request evidence of empowerment but does not permit a prescribed or an exclusive format to attach substantive liability consequences for noncompliance with the prescribed format. This is expressly acknowledged in eCustoms Helpdesk Notification 027/2020, which states that no specific format is laid down in the UCC, and the Respondent merely expects authorisation to accord with the specimen attached to the notification.

61.9. Consistent with European contract law, this provision addresses undisclosed or falsely disclosed agencies, not situations where agency is openly known and accepted. In the principles of European contract law and the accompanying academic commentary in the documents submitted with this appeal, the distinction between direct and indirect representation corresponds to the classical distinction between disclosed agency, in which case the agent is not liable, and undisclosed agency, in which case the person who is an agent but does not disclose this fact, is liable.

61.10. The requirement in Article 19 of the UCC that a representative states that he or she is acting on behalf of the person represented is satisfied where the importer is identified as consignee and the customs authorities accept the declaration on that basis. The failure to tick an additional representation box on the AIS does not negate the existence of disclosed agency. Article 19 of the UCC is not addressed to declarations but to the relationship between a customs agent and an importer generally. Apart from Article 19 of the UCC, the Respondent identifies no express statutory provision which renders a direct representative liable as a principal. Written empowerment is not required. Article 19 of the UCC deliberately uses open language. The word “evidence” in Article 19 of the UCC is undefined, unqualified and deliberately broad. The Respondent’s insistence on written empowerment therefore had no statutory basis, contradicted ordinary commercial practice, and contradicted Article 19(3) of the UCC which assumes ongoing agency without repeated documentation. The Appellant has given ample evidence that the company was an agent for all of the importers. The Respondent’s claims that documentary evidence must have existed at the time of importation was incorrect. A person may be verbally authorised and that may be confirmed later by written authorisation.

61.11. Documentary evidence of agency has been given by way of TAN authorisations and other documents. The requirement that a person be empowered in writing was completely artificial and was not mandated by the legislation and was “*the whole hook or charge on which the Appellant, is purported to be made personally liable, both at the corporate and individual level*”. There was no statutory or EU law basis which authorised the Respondent to prescribe an exclusive format of empowerment or attach personal liability for noncompliance with an administrative expectation. Article 19 of the UCC permits customs authorities to request evidence of empowerment. It does not confer power to mandate an exclusive form of authority or alter the allocation of customs debt liability by reference to the form of that evidence. This is expressly acknowledged by the Respondent itself in eCustoms Helpdesk Notification 027/2020 which states "*while there is no specific format laid down in the code in relation to empowerment, [the Respondent] expects that the authorisation of empowerment would be in accordance with the specimens attached to this notice*". An expectation expressed in guidance cannot lawfully be transformed into a charging provision.

61.12. Article 163 of the UCC concerns supporting documentation required for customs controls, it does not relate to empowerment or conferring power on national authorities to prescribe a form of authority. To the extent that the Respondent relied on Article 15 of the UCC, that reliance is misplaced. Article 15 of the UCC concerns responsibility for the accuracy and completeness of information. It is not a charging provision and does not identify a customs debtor. Liability for a customs debt is covered by Article 77 of the UCC. In the absence of fraud, deception or indirect representation, Article 15 of the UCC cannot be used to impose liability on the Appellant.

61.13. Articles 18 and 19 of the UCC are not about individual declarations, they are about the totality of the relationship. That a person has to tick a box and confirm on every single occasion that the person was acting as an agent and provide written proof of that was incorrect. Article 77 of the UCC is what imposes the charge. There is nothing in Articles 15, 16, 19, or 77 of the UCC which can place a personal liability on the Appellant alone. The Appellant has demonstrated that he was a customs agent, such that he has demonstrated that he used the importer's TAN accounts, the importer was identified as the consignee and the Respondent accepted his customs declarations.

61.14. Regulation 2015/2446, Annex B (Data Element 3/21), Chapter 3, Section 1 sets out the mandatory information code. "A" refers to a mandatory requirement. Data Element 3/21 deals with representative status which is deemed mandatory in respect of foreign H1 declarations (import declaration for release for free circulation). eCustoms Helpdesk Notification 027/2020 acknowledges that this was a mandatory requirement. Nevertheless, the Respondent disabled that requirement in the AIS sometime prior to 1 January 2021 and accepted declarations without it being completed. If specification of representation status was mandatory as a matter of law, then either the requirement was waived by the Respondent, or the declarations were legally invalid and incapable of grounding a customs debt. The Respondent cannot accept declarations in the absence of a mandatory Data Element and later rely on that absence to impose liability on an agent.

61.15. By disabling the mandatory representation field and accepting declarations without it, the Respondent adopted a position which reasonably led the Appellant to believe that specification of representation status was not required on each occasion and agency could be evidenced by the overall structure of the declaration. The criteria for legitimate expectation under Irish law was satisfied. It would be unjust to permit the Respondent to resile from that position. Reference was made to the judgment of the Supreme Court in *Glencar Exploration plc v Mayo County Council (No 2)* [2002] 1 IR 84 at page 162 ("*Glencar*"). The disabling of the declaration box amounts to the adoption of a position as espoused in that decision. The Respondent cannot claim that the status representation return was mandatory when the relevant requirement was disabled, and declarations were accepted in its absence. The Appellant and his company reasonably and correctly believed that entering themselves as the declarant and the client as the consignee/importer was sufficient to show that they were acting as customs agents. The disablement of the mandatory requirement meant that the agent's attention was not drawn to this issue. Had this issue been drawn to the agent's attention on the occasion of each declaration, then plainly he would have ticked the box to show that he was a direct representative and thereby not personally liable. The Respondent was estopped from relying on the proposition that the Appellant must specify representation in every instance by reference to the fact that the declaration was accepted without the relevant Data Element Box 14 being completed. Article 173 of the UCC allows for amendments to the declarations and reference was made to the judgment of the CJEU in Case C-97/19 *Pfizer & Langen.*

61.16. The Appellant was specifically told by the Respondent that U117, importer's knowledge, cannot be used unless the importer holds the actual bill of materials. The code for importer's knowledge was more appropriate herein because this was the primary basis of the claim. The Appellant/the company could have used the code U117 for importer's knowledge, instead of the code U116 for statement on origin in which event there would be no liability for the Appellant/the company personally. Where EU law is being applied principles of fair procedure, good administration, legal certainty, proportionality and equity apply as a matter of law irrespective of the domestic characterisation of the appeal body or the statutory framework governing the appeals.

61.17. Articles 41 and 47 of the Charter of Fundamental Rights ("the Charter") apply mandatorily. Article 41 of the Charter guarantees the right to good administration including impartial and fair treatment, the right to be heard before adverse measures are taken, and the obligation to act reasonably and proportionally. Article 47 guarantees the right to an effective remedy before an independent tribunal. The assertion of a substantial customs debt against the Appellant personally was plainly an adverse measure within the scope of Articles 41 and 47 of the Charter. These guarantees are not optional and do not depend on the discretion of the Respondent or the procedural limits of national appeal legislation.

61.18. Article 120 of the UCC expressly provides for repayment or remission of a customs debt in the interest of equity, where the debt was incurred under special circumstances, and no deception or obvious negligence may be attributed to the debtor. It is a binding rule of EU law designed to prevent unjust outcomes arising from the rigid application of customs rules. The Respondent accepts that the Appellant acted honestly and in good faith, no deception was alleged, and the matters arose in the exceptional circumstances of early post Brexit trading. In those circumstances, Article 120 of the UCC is engaged as a matter of law.

61.19. The following matters taken cumulatively constitute special circumstances within the meaning of Article 120 of the UCC namely; the Appellant and his company were first time customs agents entering the market in January 2021; Brexit caused an unprecedented overnight increase in customs declarations; the State actively encouraged new entrants into the customs agent market and promoted training courses; the Agreement was agreed on 24 December 2020 and applied from 1 January 2021; comprehensive EU guidance on preferential origin issued only months later; the early months of 2021 coincided with the COVID pandemic and extreme operational disruption; the Appellant relied in good faith on experienced importer clients; retrospective statement on origin documents have been furnished in the vast majority of cases; there has been no loss to the Respondent and the Respondent possesses verification powers under the agreement that the Appellant does not have. These are not ordinary trading conditions. They are exceptional by any objective measure. As a customs agent acting in good faith, the Appellant reasonably expected that liability would rest with the importers, not the agent, and administrative guidance would not be retrospectively converted into a basis for personal liability, and honest mistakes made in unprecedented regulatory conditions would be addressed by verification or correction not punishment. Tax must be imposed by clear legislation.

61.20. The Respondent asserted that an importer cannot rely on U117, importer's knowledge, unless it was in possession a full bill of materials or manufacturing records of the vehicle. This is legally incorrect, factually unrealistic and inconsistent with the Agreement. It imposes an evidential burden on importers and their agents which is not required by the Agreement, which is not within their procurement and can only realistically be discharged by customs authorities acting through administrative cooperation. The Respondent has wrongly interpreted importer's knowledge. The Respondent is entitled to make inquiries with HMRC in relation to particular cases when it opens an investigation and is entitled to seek information in relation to the makeup of vehicles, and that is a complete inequality of arms between the Respondent and the Appellant. Article 61 of the Agreement provides for the mechanisms for administrative cooperation.

61.21. Customs declarations claiming preferential origin which are the subject of this appeal are governed by the Agreement. In relation to claims for preferential treatment under the Agreement, the importer alone was the person entitled to make the claim, and the importer alone was responsible for the correctness of that claim. Reference was made to Article 54 of the Agreement. The Agreement excludes the possibility that the customs declarant or customs agent may be rendered liable for a claim of preferential origin. Any attempt to impose a customs debt on the Appellant whether personally or as a deemed declarant was void and incompatible with express terms of the Agreement. Article 58 of the Agreement does not specify the form or evidential basis of importer's knowledge, in particular it does not require a list of materials or manufacturing records that are confidential production data. The UCC definition of "declarant" cannot override the express allocation of responsibility in the Agreement. The matter of liability is governed by the Agreement.

61.22. The provisions of Article 203 of the UCC, namely RGR, applied to the vehicles at issue which were in free circulation in the UK at 11:00 PM on 31 December 2020. Those vehicles had either been produced in the EU or been lawfully imported into the EU prior to that date. The subsequent importation of those vehicles into the State after 1 January 2021, constituted the return of goods within the meaning and purpose of Article 203 of the UCC. Reference was made to the judgment of Mr Justice Kennedy in *Bell Transport Limited v The Revenue Commissioners* [2025] IEHC 544 ("*Bell Transport*"). RGR applies automatically to all of the vehicles at issue herein. The customs declarations that the Appellant exhibited in his documentation on the face of them, show sufficient facts to engage RGR. In respect of the other matters addressed in the *Bell Transport* decision, the decision is not binding on the Commissioner.

61.23. A number of the vehicles included in the Notification of Customs Debt related to vehicles which were over 25 years old, and in one instance a vehicle dating from 1920. Those vehicles were eligible for VAT relief and corresponding customs relief/commodity code treatment. The appropriate vehicles were not included in the original Movement Reference Numbers ("MRNs"). The Respondent refused to permit the making of corrective MRNs in respect of those vehicles. That refusal was inconsistent with the principles governing amendment and correction of customs declarations, in the absence of any fraud, deception or abuse. For the reasons set out in the grounds of appeal five and six, EU law permits correction of declarations to reflect the correct legal treatment. The refusal therefore lacks transparency, proportionality and legal justification.

61.24. The Appellant's grounds of appeal one and two are more than sufficient to dispose of this appeal for the Appellant. However, even if it is found that the Respondent's decision was legitimate, it was patently contrary to fair administration and fair procedures. The Commissioner must make an assessment in relation to this because it is engaging a matter of EU Law and the CJEU, and when EU Law is engaged the fundamental principles of the Charter must apply. So, even if it is found that the Appellant was personally liable under the legislation, this could not be valid having regard to the fundamental principles of the Charter.

61.25. In replying submissions, the Appellant's Solicitor submitted that the decision of the High Court in *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 ("*Menolly Homes*") related to domestic taxation and that in the context of EU Law this was a fresh appeal. In circumstances where the Respondent has accepted that the Charter was engaged, it would be inconsistent with the basic principles of fair administration if the burden of proof cases, that might be applicable to domestic taxation and appeals, were applied in these circumstances. Furthermore, the principles of estoppel apply by analogy and are filled out by EU case law in relation to Articles 41 and 47 of the Charter.

61.26. In relation to Article 19 of the UCC it is clear that the interpretation is inconsistent with European principles of contract law and agency. It was a central issue in this case and in other appeals, which should not be followed because they misconstrue Article 19 of the UCC as if it was a charging provision, such that if it was not disclosed that a person was acting as a representative in every customs declaration, that person was as a consequence, personally liable. It was wrong under any measure of Article 41 and 47 of the Charter that a person could be made liable in such an oblique way.

*Respondent's evidence*

62. The Respondent's witness 1 gave evidence on behalf of the Respondent. The Commissioner has set out hereunder a summary of the evidence adduced:-

62.1. The Respondent's witness 1 testified that he is a Customs Officer and a member of the PCI Unit which carries out reviews of importations over the previous three years, to ensure that the correct customs duties have been collected. The Respondent's witness 1 confirmed that he had taken over the Appellant's file in 2022.

62.2. The Respondent's witness 1 gave evidence that the customs debt had been identified on the basis that the statement on origin documentation had not been in place at the time of importation and consequently, preferential treatment could not be claimed. The Respondent's witness 1 stated that it was a requirement under the Agreement that documents to support any claim for PO would be in the possession of the importer or declarant at the time of import in order to qualify for PO. He stated that there are two options to be availed of under the Agreement, a statement on origin, which is a statement made out by the exporter, or importer's knowledge, which means that the required documentation disclosed that the vehicle in question was originating in the UK. He stated that the code U116 is used on the AIS for a statement on origin and U117 is used for importer's knowledge.

62.3. The Respondent's witness 1 relayed that from an importer's perspective, it is much more difficult to prove importer's knowledge, because of commercial sensitivity, such that a manufacturer in the UK would not be willing to provide documentary proof from where they obtained their parts. He said that the statement on origin moves the responsibility for having that information from the importer to the exporter and that the statement on origin is a specific wording which is laid out in Annex 7 of the Agreement and an importer should have this on an invoice.

62.4. In respect of verification of origin, he said that the Respondent was not in a position to approach UK customs authorities to request information to substantiate a claim of origin, because one of the requirements for a mutual assistance request to the customs authority in the UK, or any other country, would be the existence of a statement on origin at the time the declaration was made. He said that this was set out in the Agreement also and the Respondent had no discretion in that regard.

62.5. The Respondent's witness 1 testified that there are two parts to PO, the rules on how something had to be manufactured and the procedural rules. The procedural rules are that the goods have to be accompanied by the relevant proof of PO, to be considered to be of PO. The witness stated that the Respondent has the ability to verify any proof of origin that was presented, but it must be present before it can be declared on an import declaration. The witness stated that Article 54 of the Agreement states that a claim for PO "shall" be based on a statement on origin (U116) or importer's knowledge (U117). The witness said that means that if a person is importing a vehicle into the State that person enters the details into the AIS which confirm that the vehicle qualified for PO and that the documentation was to hand to support the claim, if required. The witness confirmed that if the Respondent permitted an amendment to change from U117 to U116 that would offend the Agreement that had been negotiated by the EU and the UK. The witness testified that a product cannot be deemed to have PO unless it was accompanied by the correct proof of PO.

62.6. The Respondent's witness 1 testified that Articles 18 and 19 of the UCC provide for representation and allow the declarant to state whether they are acting as a direct or indirect representative. He said that it was not mandatory. However, if representation was not indicated then the declarant becomes responsible for any customs debt. In order to avoid a customs debt being assigned to the declarant, he said a signed agreement to show that the declarant was acting as a direct agent for the importer would be required and any agreement must be in place at the time the declaration was made on the AIS. He stated that as the Appellant informed the Respondent that he did not have the signed agreements in place at the time of importation of the vehicles at issue, the debt was assigned to him as the declarant. He stated that in an email dated 14 November 2022, the Appellant informed him that he did not have any such agreements with the importers, only oral agreements. The Respondent's witness 1 testified that as the Appellant did not provide any written documentation apart from TAN authorisations, he was held responsible for the customs debt. He said that the absence of written empowerment documentation meant that the Respondent could not pursue the importers for the customs debt.

62.7. The Respondent’s witness 1 stated that the Appellant had not indicated on the declarations whether or not he was acting as a direct or indirect representative, or that he was any sort of agent or representative, as that box was left blank. The Respondent’s witness 1 testified that leaving that box blank or not was irrelevant, unless the person making the declaration actually had the empowerment documentation in their possession at the time of importation. Reference was made to the eCustoms Helpdesk Notification, dated the 2 February 2020, which the Respondent’s witness 1 stated was issued by the Respondent to all traders and which was available online. He said that there was a continuous stream of eCustoms notifications issued from the Respondent covering all aspects of customs, but that the one referenced covers representation specifically.

62.8. The Respondent’s witness 1 was cross examined by the Appellant’s solicitor. It was put to the Respondent’s witness 1 that the importers and their tax numbers are identified on the declarations. The Respondent’s witness 1 agreed. It was suggested to the Respondent’s witness 1 that the Appellant furnished statements on origin after the interventions and the Respondent’s witness 1 confirmed that the Appellant did so subsequently, and he agreed that had those statements on origin existed at the time the declarations were made, there would have been no liability in this case. The Respondent’s witness 1 agreed that the statements on origin were rejected because they were created subsequently and had they existed at the time, they would have been accepted by the Respondent. It was put to the Respondent’s witness 1 that it was commercially unrealistic for any importer to provide the information in relation to U117, importer’s knowledge. The Respondent’s witness 1 referred to the requirements in Article 56 of the Agreement as being relevant and said that an alternative is offered by the Agreement namely, the statement on origin. It was put to the Respondent’s witness 1 that the Respondent had power to make an intervention with HMRC. The Respondent’s witness 1 stated that it does not apply to importer’s knowledge as the importer is stating what the information was. He said that it was possible in relation to a statement on origin provided that the statement on origin existed at the time the declaration was made, which was not the case herein.

62.9. The Respondent’s witness 1 was asked did he accept that the Appellant was a customs agent, and he stated that the Appellant used his own name and EORI number on the declarations and hence, the Appellant was under investigation. He confirmed that the Respondent did not consider that the Appellant was importing the vehicles for his own end use. The Respondent’s witness 1 also accepted that he was completing the declarations on behalf of the importers. The Respondent's witness 1 was asked why it not accepted that the Appellant had authority to do so in the form of empowerment. The Respondent's witness 1 testified that the Appellant did not have any documentation to support empowerment. It was put to the Respondent's witness 1 that there was nothing in the legislation that required written authority. The Respondent's witness 1 gave evidence that the Appellant did not indicate whether he was acting as a direct or indirect representative. It was put to the Respondent's witness 1 that the Respondent would not accept that there was an oral agreement, and the Respondent's witness 1 stated that he was not sure how that could be accepted when there was no proof. It was put to the Respondent's witness 1 that the Appellant provided the TAN authorisations and that this was written evidence of empowerment. The Respondent's witness 1 confirmed that TAN authorisations only refer to authority for the deferred payment of VAT, and it had nothing to do with agency. He said that for the customs debt under appeal, the Appellant had no empowerment documentation to show that he was acting as a direct representative of the importers. Hence, in accordance with Articles 18 and 19 of the UCC, the responsibility for the customs debt lay with the declarant.

62.10. The Respondent's witness 1 was re-examined on his evidence and he was asked what the consequences would be for an importer or garage if the Respondent relied on a purported oral agreement with an agent or a TAN authorisation as establishing direct representation. The Respondent's witness 1 testified that it would lead to serious issues and "*we would all be going round in circles".* He relayed that for the Respondent to present a case or to pursue a customs debt, it required some form of written authorisation or written agreement with the importers, so that the Respondent understands where the responsibility for the customs debt lies and failing that, the legislation applied.

63. The Respondent's witness 2 gave evidence on behalf of the Respondent. The Commissioner has set out hereunder a summary of the evidence adduced:-

63.1. The Respondent's witness 2 stated that she is a Higher Executive Officer in the Origin and Valuation Unit of the Respondent, working in two key areas namely, determining the amounts of customs duties owing and the classification of the goods. The Respondent's witness 2 stated that the unit provides advice to trade, agents and other staff that are dealing with clearance at the ports and post-clearance scenarios. In addition, she said that the unit is responsible for drafting guidance material and manuals.

63.2. The Respondent's witness 2 gave evidence that there are two parts to PO, the rules on how something has to be manufactured and the procedural rules. The procedural rules are that the goods have to be accompanied by the relevant proof of PO, to be considered to be of PO. The Respondent's witness 2 stated that the Respondent has the ability to verify any proof of origin that is presented, but this must be present before it can be declared on an import declaration. The Respondent's witness 2 stated that Article 54 of the Agreement states that a claim for PO "shall" be based on a statement on origin (U116) or importer's knowledge (U117).

63.3. The Respondent's witness 2 said that this means that if a person is importing a vehicle into the State that person enters the details into the AIS, confirming that the vehicle qualifies for PO, and that the documentation is to hand to support the claim, if required. The Respondent's witness 2 testified that a product cannot be deemed to qualify for PO unless it was accompanied by the correct proof of PO. She stated that the documentation must be in existence at the time the declaration is made on the AIS. She relayed that a statement on origin in accordance with Article 55 of the Agreement shall be valid for 12 months from the moment it was made out. Therefore, it cannot be given retroactive effect and there is no discretion to do so.

63.4. The Respondent's witness 2 was cross examined on her evidence by the Appellant's solicitor. It was put to the Respondent's witness 2 that there was no responsibility allocated under the Agreement on anyone other than the importer. The Respondent's witness 2 stated that there is no possibility of interpreting who a declarant is by reading the text of the Agreement, because it does not deal with that concept, it deals with the rules of origin and the procedural rules around it.

63.5. The Respondent's witness 2 gave evidence that the exporting authorities have no involvement at the point of issue of a statement on origin, and the rules around the issuing of these documents are set down in the Agreement, but it does not deal with how a sovereign state will safeguard its own financial responsibilities. She relayed that the Agreement does not get into the detail of who is responsible for a customs debt. The Respondent's witness 2 was asked to confirm that the Agreement does provide for a situation where the Respondent can request HMRC to verify a declaration in the course of an investigation and the Respondent's witness 2 stated that it does not allow the Respondent to verify a customs declaration where U117 had been used, but that it may raise a verification request with HMRC where a valid statement on origin had been produced. However, she confirmed that in this particular case, the basis for the claim of PO did not exist at the time the claim for PO was made, as there were no valid statements on origin at the time the declarations were made. The Respondent's witness 2 testified that the procedural rules had not been followed and therefore, no verification request was sent to HMRC.

64. The Respondent's witness 3 gave evidence on behalf of the Respondent. The Commissioner has set out hereunder a summary of the evidence adduced:-

64.1. The Respondent's witness 3 testified that he is an Assistant Principal Officer in the Customs Division of the Respondent and he has responsibility for the Traditional Own Resources Unit, which is the Own Resources of the EU and the collection of customs duty. He said that he also has responsibility for dealing with customs representation and customs debt as a policy area within the Customs Division.

64.2. The Respondent's witness 3 explained what the position was when the representative box was not ticked. He stated that Article 18 of the UCC covers representation and it allows for a trader or someone who needs to import, to appoint a customs representative to make a declaration on their behalf. He said that in addition, Article 19 of the UCC deals with the empowerment, and states that where a customs representative has been appointed, they shall declare whether they are acting as a direct representative or an indirect representative. Furthermore, Article 19 of the UCC states that where neither representative status is selected by the customs representative, it shall be deemed that they are acting in their own name. The Respondent's witness 3 explained that the TAN authorisations are evidence of a financial relationship between the Appellant and the traders in question, but are not evidence of empowerment, nor have they ever been accepted as evidence of empowerment of a customs representative. He relayed that the eCustoms Helpdesk Notifications clearly set out that a TAN authorisation was not evidence of empowerment.

64.3. The Respondent's witness 3 was cross examined on his evidence by the Appellant's solicitor. He was asked what would happen if a declaration was lodged on the AIS, but the representative box was left blank. The Respondent's witness 3 confirmed that the declarant would be deemed to have not selected a representative status and deemed to be an indirect representative. The Respondent's witness 3 confirmed that he could not speak to the AEP system, which was the system used prior to the introduction of the AIS in 2021, and he confirmed that the AIS was the system that had operated in relation to the declarations that formed part of this appeal. The Respondent's witness 3 confirmed that there is a mandatory piece to Data Element 3/21 that only comes into play where Data Element 3/19 and 3/20 have been completed. It was put to the Respondent's witness 3 that there was an option not to complete the box. The Respondent's witness 3 referred the Appellant's solicitor to Article 18 of the UCC which states that a person may appoint a customs representative to file an import declaration, but you are not obliged to do so. However, he said that Article 19 of the UCC states that if a selection as a customs representative was not made, then the declarant is deemed to be acting as an indirect representative. The Respondent's witness 3 stated that these are obligations as a customs representative.

65. The Respondent's witness 4 gave evidence on behalf of the Respondent. The Commissioner has set out hereunder a summary of the evidence adduced:-

65.1. The Respondent's witness 4 confirmed that he is an Assistant Principal Officer in the eCustoms Development Unit in the Customs Division of the Respondent.

65.2. The Respondent's witness 4 was directed to the forms that had been completed by the declarant and the Respondent's witness 4 explained that the documents were printed from the AIS system. He said that the Respondent's software can print a format of the document but that declarants have their own software. The Respondent's witness 4 confirmed that it was the Appellant's EORI number entered under the heading "Declarant 3/18". He confirmed that there are two data elements on the form for declarants, such that 3/18 is the declarant's EORI number and 3/17 is the second declarant element, the EORI name and address. He said that the declarant is a mandatory field to be completed and if it was not completed, the system would not accept the declaration. He said that the representative details are different. The declarant and the representative are two different actions he said and there are two fields for the declarant and three for the representative.

65.3. The Respondent's witness 4 agreed that the Appellant did not dispute the fact that he did not indicate the representative status, namely data elements 3/19, 3/20 and 3/21. He confirmed that when either of the first two representative fields are completed, either 3/19 or 3/20, the representative status is mandatory, namely that it must be indicated whether there is direct or indirect representation. However, he said that if no representative is chosen then 32/1 does not become mandatory. He confirmed that a declaration cannot be completed without filling in the name of the declarant and their EORI number but that it was not mandatory to complete the representative status under 3/19 and 3/20. The Respondent's witness 4 relayed that the position is due to Article 18 of the UCC, where it states that a trader or an importer may appoint a representative.

65.4. The Respondent's witness 4 was cross examined on his evidence by the Appellant's solicitor. He was asked if every declaration that was made was required to be validated by the Respondent and he stated that it was an electronic validation that took place and if the declaration was not correct it was rejected, but that there were different forms of validation. The Respondent's witness 4 gave evidence that the declarant, as far as the system was concerned, was the person who submitted the message down the line to the Respondent, and it does not validate each field nor does it establish relationships between the declarant and the importer. There is no cross-check between those fields in the system.

*Respondent's submissions*

66. The Commissioner sets out hereunder a summary of the submissions made by counsel for the Respondent:-

66.1. The Respondent initiated a PCI after the importation stage, on the declarations made by the Appellant. The purpose of the PCI was to verify that the importer was correctly claiming relief from customs duty on the grounds that the imported motor vehicles qualified for the 0% duty rate by virtue of them being eligible for PO. On 25 January 2021, the Appellant was requested to provide supporting documentation to prove entitlement to his claim for preferential tariff treatment.

66.2. The Appellant does not have the documentation required to support the declarations that were made and it was on that basis that the PCI was valid and had merit, as it found that the claim for PO was not valid. Furthermore, the Appellant had no documentation in relation to empowerment and hence, the customs debt was properly that of the Appellant.

66.3. Article 5 of the UCC defines the "declarant" as the "*person lodging a customs declaration, a temporary storage declaration, an entry summary declaration, an exit summary declaration, a re-export declaration or a re-export notification in his* *or her own name or the person in whose name such a declaration or notification is lodged*". The Appellant herein was the declarant on all of the relevant declarations on the AIS, wherein he failed to indicate whether he acted as a direct or indirect representative. Article 5 of the UCC also provides for the definition of "debtor" at paragraph 19 where it is defined as meaning "*any person liable for a customs debt*".

66.4. Customs declarations submitted by a declarant on the AIS are legally binding returns similar to any other return made to the Respondent. Article 15 of the UCC provides for the delivery of information to the customs authorities. If a person lodges a customs declaration, they are responsible for three things namely: the accuracy and the completeness of the information; the authenticity, accuracy and validity of any document supporting the declaration; and compliance with all obligations regarding placing the goods under the custom procedure concerned.

66.5. Article 18 of the UCC pertains to customs representation and provides that: "*A person may appoint a customs representative*." This was the article that the Respondent's witnesses referred to in support of the argument that the AIS does not include a mandatory box for a representative, because it is a matter of logic that not every person who completes a declaration will have appointed a customs representative. Therefore, it was optional to complete that information on the AIS and that option was in accordance with Article 18 of the UCC. Article 18 of the UCC also provides for direct and indirect representation. So, if a customs representative was acting on behalf of a person, they shall specify whether that representation was direct or indirect. The Appellant did not indicate any representative status whatsoever and that was not in dispute.

66.6. Article 19 of the UCC provides that where persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so, shall be deemed to be acting in their own name and on their own behalf. This deeming provision places the responsibility for any customs debt on the declarant and not the importer. What is at issue is whether the Appellant had any agreements with clients regarding representation. The Appellant argued that the TAN authorisations to pay customs duties was proof that he was representing the importer and not acting in his own name and capacity. The Respondent does not accept that the TAN authorisations were proof of empowerment. Article 19 of the UCC also provides that "*Persons who fail to state that they are acting as a customs representative or who state that* *they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf".* That does not arise here because the Appellant did not indicate a status on the declarations on the AIS, but if it did the Appellant had no evidence of empowerment to support representation in any event. The evidence of empowerment was sought by the Respondent. However, on the Appellant's own admission, the evidence was not available. Rather, he relied on oral agreements with the importers, but there was no evidence to support such oral agreements. Alleged oral agreements are not sufficient to meet the requirements of Article 19 of the UCC, because Article 19 states that the evidence is to be provided, and the Appellant simply did not provide any evidence. Furthermore, it would be very dangerous if the Respondent were to rely on purported oral agreements with importers regarding customs obligations.

66.7. Article 48 of the UCC deals with the power of customs authorities to verify information that has been given in a customs declaration. Article 51 of the UCC deals with obligations to keep documents and other information. There was an obligation to retain information for three years.

66.8. Post Brexit, vehicles being imported from GB that qualify for PO attract a 0% rate of customs duty. Cars that are not entitled to PO attract various rates of duty, the most common of which is 10%. In the Agreement, the rules of origin for second hand motor vehicles originating in the UK are explicit. The value of non-originating material used in the production of the car must not exceed 45% of the ex-works price of the car in order for the car to qualify as originating in the UK for a zero tariff rate on import to the EU. Non-originating means raw materials that do not hold UK origin status.

66.9. Certain proofs are required to qualify for preferential treatment. The Appellant made the relevant declarations for preferential treatment, but has failed to prove an entitlement to same, despite several opportunities being afforded to him to provide documentation supportive of the claim. The Appellant has been afforded reasonable opportunity to provide the necessary documentation, namely statements on origin that existed at the time the declarations were made, to support his claims for PO, but he has failed to do so. The customs debt was properly the responsibility of the Appellant who made the relevant declarations for preferential treatment, but despite several opportunities has failed to prove an entitlement to same.

66.10. Article 77 of the UCC pertains to the release of goods for free circulation and temporary admission. As soon as the declarations were lodged and then accepted, the customs debt was incurred, so therefore it crystallised. At subparagraph 3, the Article provides that *"[t]he declarant shall be the debtor*" and this was why the use of the word "declarant" is so important, which is defined in Article 5 of the UCC.

66.11. Article 162 of the UCC provides for the content of a standard customs declaration. This provision underscores the absolute requirement that when a customs declaration is completed, the information must be accurate and complete. All the particulars necessary must be completed, but the underlying information and supporting documents must be in the declarant's possession at the time the customs declaration is lodged, and that is crucial from the Respondent's perspective.

66.12. Article 163 of the UCC deals with supporting documentation and confirms that supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared, shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.

66.13. Article 172 of the UCC deals with the acceptance of a customs declaration. The date of acceptance is crucial, and it means that if a customs declaration is submitted and is accepted immediately, then those goods fall within the declaration that has been accepted. So, in this case, for example, the goods were released for free circulation.

66.14. Article 173 of the UCC pertains to an amendment of a customs declaration. It is very important to emphasise that the judgment of the CJEU, relied on by the Appellant, in Case C-97/19 *Pfizer & Langen* was considering the precursor to Article 173 of the UCC namely Article 78 of the Union Customs Code ("UCC"), which is very different to Article 173 of the UCC.

66.15. Article 55 of the Agreement deals with a claim for preferential tariff treatment. It is clear from the interaction of Article 54 and Article 55 of the Agreement that the information must be available to the relevant person at the time of importation and this is also addressed in the Commission Guidance Note that was referred to. Article 56 of the Agreement specifically deals with statements on origin and Article 58 of the Agreement specifically deals with importer's knowledge. Importer's knowledge does not arise herein, because the Appellant never sought to rely on

U117 importer's knowledge. All declarations were made on the basis of U116, a statement on origin.

66.16. U116 requires a statement of origin which can be stated on the supplier invoice or on another similar document. There is specific wording provided at Annex 7 of the Agreement. If the prescribed text is not used, then the claim is not accepted. U117, importer's knowledge requires information in the form of supporting documents or records provided by the exporter or manufacturer of the product to the importer. This information provides valid evidence that the product qualifies as originating. The importer is fully responsible for proving the relevant rule in Annex ORIG-2: Product Specific Rules of Origin and the conditions set down in Chapter 2, on Rules of Origin have been met. A bill of materials used to manufacture the vehicle, clearly showing that the non-originating materials do not exceed 45% of the ex-works price, is required.

66.17. If the claim is based on a statement of origin, the statement of origin must be available and capable of being provided to the customs authority if requested to do so and in this case, that was not capable of being done, because there were no statements on origin available at the point of declaration. The only statements on origin provided by the Appellant, postdated the declarations being made on the AIS.

66.18. Annex 7 of the Agreement provides the text of the statement on origin which states that *"[t]he Statement on Origin, referred to in Article 56 of this Agreement shall be made out using the text set out below, in one of the following language versions, and in accordance with the laws and regulations of the exporting party*." Furthermore, a sample statement on origin is provided which states: "*The exporter of the products covered by this document (Indicate the reference number by which the exporter is identified) declares that, except where otherwise clearly indicated, these products are of [Indicate the origin of the product: the United Kingdom or the Union] preferential origin.*"

66.19. Reference was made to the judgment in *Bell Transport*. It is relevant to the argument that is being advanced regarding the entitlement to claim RGR. RGR was not claimed on any of the import declarations. Therefore, it does not apply on the facts of this appeal. Moreover, no evidence whatsoever has been provided, either to the Respondent in advance of this appeal, or for the purposes of this appeal, or indeed during the hearing of this appeal, that would support a claim for RGR. Whilst the Appellant's solicitor was urging that this was an issue of law and that RGR automatically applied to the vehicles, the Respondent does not agree. The Respondent relies on the *Bell Transport* decision, such that RGR is not solely a question of law. There would have to be some factual matrix available to engage with this argument in the first place. The Appellant would have to establish the position regarding each of the vehicles the subject of this appeal, and akin to the facts of the decision in *Bell Transport*, no proof in that regard was available to the Commissioner herein.

66.20. In relation to the three vintage cars, no evidence supportive of this claim was furnished to the Respondent at the time of declaration, in the intervention or for the purposes of this appeal. There had been a query from the Appellant to the Respondent in relation to one car only namely, a Triumph Acclaim. In an email dated 19 April 2021, to the Respondent, the Appellant stated that "*I have rang Ecustoms looking for the box 44 code and to see if anything else needed for the vintage cars and I am waiting there response as it it (sic) those TRUIMPHS were made in the UK so should come under the country of origin codes as well*." No further correspondence was received after that date. As with any claim made on a declaration on the AIS, an importer must be in a position to provide the relevant proofs to the Respondent, namely that the vehicles are in their original state, they are in excess of 30 years old and of a model or type that is no longer in production. The Appellant should not make this claim for the first time in his grounds of appeal. However, the Respondent would be more than willing to examine any documentation the Appellant holds to prove these claims.

66.21. Reference was made to the decision in *Kenny Lee v The Revenue Commissioners* [2021] IECA 18 ("the *Lee* decision"). Judicial review type arguments and other arguments that have been made do not arise in a tax appeal. Furthermore, the burden of proof is on the Appellant in this appeal in accordance with the decision of the High Court in *Menolly Homes*.

66.22. Reference was made to the Appellant's reliance on section 45 of the Companies Act 2014. No evidence of any ratification within the meaning of section 45 of the Companies Act 2014 was ever provided to the Respondent. If there had been an agency, then that would allow the Appellant to look to the other sub-party for compensation in respect of the issues. However, this appeal engages the very specific requirements of the UCC regarding representation, and no alleged or purported agency permits anything other than compliance with the very specific requirements of the UCC.

66.23. Reference was made to Article 120 of the UCC. There were no special circumstances that applied to the Appellant and there was no exceptional situation that prevailed for the Appellant when compared to other operators engaged in the same business. The requirements were the same for everybody.

66.24. Insofar as the Appellant referred to the company, that was set up from mid-February 2021 onwards and was not involved in the declarations that are under appeal. Each of those declarations was made on the basis of the Appellant using his own name, address and EORI number. There was no representation status asserted, and no proof of empowerment was ever provided to the Respondent thereafter.

**Material Facts**

67. Having read the documentation submitted by the parties in this appeal and having considered the evidence adduced and submissions made at the hearing of the appeal, the Commissioner makes the following findings of material fact:

67.1. The Appellant is a customs declarant whose business includes lodging declarations for second hand vehicles being imported from the UK into Ireland.

67.2. The Appellant did not own the vehicles, trade in vehicles nor was he a commercial importer.

67.3. The Appellant registered for customs procedures and obtained his own personal EORI number.

67.4. In 2021, the Appellant established the company for the purpose of providing customs clearance services, in particular in relation to the importation of motor vehicles from the UK to Ireland.

67.5. On 15 February 2021, the company was incorporated and its certificate of incorporation reflects that date.

67.6. In relation to the vehicles, the Appellant completed customs formalities and declarations via the "AIS", used his own personal EORI number and under the heading "declarant", the Appellant used his own name and address.

67.7. The Appellant left blank or did not complete the box on the declarations on the AIS indicating whether he was acting as a direct or indirect representative.

67.8. The Appellant lodged customs declarations on the AIS in respect of imported vehicles, for which the Appellant claimed GBPO.

67.9. The declarations at issue in this appeal were all lodged by the Appellant during the relevant period using the AIS and no declarations at issue in this appeal were lodged using any previous system of the Respondent.

67.10. It was not mandatory that the Appellant complete the box on the AIS in relation to representation because it is not envisaged that representation is mandatory, having regard to the language used in Article 18 of the UCC.

67.11. The Appellant claimed GBPO on the basis of U116, statement on origin. However, the Appellant did not have statements on origin for the vehicles at issue at the time the declarations were made.

67.12. The statements on origin submitted by the Appellant to the Respondent were not contemporaneous, but rather postdated the declarations being made on the AIS.

67.13. There was no claim for RGR in respect of any of the declarations lodged by the Appellant in respect of the vehicles at issue in this appeal.

67.14. There was no documentary evidence submitted to the Respondent or evidence adduced at the appeal hearing, to support a claim of RGR.

67.15. There was no documentary evidence submitted to the Respondent or evidence adduced at the appeal hearing, to support the classification of three vehicles as vintage cars.

67.16. There was no documentary evidence adduced by the Appellant to support an agency agreement between him and the company nor was there any documentary evidence adduced to support the contention that the company ratified all acts of the Appellant prior to its incorporation.

67.17. No documentary evidence of empowerment was submitted by the Appellant to support his position that he acted as a direct representative of the importers. The Appellant submitted that oral agreements were in place with the importers.

67.18. A TAN authorisation allows the declarant to enter a separate EORI in order to pay a debt at customs clearance. A TAN authorisation does not constitute evidence of empowerment.

67.19. The Respondent does not always request supporting documents at the point of entry, but within three years of importation the Respondent is entitled to subject any import to an audit or documentary check.

67.20. The classification of an import as "orange", "red" or "green" at the point and time of entry does not affect the entitlement of the Respondent to later subject the goods to a check or audit.

67.21. On 25 January 2021, a PCI was initiated, when the Respondent issued correspondence to the Appellant outlining the specific proofs required to claim GBPO for the vehicles being imported into the State for the relevant period.

67.22. On 11 October 2023, a Notification of Customs Debt issued to the Appellant, in the amount of €93,924.00.

67.23. Subsequent to the correspondence dated 11 October 2023, the Appellant provided further documents to support a claim of RGR for one of the vehicles. The evidence was accepted by the Respondent and an amended Debt Notification letter issued on the same date, 11 October 2023, notifying the Appellant that the Respondent was establishing an updated total customs debt in the amount of €93,020.62.

67.24. On 31 October 2023, the Appellant discharged the customs debt due to the Respondent.

67.25. On 8 November 2023, the Appellant lodged a first stage appeal to the DAO of the Respondent.

67.26. On 12 January 2024, the DAO determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld by the Respondent.

67.27. On 9 February 2024, the Appellant duly appealed the customs debt to the Commission.

**Analysis**

*Burden of proof*

68. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law, for example in the High Court case of *Menolly Homes* 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*".

69. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes,* wherein he states that:

> "*Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute…"*

70. 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 and *Quigley v Revenue Commissioners* [2023] IEHC 244.

71. More recently, the Court of Appeal has affirmed this position in the case of *JSS & Others v Tax Appeals Commissioner* [2025] IECA 96. In that case, at paragraph 34, McDonald J. stated:

> *"[…] the taxpayer bears the burden of demonstrating that a tax assessment is wrong."*

72. 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 ("*Hanrahan*"). 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………."*

*Substantive issues*

73. In respect of the substantive issues in this appeal, the Appellant in his Notice of Appeal set out nine separate grounds of appeal. The Commissioner will address each ground of appeal in turn, hereunder as follows:

*Ground of appeal 1 - The appellant is not liable in respect of any customs debt, because he acted at all times as director and an employee, on behalf of the company*

74. The Commissioner notes the Appellant's first argument, that he was not liable in respect of the customs debt, because he acted at all times as a Director and employee on behalf of the company, and that the only entity that traded as a customs agent, was the company. Hence, he argued, the imposition of the customs debt on him in his personal capacity purported to set aside the separate corporate existence of the company, without any basis in law or in fact. The Appellant's solicitor submitted that settled principles of agency provide that an agent who acts on behalf of a disclosed principal does not incur personal liability, absent express agreement to the contrary. He said that the basic principle that an agent who acts on behalf of a principal was not personally liable is trite law, and reference was made to the judgment in *Gadd v Houghton & Co* (1876) 35 LT 222, which decision the Commissioner has considered in the course of her analysis in this Determination.

75. The Commissioner notes that on 15 February 2021, the company was incorporated. This was supported by the certificate of incorporation submitted by the Appellant in support of his appeal and was not a fact in dispute in this appeal. It is a material fact in this appeal that the declarations at issue were lodged on the AIS up to 30 June 2021. Furthermore, it is a material fact found in this appeal that the declarations at issue all reflected the Appellant's name and not the company under the heading "declarant", in addition to the Appellant's personal EORI number being used, as opposed to the company's EORI number, on the declarations at issue.

76. The Appellant's solicitor posited that despite those material facts, namely that the declarant fields reflected the Appellant's name and EORI number as opposed to the company's name and EORI, section 45 of the Companies Act 2014 was applicable to this scenario. The Commissioner notes that section 45 of the Companies Act 2014 provides that:

   *"(1) Any contract or other transaction (including any application to any lawful authority) purporting to be entered into by a company prior to its formation, or by any person on behalf of the company prior to its formation, <u>may be ratified by the company after its formation</u>.*

   *(2) <u>Upon such contract or other transaction being so ratified</u>, the company shall become bound by it and entitled to the benefit of it as if the company had been in existence at the date of such contract or other transaction and had been a party to it.*

*(3) <u>Prior to such ratification (if any) by the company, the person or persons who purported to act in the name or on behalf of the company shall, in the absence of express agreement to the contrary, be personally bound</u> by the contract or other transaction and entitled to the benefit of it*."

77. The Appellant submitted that acts done on behalf of a company prior to incorporation may be ratified by the company and upon ratification, an agent has no personal liability, absent an express agreement to the contrary. The Appellant submitted that the company ratified all pre-incorporation trading by adopting the transactions in its accounts, by registering for employer PAYE, by including the trading from 1 January 2021 in its corporation tax returns and by continuing the business without interruption following incorporation. That was so, he argued, because upon ratification it was as if the company had been in existence at the time of the contract, and under the law of agency the company, and not the Appellant, was liable. Moreover, the Appellant's solicitor submitted that this interpretation was further confirmed by the wording of section 45(3) of the Companies Act 2014, which states that an agent is personally liable only prior to the ratification by the company of the act concerned.

78. The Commissioner notes the Appellant's evidence that he never personally traded and never intended to do so, and that it was always done with the company in mind. The Commissioner notes the Appellant's testimony that at the time, the administrative steps he was required to take to establish the company such as registering for corporation tax and obtaining an EORI number for the company, were taking longer than anticipated due to the Covid-19 pandemic. Furthermore, he gave evidence that he used his own personal EORI number out of an administrative necessity, due to the company not having its own EORI number at the time, and the timing of the incorporation of the company and its tax registration.

79. The Appellant's solicitor argued that the use of an EORI number does not create liability where the declarant is an agent of the company. There was no statutory basis on which the inclusion of an EORI number could create a customs debt and to do so would amount to imposing taxation by implication. The Appellant's solicitor argued that the company was the trading entity and agent at all times before and from the commencement of trading in January 2021, and the Appellant did not trade in his personal capacity. He submitted that looking at the facts, it was abundantly clear that the entity with which the Respondent was dealing with was the company and that the company was trading at all material times. The Commissioner notes the Appellant's submissions wherein he argued that: "*The slip-up in use of a personal tax reference number cannot change the basic fact*

*that it was the company trading and the company dealing with Revenue. To do otherwise, would go against basic company law and the separate identity of the company which is very firmly established in law. Furthermore, it would be utterly unreasonable and against basic principles of fairness and constitutional justice between the citizen and state to claim personal liability going behind the existence of a company, based on what is self-evidently a slip or error*." In terms of the evidence adduced, the Appellant's solicitor argued that "*section 45 of the Companies Act retrospectively exonerates [the Appellant] personally on any view of the matter once the company is formed and the trading is ratified and I say that on the evidence, there is more than sufficient evidence of ratification*."[1]

80. In response, the Respondent argued that it does not accept that section 45 of the Companies Act 2014 applied herein. Counsel for the Respondent submitted that the Appellant was asked to furnish agreements with customers and the company, and whilst the Appellant produced bank statements in the name of the company, the Respondent argued that this merely confirmed the existence of a business. Counsel for the Respondent submitted that despite requests being made by the Respondent, no documentary evidence was furnished to the Respondent to substantiate the claim that the Appellant was acting on behalf of the company, and the Appellant has provided no documentary evidence of any agreements between the Appellant and the company. Furthermore, the Appellant's EORI number was used on all of the declarations and there are no instances where the company was listed as the declarant on any of the import declarations at issue in this appeal. Counsel for the Respondent stated that customs declarations submitted by a declarant on the AIS are legally binding returns similar to any other return made to the Respondent. Counsel for the Respondent relayed that there are very specific requirements in the UCC regarding representation, and no alleged or purported agency permits anything other than what the very specific requirements of the UCC required. Therefore, once the declaration was lodged with the Appellant's name and EORI number as the declarant, the customs debt crystalised once that customs declaration was accepted by the Respondent and the goods were released for free circulation.

81. The Commissioner has considered all of the evidence adduced, including the testimony of the Appellant and the documentation submitted in this appeal. The Commissioner notes the submissions made by the parties and their respective opposing positions in relation to the application of section 45 of the Companies Act 2014 to the facts of this appeal and the question as to whether the Appellant was acting on behalf of the company.

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[1] Transcript Day 1, page 187

The Commissioner is of the view that the evidence adduced does not support a finding that the Appellant was acting on behalf of the company. The Commissioner notes that the Appellant's solicitor posited that "*looking at the facts, it is abundantly clear that the entity with which the Respondent was dealing with was the company and that the company was trading at all material times.*" Furthermore, the Commissioner notes that counsel for the Respondent submitted that "*despite request, no documentary evidence has been provided to the Respondent to substantiate the claim that the Appellant was acting on behalf of the company, and the Appellant has provided no documentary evidence of any agreements between the Appellant and the company*."

82. The Commissioner is satisfied that no documentary evidence was submitted by the Appellant to support his argument that the company ratified the acts of the Appellant consequent to the incorporation of the company on 15 February 2021. The Commissioner was presented with no corroborating evidence to support a finding by the Commissioner that the Appellant was acting on behalf of the company at the time the declarations were made. Furthermore, despite the Appellant's evidence that the company was incorporated on 15 February 2021 and the company having received its VAT number by the end of March 2021, no explanation was proffered by the Appellant, why he continued to use his personal name and address and his own EORI number on the declarations on the AIS, as opposed to the company name and EORI number. The Commissioner notes references to certain documentation by the Appellant that supports this argument. However, no documentation was furnished or opened to the Commissioner at the hearing of the appeal to establish that the company ratified the acts of the Appellant. The Commissioner agrees with the Respondent's submission that customs declarations submitted by a declarant on the AIS are legally binding returns similar to any other return made to the Respondent. The Commissioner is therefore satisfied that once the declarations were lodged on the AIS with the Appellant's name and EORI number as the declarant, the customs debt crystalised when the customs declarations were accepted by the Respondent and the goods were released for free circulation.

83. Even if the Commissioner is wrong in her analysis of the evidence adduced to support the Appellant acting on the company's behalf and the ratification of those acts by the company, the Commissioner must apply the relevant legislation to the facts of this appeal. The Commissioner is satisfied that in this appeal she is dealing with a customs debt as a result of the importation of vehicles into the State, and the provisions of the UCC are applicable to the Appellant in that regard. The Commissioner is satisfied that when making the declarations on the AIS, the Appellant used his own name and EORI number as the declarant on all of the declarations the subject matter of this appeal and nowhere

is there reference to the company. Article 5 of the UCC provides for certain definitions. In particular the Commissioner notes that *"customs declaration"* means *"the act whereby a person indicates, in the prescribed form and manner, a wish to place goods under a given customs procedure, with an indication, where appropriate, of any specific arrangements to be applied";* and *"declarant"* means *"the person lodging a customs declaration".* Furthermore, and of note is Article 15 of the UCC wherein at paragraph 2 it states that "*The lodging of a customs declaration….shall render the person concerned responsible for all of the following: (a) the accuracy and completeness of the information given in the declaration, notification or application*, *(b) the authenticity, accuracy and validity of any document supporting the declaration, notification or application (c) where applicable, compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned, or to the conduct of the authorised operations".* The Appellant's solicitor posited that "*there is nothing in the Customs Code or Irish law that can permit [the Respondent] to disregard the personality of a company and impose liability directly on a director or employee of a corporate customs agent*."[2] The Commissioner is satisfied that no evidence was adduced to support the ratification by the company of the acts of the Appellant and aside from that fact, the Commissioner must apply the law as it stands and the UCC is applicable herein to the Appellant in circumstances where it was the Appellant who was responsible for the accuracy and completeness of the information given in the declaration, the authenticity, accuracy and validity of any document supporting the declaration and compliance with all of the obligations relating to the placing of the goods in question under the customs procedure concerned. As stated, it is a material fact in this appeal that all of the declarations at issue in this appeal reflected the Appellant's name and EORI number not the name or EORI number of the company.

84. Accordingly, the Commissioner finds that having regard to the applicable legislation, namely the UCC, it is the Appellant who was the declarant on the customs declarations. Having regard to Article 15 of the UCC, it was the Appellant who was responsible for the accuracy of the declarations made on the AIS. The declarations were reflective of the Appellant and not the company and hence, the Appellant was the person liable for the customs debt and not the company. Article 173 of the UCC deals with the amendment of a customs declaration and no amendment is permitted once the customs authorities have released the goods in question, which occurred herein (the Commissioner will deal with this point in greater detail later in this Determination as a stand-alone ground of appeal). Therefore, having regard to the applicable provisions of the UCC, the Commissioner must

[2] Transcript Day 1, page 187

find that it was the Appellant who was the declarant and person named on the declarations, not the company, as it was the Appellant who was named on the declarations at the time the declarations were made and it was the Appellant's EORI number that was used at the time the declarations were made. No references are made on the declarations to the company, and it is not open to the Commissioner to disapply the legislative provisions, namely the UCC, to find that the company was the declarant and not the Appellant.

*Ground of appeal 2 - The company was at all times a customs agent and not a principal.*

85. The Commissioner has found in the preceding paragraphs that there was no evidence adduced to support the Appellant's argument that the company ratified the acts of the Appellant, who had acted on behalf of the company. Therefore, the Commissioner found that in circumstances where it was the Appellant's name, address and EORI number, not the company's name which was reflected on the declarations at issue in this appeal, it was the Appellant and not the company that was the declarant. Hence, the Commissioner intends to address this ground of appeal in light of that finding, that the Appellant was the declarant and not the company. Accordingly, the Commissioner will consider this ground of appeal as being whether the Appellant, rather than the company, acted as an agent and direct representative of each of the importers, and insofar as any customs debt or liability arose in respect of the subject matter of the appeal, it was the liability of the importers only and not the Appellant.

86. The Commissioner notes the Appellant's second ground of appeal, that there was no requirement in Article 19 of the UCC for a specific form of proof that a customs agent was acting as a direct representative and that the evidence available to the Appellant, and in turn the Respondent, was more than adequate to meet the civil standard of proof to establish that the Appellant was not liable for the said customs debt.

87. The Appellant submitted that "*numerous authorisations and other information are and were held by [the Respondent] showing this position beyond all doubt.*" The Appellant's solicitor submitted that *"[t]here's no requirement at law that the appointment of someone as a customs agent has to be in writing...An agent can be appointed verbally. That's the most basic and trite law and in that situation, that person being an agent is sufficient so that they're not liable. It's the principal, the importer, who's liable…It's common law. It's most basic common law….The exception is when they do have to be appointed in writing and I say that doesn't apply here and [the Respondent] effectively required a written evidence of authority. I say it doesn't have to be evidenced in writing or be in writing and*

*that's at the core of this case*."[3] That was so, he posited, because daily life would not work if a verbal agency agreement could not be accepted. He submitted that verbal agency can be evidenced in a number of ways and that the TAN authorisations were evidence to support empowerment. The Appellant's solicitor stated that "*the requirement that somebody be empowered in writing is completely artificial and isn't mandated by the legislation and is the whole hook or charge on which the taxpayer, the appellant, is purported to be made personally liable, both at the corporate and individual level*."[4]

88. The Commissioner notes the evidence of the Appellant that he had verbal agreements in place with the importers. However, the Appellant stated that the TAN authorisations made perfectly clear that he was acting as a customs agent on behalf of the importers. The Appellant relayed that he understood that the TAN documentation that he had submitted was proof of empowerment and the agreements that he had with the importers. It was put to the witness by counsel for the Respondent that this was disputed by the Respondent, and that it had requested the Appellant to provide proof of empowerment at the time, such as a written contract in respect of the imports. The Commissioner notes that the Respondent submitted that had the Appellant produced evidence of empowerment or documentation to that effect, then the Respondent would have been willing to allow an amendment to the declarations to reflect that position. The Appellant stated that this was not the impression that he had when his meeting with the Respondent during the PCI concluded, and that he was of the view that the Respondent was demanding that evidence of empowerment be in the prescribed form only. The Commissioner notes that the Respondent submitted that a TAN authorisation permits payment against a trader's EORI account or TAN account, such that it was simply a fiscal arrangement which did not constitute evidence of empowerment. Moreover, the Commissioner notes that the eCustoms Helpdesk Notification 027/2020 explains that a TAN authorisation is not accepted by the Respondent as evidence of empowerment.

89. The Appellant submitted that the TAN authorisations unambiguously show that the Appellant was acting in the capacity of direct representative and hence, the Appellant had no liability in respect of the said customs debt. The Respondent maintained that the requirement was that evidence of empowerment must be in place at the time the declarations were made on the AIS. The Commissioner notes that the Appellant confirmed that he did not have written agreements with the importers at the time the declarations were made in the form required by the Respondent.

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[3] Transcript Day 1, page 192
[4] Transcript Day 1, page 193

90. The Commissioner notes the submission by the Appellant's solicitor that "*So clearly if you act as an agent and it's apparent you're an agent, your principal is liable and this carries through under Article 18 and 19 and direct and indirect representative but if you act but you don't say you're an agent at all whatsoever, then yes, of course you are liable in that situation and that is what Article 19 is saying and [the Respondent] accept that. In all the electronic returns it was clear that consignee was someone different to the declarant. They accept that [the company], [the Appellant], are a customs agent. They don't contend that they've been misled and I say there's nothing in Articles 15, 16 or 19, or Article 77, which can place a personal liability on [the company], yet alone [the Appellant] personally and it would be extraordinary to find a charging provision, charging someone with tax and what has happened here is extraordinary…. and I refer to the principles of European Contract Law and they are completely consistent with the concept of agency and undisclosed agency and they make clear that a person can be appointed an agent in any way whatsoever, formally or informally*."[5]

91. In the Appellant's Outline of Arguments, the Commissioner notes that the Appellant argued that "*Principles of European Contract Law and the accompanying academic commentary, the distinction between direct and indirect representation corresponds to the classical distinction between: a) disclosed agency (where the third party knows it is dealing with an agent acting for a principal) and the agent is not therefore liable; and b) undisclosed agency (where the third party has no reason to believe that the intermediary is acting as an agent at all) and the person who is an agent but does not disclose this fact is liable. Indirect representation arises, in contract law terms, only where: a) the intermediary contracts in its own name; and b) the third party neither knows nor has reason to know that the intermediary is acting on behalf of another. That is not this case. Revenue: a) knew that the Company was acting as a customs agent; b) knew the identity of the importers; c) accepted declarations identifying third-party consignees; and d) accepted the use of importer TAN accounts. This is therefore a case of disclosed agency. Article 19(1) has no application to such circumstances.*"

92. The Commissioner will now consider the applicable legislative provisions of the UCC that apply to representation. Article 18 of the UCC provides that "*any person <u>may</u> appoint a customs representative. Such representation may be either direct, in which case the customs representative <u>shall act in the name of and on behalf of another person</u>, or <u>indirect, in which case the customs representative shall act in his or her own name but on behalf of another person</u>.*" [Emphasis added]. The Commissioner notes the use of the

[5] Transcript Day 1, page 198

word “may” in Article 18 of the UCC. Thus, the Commissioner is satisfied that it is not a mandatory requirement that a representative be appointed. This finding is important as later in this Determination, the Commissioner deals with the Appellant’s argument in respect of the representation box on the AIS not being a mandatory field for completion, as opposed to a previous system, wherein the Appellant submitted that the representation field was mandatory on the system.

93. Article 19 of the UCC provides that a representative shall state that it is acting on behalf of the person represented and shall specify whether the representation is direct or indirect. The Commissioner has considered the mandatory use of language in Article 19 of the UCC, namely “*shall state*”. This means that it was mandatory that the Appellant, if acting in the capacity of representative, state that he was acting on behalf of a person either directly or indirectly. Furthermore, the Commissioner observes that Article 19 of the UCC provides that persons who <u>fail to state</u> that they are acting as a customs representative or who state that they are acting as a customs representative <u>without being empowered to do so</u>, <u>shall be deemed to be acting</u> in their own name and on their own behalf. [Emphasis added]

94. Thus, Article 19 of the UCC contains a deeming provision. The Commissioner is satisfied that a deeming provision effectively allows one set of facts to be treated as if they were a different set of facts. It is often referred to as a statutory fiction. The Commissioner is satisfied that this means that if a person fails to state that they are acting as a customs representative or that they are acting as a customs representative without being empowered to do so, that person shall be treated as acting in their own name and on their own behalf. The Commissioner observes that it was not in dispute in this appeal that the representation box was not ticked on the AIS. The consequence of this was, according to the evidence of the Respondent, that there was no box ticked in terms of direct or indirect representation, as those boxes only become mandatory if the representation box is ticked initially.

95. The Commissioner is also mindful of Article 15 of the UCC which provides that documentation and information in relation to the accomplishment of customs formalities or in customs controls shall be produced at the request of the customs authorities, within any time-limit specified. Again, the language used is mandatory in nature. Furthermore, Article 15 of the UCC is clear in its terms wherein it states that the lodging of a customs declaration shall render the person concerned responsible for the accuracy and completeness of the information given in the declaration.

96. The Commissioner has had regard to the Respondent’s evidence that there is a “tick box” on the AIS that allows a customs representative to input the information required by the UCC, but that it was possible to leave the representation box blank. However, the Commissioner notes that the consequence of not ticking the box is that the person making the declaration will be deemed to be taking responsibility for the debt. The evidence of the Respondent’s witnesses was that the Appellant did not complete the representation box on the customs declarations lodged on the AIS. Moreover, the Appellant accepted that was the case. The completion of the representation box was not mandatory on the AIS, having regard to Article 18 of the UCC. Consequently, the Respondent treated the Appellant as if he was the importer of the vehicles and responsible for the said customs debt, in the absence of evidence of empowerment in the form of documentation as opposed to verbal agreements. The Commissioner notes the evidence of the Respondent’s witnesses that an opportunity is always provided to the declarant to furnish evidence of empowerment at a later stage, and which documentation would be accepted, if the documentation was dated prior to the declarations being made on the AIS. The Respondent’s witnesses stated that opportunities were provided to the Appellant to furnish evidence of empowerment and the documentation that was required. However, no empowerment documentation has been forthcoming to date. The Commissioner notes the Respondent does not accept that a TAN authorisation constitutes evidence of empowerment.

97. In the Commissioner’s previous determinations in *19TACD2023*, *97TACD2025* and *239TACD2025,* the Commissioner found that having had regard to the evidence of the Respondent’s witnesses, a TAN authorisation did not constitute empowerment documentation. Similarly in this appeal, the Commissioner heard evidence from the Respondent’s witness 3 that the purpose of a TAN authorisation was to grant a financial authorisation, not an empowerment authorisation under the UCC, as it is a technical authorisation to use a trader's account to deduct the applicable amounts of customs duty payable on the importation of goods. Furthermore, the Commissioner noted the evidence that whilst a TAN authorisation was evidence of a relationship, it was not evidence of empowerment required in accordance with Article 19 of the UCC. Whilst the Commissioner is not bound by her previous determinations, the Commissioner has not been presented with any evidence herein to show why she should depart from her previous decisions in *19TACD2023*, *97TACD2025* and *239TACD2025.* Hence, the Commissioner is satisfied herein that a TAN authorisation does not constitute evidence sufficient to establish empowerment and the Commissioner is so satisfied, on the basis of the Respondent’s evidence in relation to the purpose of a TAN authorisation.

98. The Commissioner is satisfied that the wording of Article 19 of the UCC is clear and unambiguous, and capable of being understood having regard to the plain and ordinary meaning of the words in the article. It requires that when dealing with the customs authorities, a customs representative shall state that he or she is acting on behalf of the person represented and shall specify whether the representation is direct or indirect, and persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf. [Emphasis added] Furthermore, the customs authorities may require persons stating that they are acting as a customs representative to provide evidence of their empowerment by the person represented. Furthermore, Article 15 of the UCC is entitled "Provision of information to the customs authorities" and provides that any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time-limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls. This is in addition to the requirement in Article 15 of the UCC that the lodging of a customs declaration shall render the person concerned responsible for the accuracy and completeness of the information given in the declaration, notification or application.

99. Article 15 of the UCC makes clear the importance of accuracy and completeness in terms of the declaration and Article 19 of the UCC specifically provides a power to the customs authorities to request a customs representative to provide evidence of empowerment. Furthermore, persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf. [Emphasis added]

100. The Commissioner notes that on 13 November 2020, the Respondent issued eCustoms Helpdesk Notification 027/2020, which stated that:

> "*While there is no specific format laid down in the Code in relation to empowerment, [the Respondent] expect that the authorisation of empowerment would be in accordance with the specimens attached to this Notice*."

101. The Appellant accepted that he did not have evidence of empowerment in the form of signed agreements with the importers, rather he had verbal agreements. The Commissioner notes the Appellant's email dated 14 November 2022, wherein it was confirmed that he did not have the signed authorisation form to act as a direct

representative as per eCustoms Helpdesk Notification 027/2020. The Appellant gave evidence that he understood from the Respondent, that the Respondent required only the format set out in eCustoms Helpdesk Notification 027/2020 and that no other form of empowerment would be accepted. The Commissioner does not accept that evidence that the Appellant believed that the Respondent required only the format as set out in the notification. The correspondence that ensued between the Appellant and the Respondent during the course of the PCI supported the Respondent's requests for documentation in general that would evidence empowerment and such agreements with the importers. The Commissioner is satisfied that nowhere in that correspondence was it suggested that the Respondent would only accept a document if it was in the format provided for by the eCustoms Helpdesk Notification 027/2020. In particular, the Commissioner notes the correspondence dated 9 September 2023, which issued from the Respondent to the Appellant requesting that he submit *"….contracts or any company documents showing that the 3rd party was aware that you ([the Appellant]) were acting as an agent on behalf of a limited company when your services were acquired*". Had the Appellant been in a position to provide written documentation, that he was empowered to act on behalf of the importers, the evidence of the Respondent's witnesses was that this would have been accepted as evidence of empowerment. The Commissioner accepts the evidence of the Respondent's witnesses in that regard. Furthermore, the Commissioner notes the Appellant's evidence that he had verbal agreements with the importers and the evidence of the Respondent in response, that it would encounter serious difficulties enforcing a customs debt, if it were to rely only on verbal agreements with the importers, and that it could only ever rely on written authorisation, which is required by Article 19 of the UCC wherein it states that "…*customs authorities may require persons stating that they are acting as a customs representative to provide <u>evidence</u> of their empowerment by the person represented*." [Emphasis added]

102. The Appellant submitted that in 2021, he believed that a TAN authorisation was sufficient and at that time, the Appellant stated he was unaware of the Respondent's guidance in eCustoms Helpdesk Notification 027/2020. The Commissioner is satisfied that these requirements existed prior to Brexit and that the Appellant's submissions that the period post Brexit was a difficult time, which was also coupled with the COVID-19 pandemic, do not absolve the Appellant of his responsibilities under the UCC in terms of customs formalities and procedures. The Commissioner notes the Respondent's correspondence dated 17 June 2023, that was issued to the Appellant wherein it stated that:

> *"[The Respondent] ran a comprehensive advertising campaign in 2020 to ensure all traders/declarants were prepared for the fall-out of Brexit. [The Respondent] cannot be*

*deemed liable for the failings of any company and/or declarant to familiarise themselves with the changes to the import procedures caused by Brexit. Any claims made for a relief of Customs Duty and the supporting evidence associated with these claims is entirely a matter for you to address. The EU UK Trade and Cooperation Agreement (TCA) is a free trade agreement that was signed on 30th December 2020, between the European Union (EU) and the UK. The changes to claiming UK Preferential Origin came into legal effect on 31st December 2020. [The Respondent] issued guidance on the changes to importing goods from the UK on 31st December 2020*."

103. The Commissioner notes that there was no dispute between the parties that the Appellant failed to state that he was acting as a direct representative and that he did not have in his possession at the time of making the declarations, evidence sufficient to show that he was acting as a direct representative. The Commissioner is therefore satisfied that the Appellant has not discharged the burden of proof to establish that he was acting as a direct representative at the time the declarations were made on the AIS and that he complied with the requirements of Article 19 of the UCC. The Commissioner notes that numerous opportunities were provided by the Respondent to the Appellant to comply with its request for documentation. The Commissioner has no discretion in terms of the legislative provisions and must apply the law as it stands. Furthermore, the Commissioner is satisfied that the requirements as to evidence of empowerment being in the possession of the Appellant at the time the declarations were made and his obligations under the UCC were in existence prior to Brexit. The Appellant submitted that *"[i]n the absence of fraud or knowledge, EU customs law does not permit the imposition of a customs debt on a person merely because that person was involved in the preparation or submission of declarations*." The Commissioner does not accept that submission as a correct statement of the law and she has set out heretofore the applicable legislative provisions and the obligations on the Appellant with regard to customs formalities and procedures.

104. Therefore, in circumstances where the Appellant failed to state that he was acting as a direct representative and in the absence of evidence to support the Appellant being empowered to do so, the Appellant is deemed to have been acting in his own name and on his own behalf and thus, was liable for the said customs debt. The Commissioner is satisfied that in circumstances where the Appellant's name and EORI number were used as declarant and in the absence of evidence of empowerment to support representation, the Respondent properly applied the provisions of the UCC, in particular Article 19 of the UCC, to deem the Appellant the declarant and hence, responsible for the said customs debt that was established in accordance with Article 77 of the UCC. The Appellant

submitted that there was ample evidence that he was acting for the importers. The Commissioner does not accept that submission. The Commissioner is satisfied that no evidence was adduced in this appeal to support the Appellant's position that he was acting in the capacity of direct representative of the importers. As stated, the Commissioner does not accept that a reference to verbal agreements with importers is evidence capable of establishing empowerment at the time the declarations were made nor do the TAN authorisations establish empowerment.

*Ground of appeal 3 - A taxing statute or directly applicable EU legislation must clearly and expressly charge tax by its terms on the citizen as a matter of fundamental Irish Constitutional law*

105. The Commissioner notes the Appellant's third ground of appeal relates to the Appellant's argument that a failure to provide evidence of empowerment in a format specified by the Respondent was not a substantive legal basis for charging the Appellant with a personal customs debt. The Commissioner notes that the Appellant submitted that the approach is invalid and that "*there is no statutory or EU-law basis which authorised the Respondent to prescribe an exclusive format of empowerment or attach personal tax liability to non-compliance with an administrative expectation*."

106. The Commissioner notes that it was posited by the Appellant's solicitor that the UCC does not prescribe any specific form of empowerment for customs representation. Furthermore, the Commissioner notes the argument that the Respondent does not have delegated powers under the UCC to mandate the form of authority required to constitute evidence of empowerment for the purpose of Article 19 of the UCC nor pursuant to Article 163 of the UCC for the purpose of specifying the form of the standard customs declarations and the required supporting documents. The Commissioner is satisfied that Article 19 of the UCC refers to what is required as "evidence", which the Commissioner has set out heretofore in this Determination when addressing ground 2 of the Appellant's appeal.

107. It was submitted by the Appellant's solicitor that "*it is a fundamental principle of Irish constitutional law, that taxation must be imposed clearly and expressly by law….An Irish taxing statute or directly applicable EU legislation must clearly and expressly charge tax by its terms on the citizen, as a matter of fundamental Irish Constitutional law…..It is a basic principle of Constitutional law that the sole power of taxation rests with the Oireachtas.*" The Commissioner considers that this is a correct summary of the jurisprudence relating to taxing statutes. Further, the Appellant's solicitor submitted that Articles 21 and 22 of the Constitution of Ireland are clear that the Oireachtas cannot

delegate the authority to levy a tax and that neither the UCC nor any Irish statute provides that failure to comply with a specified format of authorisation furnished by the Respondent invalidates agency or converts an agent into a principal liable for customs duty. The Appellant's solicitor submitted that *"[i]f such an extraordinary result were intended, it would have been stated in the clearest terms. It was not*."[6]

108. The Commissioner further notes that the Appellant argued that Article 163 of the UCC was of no assistance to the Respondent. This was so, the Appellant argued, because Article 163 of the UCC concerns supporting documents required for customs controls. It does not relate to empowerment or confer power on national authorities to prescribe the form of authority. Moreover, the Commissioner notes that the Appellant argued that any reliance on Article 15 of the UCC by the Respondent was misplaced, because Article 15 of the UCC concerns responsibility for the accuracy and completeness of the information provided in the declaration. It is not a charging provision and does not identify a customs debtor, because liability for a customs debt is governed by Article 77 of the UCC. The Appellant argued that in the absence of fraud, deception, or indirect representation, Article 15 of the UCC cannot be used to impose a liability where the Respondent accepted that that no fraud or dishonesty was alleged.

109. The Appellant submitted that Regulation 2015/2446, Annex B (Data Element 3/21, Chapter 3, Section 1) sets out the mandatory information code and that "*3.21 (3/21) deals with representative status, which is deemed mandatory in respect of form H1 (import declaration for release for free circulation)*. *ECustoms Notice 27/20 acknowledges that this is a mandatory requirement*." Furthermore, the Commissioner notes that the Appellant contended that the Respondent disabled that requirement on the AIS sometime prior to 1 January 2021, yet accepted declarations without the representation box being completed. The Appellant's solicitor argued that the system previous to the AIS, the AEP system, had a mandatory requirement and submitted that *"[i]f specification of representation status were mandatory as a matter of law, then either: a) the requirement was waived by Revenue; or b) the declarations were legally invalid and incapable of grounding a customs debt. Revenue cannot accept declarations in the absence of a mandatory data element and later rely on that absence to impose liability on an agent*."

110. The Commissioner notes the Appellant's arguments in relation the doctrine of legitimate expectation and alleged unfairness on the part of the Respondent. In that regard the Appellant's solicitor referred the Commissioner to the judgment in *Glencar*, where the Supreme Court made clear that for an expectation to be legitimately held, it was essential

[6] Appellant's Outline of Arguments, page 23

firstly, that a public authority have made a promise or representation express or implied as to how it would act in relation to an identifiable area of its activity and, secondly, that:-

> "[…] *this representation must be addressed or conveyed either directly or indirectly to an identifiable person or group of persons affected actually or potentially in such a way that it formed part of a transaction definitely entered into or a relationship between that person and the public authority or that the person or group had acted on the faith of the representation."*

111. The Appellant argued that the disabling of the representation box amounted to the adoption of a position. The Appellant submitted that the Appellant and the company "*reasonably and correctly believed that entering themselves as the declarant and the client as the consignee/importer was sufficient to show they were agents*." The disablement of the mandatory requirement to tick the representation box meant that the agent's attention was not drawn to this issue. Had this issue been drawn to the agent's attention on the occasion of each declaration, then plainly he would have ticked the box to show he was a direct representative, and therefore not personally liable.

112. The Commissioner notes the Appellant's arguments in relation invalidity, constitutional law, unfairness and the doctrine of legitimate expectation. However, it is important to state that the Commissioner does not have jurisdiction to make declarations or findings that an assessment to tax, or in this appeal a Notification of Customs Debt, is invalid.

113. 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. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal. These matters are reserved for the inherent jurisdiction of the High Court.

114. The Commissioner's jurisdiction was set out clearly in the *Lee* decision, where in the Court of Appeal, Mr Justice Murray stated that:

> "*The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor*

*a general jurisdiction to enquire into the legal validity of any particular assessment… That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry*.

115. The Commissioner also considers it 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 investigations of taxpayers. 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 the *Lee* decision. 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.

116. That an Appeal Commissioner is not entitled to consider that an assessment or charge to tax issued by the Respondent is invalid was confirmed recently by the Court of Appeal in *J.S.S., J.S.J., T.S., D.S. and P.S. v A Tax Appeal Commissioner* [2025] IECA 96. Therefore, the legal question which frames the Commissioner's jurisdiction herein is whether the Appellant can establish, on the balance of probabilities, compliance with the requirements of the UCC, in relation to the importation of vehicles into the State.

*Ground of appeal 4 - Breach of mandatory EU law principles of fair procedures, good administration, proportionality and equity (Articles 41, 47 and 120 UCC)*

117. In respect of the Appellant's fourth ground of appeal, the Commissioner notes the Appellant submitted that "*[w]here EU law is being applied, principles of: a) fair procedures, b) good administration, c) legal certainty, d) proportionality, and e) equity (A.120) apply as a matter of law, irrespective of the domestic characterisation of the appeal body or the statutory framework governing appeals*." The Commissioner notes that counsel for the Respondent agreed that the Charter was engaged in this appeal and the Commissioner also considers this to be the case. Therefore, it is open to the Appellant to argue that his rights under Articles 41 and 47 of the Charter have been infringed by the Respondent.

118. The Commissioner notes that the Appellant also argued that Article 120 of the UCC applied herein and the Commissioner will deal with that argument as a separate point to the Appellant's arguments in relation to his Charter rights. The Commissioner notes that the Appellant contended that there was a breach by the Respondent of the principles of

fair procedures, good administration, proportionality and equity. The Commissioner is satisfied that she has jurisdiction to apply EU law as appropriate, and this was confirmed in determination *31TACD2023*.

119. Articles 41 and 47 of the Charter provide *inter alia* the following:

*"Article 41 – Right to good administration*

*1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.*

*2. This right includes:*

*(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;*

*(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;*

*(c) the obligation of the administration to give reasons for its decisions…..*

*………………...*

*Article 47 – Right to an effective remedy and to a fair trial*

*Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article… "*

120. The Appellant submitted that his Charter rights have been violated by the Respondent. At page 28 of the Appellant's Outline of Arguments, he lists certain material facts which the Commissioner understands the Appellant relied on as being supportive of his Charter rights having been infringed by the Respondent. The Commissioner observes that the Appellant's solicitor argued that the *"circumstances are extraordinary*". Furthermore, the Commissioner observes that in the context of the Appellant's Charter rights the Appellant's solicitor submitted that "*it requires fair procedures and it requires substantive fairness and acting reasonably and proportionately and I'm saying by any reckoning that test hasn't been made.*"[7]

121. The Commissioner notes that the Respondent opened a PCI into the declarations made by the Appellant on the AIS, within three years of the declarations having been made. This was in accordance with its statutory powers. The Commissioner has considered the

[7] Transcript Day 1, page 214

correspondence submitted in the documentation in this appeal and the interactions between the Appellant and the Respondent during the course of that PCI. The Commissioner is satisfied that the Appellant was afforded a right of response to the correspondence that issued from the Respondent and was permitted to furnish documentation to the Respondent in relation to both the matter of evidence of empowerment and that of evidence of statements on origin, prior to the Respondent making a decision as to a customs debt. Furthermore, the Appellant was afforded his right to be heard and had a right of response to that also. Moreover, the Appellant was afforded a right to appeal the decision of the case officer to the DAO of the Respondent and thereafter, the decision of the DAO to the Commission. The Commissioner is satisfied that the documentary evidence submitted in this appeal, shows that the Appellant was afforded a comprehensive right of response to the Respondent, prior to it making its decision as to a customs debt.

122. Having regard to the submissions, documentary evidence and testimony adduced in this appeal, the Commissioner is satisfied that the Appellant has failed to show that the Respondent breached his rights under Articles 41 and 47 of the Charter. The Commissioner is satisfied that in accordance with Article 41 of the Charter the Appellant had the right to be heard before any individual measure was taken that would affect him adversely, he had a right if he requested, to access his file (there was no evidence adduced that this was an issue in this appeal or that this right was denied) and he was provided with reasons for the decision of the Respondent. Furthermore, in accordance with Article 47 of the Charter, the Appellant had an effective remedy in the form of the right to be heard, a first stage appeal and a second stage appeal to the Commission, of the Respondent's decision to impose a customs debt. The Appellant was afforded fair procedures throughout the appeals process and at the hearing of the appeal. Therefore, the Commissioner is satisfied that the Appellant has not satisfied the burden of proof and shown on balance that his Charter rights have been breached, as alleged.

123. The Commissioner has considered the Appellant's arguments in relation to Article 120 of the UCC which provides for repayment or remission of a customs debt in the interest of equity, where the debt is incurred under special circumstances and no deception or obvious negligence may be attributed to the debtor. The Commissioner notes that the Appellant contended that Article 120 of the UCC applied to his circumstances *inter alia* that the Appellant acted honestly and in good faith; no deception was alleged; and these matters arose in the exceptional circumstances of early post-Brexit trading.

124. Furthermore, the Commissioner notes the list in the Appellant's Outline of Arguments in relation to this ground of appeal, wherein he submitted that "*the following matters, taken cumulatively, constitute "special circumstances*"" within the meaning of Article 120 of the UCC. The Appellant then listed the following matters: "*the Appellant and his company were first-time customs agents entering the market in January 2021 in response to Brexit; b) Brexit caused an unprecedented ten- to twenty-fold overnight increase in customs declarations; c) the State actively encouraged new entrants into the customs agent market and promoted short training courses; d) the EU–UK Trade and Cooperation Agreement was agreed only on 24 December 2020 and provisionally applied from 1 January 2021; e) comprehensive EU guidance on preferential origin issued only months later; f) the early months of 2021 coincided with the Covid pandemic and extreme operational disruption; g) the Appellant relied in good faith on experienced importer clients; h) retrospective statements on origin have since been furnished in the vast majority of cases; i) there has been no loss to Revenue; and j) Revenue possesses verification powers under the EU–UK TCA that the Appellant does not…….These are not ordinary trading conditions. They are exceptional by any objective measure."*

125. The Respondent submitted that Article 120 of the UCC does not apply herein and counsel for the Respondent submitted that there were no special circumstances that prevailed for the Appellant, when compared to other operators engaged in the same business. The requirements were the same for everybody. The Commissioner notes that Article 120 of the UCC, paragraph 1 states that "*an amount of import or export duty shall be repaid or remitted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor*" and paragraph 2 states *inter alia* that *"[t]he special circumstances referred to in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business…*". The Commissioner notes that the legislation requires a comparison of the exceptional situation of the Appellant with that of other operators engaged in the same business. The Commissioner is satisfied that whilst there was no allegation of deception or negligence in this appeal and the Commissioner has not been presented with evidence of an exceptional situation discrete to the Appellant. Hence, the Commissioner is satisfied that the Appellant has not shown on balance that he was "*in an exceptional situation as compared with other operators engaged in the same business".* The Commissioner has been presented with no evidence documentary or otherwise to suggest that the Appellant was in an exceptional situation "*as compared with other operators*" at that time. Therefore, the Commissioner finds that the Appellant has

not shown that he falls within the requirements of Article 120 of the UCC, such that repayment of the customs debt is warranted. The Commissioner concludes that the Appellant had not shown on balance that Article 120 of the UCC applies to his circumstances.

*Ground of appeal 5 - Erroneous and unreasonable rejection of importer's knowledge (U117)*

126. The Commissioner notes that the Appellant's fifth ground of appeal related to purported information received by the Appellant from a case officer of the Respondent in relation to the difficulties that might be encountered if the Appellant was to opt to support his claim for PO by means of importer's knowledge. Plainly, the Appellant contended that he was advised by an employee of the Respondent not to rely on importer's knowledge and rather to rely on the provision of a statement on origin, which he did the Appellant stated, to his detriment. The detriment that the Appellant alleged was that he was now liable for the customs debt, due to the absence of supporting documentation on the statement on origin which he was required to have at the time the declarations were made. The Appellant submitted that the Respondent having given that advice, "*cannot now assert that U117 should have been used or rely on the alleged inadequacy of U116 as a basis for imposing liability*".

127. Moreover, the Commissioner notes that the Appellant asserted that the information from the Respondent was legally incorrect, such that he was told that he cannot rely on U117, importer's knowledge, unless he was in possession of the full bill of materials or manufacturing records for the vehicles. The Appellant submitted that *"[i]t imposes an evidential burden on importers and their agents which: a) is not required by the TCA; b) is not within their procurement; and c) can only realistically be discharged by customs authorities acting through administrative cooperation*."

128. The Appellant submitted that "*the TCA does not require that importer's knowledge be supported by: a) a bill of materials; b) confidential manufacturing data; or c) production records held by the manufacturer. Such an interpretation would render U117 illusory for almost all importers of finished goods, including motor vehicles, and cannot represent the intention of the Parties to the TCA*." The position of the Respondent, the Appellant argued, was unreasonable, because such information was commercially sensitive, routinely confidential, and not available to importers or customs agents. The Appellant further submitted that he attempted to procure information from car manufacturers, but this was not available to him. Therefore, the Appellant submitted that *"[e]quality of arms and fair procedures requires that [the Respondent] undertake the verification procedure in the EU UK TCA…..Under this mechanism HMRC can exercise their powers to require the*

*requisite information. Likewise, [the Respondent] can exercise its powers to request the information. The appellant does not have this power. There is no equality of arms between [the Respondent's] power to procure the information and his power*."

129. The Commissioner notes that Articles 61 and 62 of the Agreement provide for verification and administrative cooperation. The Commissioner notes that Article 61, paragraph 4 provides that *"[i]f the claim for preferential tariff treatment is based on a statement on origin, the importer shall provide that statement on origin but may reply to the customs authority of the importing Party that the importer is not in a position to provide the information referred to in point (b) of paragraph 2".* Furthermore, the Commissioner notes that paragraph 2 of Article 62 provides that "*[i]f the claim for preferential tariff treatment was based on a statement on origin, as appropriate after having first requested information in accordance with Article 61(1) and based on the reply from the importer, the customs authority of the importing Party conducting the verification may also request information from the customs authority of the exporting Party within a period of two years after the importation of the products*"

130. The Commissioner observes that the evidence of the Respondent's witness 2 was such that Article 62 of the Agreement does not allow the Respondent to verify a customs declaration where U117, importer's knowledge had been used, but that it may only raise a verification request with HMRC where a valid statement on origin had been produced. However, the Respondent's witness 2 confirmed that in this particular case, the basis for the claim of PO did not exist at the time the claim for PO was made, as there was no valid statement on origin at the time the declarations were made. The Respondent's witness 2 testified that the procedural rules were not followed and therefore no verification request was sent to HMRC.

131. The Commissioner is satisfied that the declarations at issue in this appeal and the claims made by the Appellant for PO were all made on the basis of U116, statement on origin. Furthermore, the Commissioner is satisfied from the evidence adduced, that the Appellant was not in possession of the statements on origin at the time the declarations were made on the AIS. The Commissioner notes that the Respondent was furnished only with statements on origin by the Appellant that post-dated the declarations being made on the AIS.

132. Furthermore, and as previously stated in this Determination, the Commissioner does not have a 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 investigation of taxpayers. 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 the *Lee* decision. 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. Hence, the Commissioner does not have jurisdiction to compel the Respondent to make a verification request to HMRC nor does the Commissioner have jurisdiction to make a declaration or finding in respect of purported advice or guidance on the part of the Respondent in respect of claiming PO. The Commissioner will address points made in relation to the amendment of declarations under the next heading and ground of appeal.

*Ground of appeal 6 - Defective declarations, amendment and re-lodgement: identity of the declarant, mandatory data elements, and the legal effect of acceptance under the UCC*

133. The Appellant submitted that it is established in EU customs law that where a declaration misstates the identity of the declarant or the capacity in which a person acts, the declaration may be amended or replaced, provided that there had been no fraud and the substantive conditions for the customs procedure are met. The Commissioner notes that the Appellant argued that *"[t]his principle applies with particular force where the authority knew or ought to have known the true position; and b) the defect arises from system design or administrative practice*."

134. Article 173 of the UCC provides for the amendment of a customs declaration on the application of the declarant, after it has been accepted by customs authorities. However, the Commissioner notes paragraph 2 which states that no amendment shall be permitted where it is applied for after any of the following events and paragraph 2(c) is relevant herein, wherein it states that "*the customs authorities have released the goods."*

135. Furthermore, the Commissioner notes that paragraph 3 provides further opportunity for an amendment of a declaration, wherein it states that "*upon application by the declarant, within three years of the date of acceptance of the customs declaration, the amendment of the customs declaration <u>may</u> be permitted after release of the goods in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned*". [Emphasis added]

136. The Commissioner notes the use of the word "may" in subsection (3) which denotes a discretion to amend, whereas the Commissioner notes the use of the word "shall" in paragraphs 1 and 2 which denotes something that is mandatory. Therefore, the Commissioner is satisfied that a discretion is bestowed upon the Respondent in terms of

whether or not it will permit an amendment of the declaration by the declarant, being the Appellant herein.

137. As set out previously in this Determination, the Commissioner is mindful of her jurisdiction which was set out clearly in the *Lee* decision. Having regard to the *dictum* of Murray J. in the *Lee* decision, the Commissioner is satisfied that she does not have jurisdiction to direct the Respondent to amend the declarations made on the AIS or to declare that the Respondent was incorrect not to permit the amendment of a customs declaration made on the AIS after the release of the goods, in order for the declarant to comply with his or her obligations relating to the placing of the goods under the customs procedure concerned.

138. The Commissioner also has no supervisory jurisdiction over the Respondent and does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent. The Respondent's decision in respect of the amendment to the declarations on the AIS was a decision within its discretion and the Commissioner has no jurisdiction in respect of how the Respondent decides to exercise its discretion in its dealings with a taxpayer. 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 the *Lee* decision.

139. Even if the Commissioner was vested with the jurisdiction to compel the amendment of the declarations made on the AIS, the Appellant would remain the debtor for the identified liability in the absence of evidence of empowerment. The Appellant made the relevant declarations for GBPO, but failed to prove an entitlement to same, despite several opportunities being afforded to him. In the absence of empowerment documentation being provided by the Appellant, the Commissioner is satisfied that the Appellant has not discharged the burden of proof to establish that he was acting as a direct representative of the importers and not the importer. Accordingly, the Commissioner is satisfied that the Respondent was correct to treat the Appellant as the importer and was correct to refuse to permit an amendment to the declarations made on the AIS, pursuant to Article 173(3) of the UCC. Furthermore, the statements of origin submitted by the Appellant all post-date the making of the declarations on the AIS for the relevant period. In accordance with Article 163 of the UCC "*The supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.*"

140. The Commissioner notes that the Appellant relied on judgments from the CJEU in respect of the amendment of a customs declaration. The Commissioner has considered the cases submitted in support of the Appellant's appeal. The Commissioner is satisfied that the case law relied upon relates to the precursor to Article 173 of the UCC, namely Article 78 of the Community Customs Code. The Commissioner is satisfied that the decisions have no relevance to Article 173 of the UCC, which, as set out above, mandates the requirements in terms of amendments to customs declarations.

*Ground of Appeal 7 - Under the EU–UK Trade and Cooperation Agreement, only the importer may claim preferential origin and only the importer may be liable*

141. In the Appellant's seventh ground of appeal, the Appellant argued that in relation to a claim for PO, it was the importer alone that was responsible for making the claim and the correctness of the claim, such that the Agreement excludes the possibility that a customs declarant or customs agent may be rendered substantively liable for a customs debt. Furthermore, the Appellant argued that any attempt to impose a customs debt on the Appellant, whether personally or as a deemed declarant, is void and incompatible with the express terms of the Agreement. This was so, the Appellant posited, because the Agreement is "*an international agreement concluded by the European Union and is binding on: a) the institutions of the Union; and b) the Member States…..By virtue of Article 216(2) TFEU, the EU–UK TCA takes precedence over secondary EU legislation, including the Union Customs Code, in the areas it regulates. 12. Preferential origin is regulated exhaustively by the EU–UK TCA…… The EU–UK TCA provides no role whatsoever for a "declarant" as a substantive party to the claim….The omission of any reference to a declarant is deliberate and reflects the structure of the Agreement: preferential origin is a matter between the importing Party and the importer….Under ordinary principles of law, the importer may act through an agent. Agency does not transfer substantive responsibility…. even if a customs agent lodges the declaration, liability cannot attach to the agent.*"

142. The Commissioner observes that the Appellant argued that the Agreement does not specify the form or evidential basis of importer's knowledge, nor does it require matters such as a bill of materials, manufacturing records or confidential production data which the Appellant contended the Respondent required in order to satisfy the requirements of importer's knowledge. The Appellant submitted that if this were so, it would render importer's knowledge unusable. The Commissioner has already dealt with this point in the preceding ground of appeal and is satisfied that all of the declarations the subject

matter of this appeal were made on the basis of a statement of origin being available, not importer's knowledge.

143. In reply, the Respondent submitted that the primary legislation is the UCC, which takes precedence, and the introduction of the Agreement does not remove the requirements laid out in the UCC. The Respondent pointed out that Article 5 of the UCC defines "declarant" as the person lodging a customs declaration and a declarant is a necessary requirement to import any goods into the State, which can be either the importer or an agent acting on the importer's behalf. The Respondent argued that the Appellant was the declarant for all of the vehicles at issue in this appeal as the Appellant did not complete the representation section on the declarations at issue in this appeal. Furthermore, the Respondent submitted, that when asked to produce evidence of empowerment, the Appellant was unable to do so, and in fact, confirmed that he did not have any form of written contract or written agreement with the importers, to show that he was empowered to act as a customs representative.

144. The Commissioner notes that a claim for GBPO based on either the statement on origin or importer's knowledge is declared on the AIS and customs declaration by using a "tick box" entitled U116 (statement on origin) or U117 (importer's knowledge). The Commissioner observes that in this appeal, the declarations and claims for PO at issue were all made on the basis of U116, statement on origin.

145. In accordance with Article 54 of the Agreement, a claim for preferential tariff treatment by the importer shall be based on: (a) a statement on origin that the product is originating made out by the exporter; or (b) the importer's knowledge that the product is originating. It is a requirement of Article 54(3) of the Agreement that the importer making the claim for preferential tariff treatment, based on a statement on origin, shall keep the statement on origin and when required by the customs authority of the importing party, shall provide a copy thereof to that customs authority. Moreover, it is the importer that is responsible for the correctness of the claim for preferential tariff treatment and for compliance with the requirements of the Agreement.

146. Article 56 of the Agreement provides for a claim for preferential tariff treatment on the basis of a statement on origin and provides *inter alia* that a statement on origin shall be made out by the exporter of a product, on the basis of information demonstrating that the product is originating, including, information on the originating status of the materials used in the production of the product. It is the exporter that shall be responsible for the correctness of the statement on origin and the information provided. The Commissioner notes that the requirement is not only that the information demonstrates that the product

is originating, but also that there is information on the originating status of the materials used in the production of the product.

147. Of note is Article 56(2) of the Agreement, wherein it states that a statement on origin shall be made out using one of the language versions set out in Annex 7 of the Agreement in an invoice or on any other document that describes the originating product in sufficient detail to enable the identification of that product, and that it is the exporter that is responsible for providing sufficient details to allow the identification of the originating product. The Commissioner has considered the text on the statement on origin provided for in Annex 7 of the Agreement which states that:

> "*The statement on origin referred to in Article 56 of this Agreement shall be made out using the text set out below in one of the following language versions and in accordance with the laws and regulations of the exporting Party. If the statement on origin is handwritten, it shall be written in ink in printed characters. The statement on origin shall be made out in accordance with the respective footnotes. The footnotes do not have to be reproduced.*
>
> *…………………………..*
>
> *(Period: from … to … [(1)])*
>
> *The exporter of the products covered by this document (Exporter Reference No ...[(2)]) declares that, except where otherwise clearly indicated, these products are of ...[(3)] preferential origin*
>
> *…[(4)]*
>
> *(Place and date)*
>
> *(Name of the exporter)*
>
> *(1) If the statement on origin is completed for multiple shipments of identical originating products within the meaning of point (b) of Article 56(4) of this Agreement, indicate the period for which the statement on origin is to apply. That period shall not exceed 12 months. All importations of the product must occur within the period indicated. If a period is not applicable, the field may be left blank.*
>
> *(2) Indicate the reference number by which the exporter is identified. For the Union exporter, this will be the number assigned in accordance with the laws and regulations of the Union. For the United Kingdom exporter, this will be the number assigned in accordance with the laws and regulations applicable within the United*

*Kingdom. Where the exporter has not been assigned a number, this field may be left blank.*

*(3) Indicate the origin of the product: the United Kingdom or the Union.*

*(4) Place and date may be omitted if the information is contained on the document itself."*

148. The Commissioner observes that Article 56(1) of the Agreement is specific in its terms in relation to the information that should be provided, such that the requirement is that it is made out "*on the basis of information demonstrating that the product is originating, <u>including</u>, information on the originating status of the materials used in the production of the product*." [Emphasis added]

149. In addition, Article 59 of the Agreement provides for record keeping and the Commissioner notes the following in relation to records created for the purposes of the chapter:

*"(1) For a minimum of three years after the date of importation of the product, an importer making a claim for preferential tariff treatment for a product imported into the importing Party shall keep; (a) if the claim was based on a statement on origin, the statement on origin made out by the exporter; or (b) if the claim was based on the importer's knowledge, all records demonstrating that the product satisfies the requirements for obtaining originating status.*

*(2) An exporter who has made out a statement on origin shall, for a minimum of four years after that statement on origin was made out, keep a copy of the statement on origin and all other records demonstrating that the product satisfies the requirements to obtain originating status.*

*………………"*

150. Whilst the Commissioner notes that the Appellant made arguments that the Agreement takes precedent over the UCC and the declarant cannot be held liable for the acts of the importer hence, the customs debt cannot be attributable to the Appellant, it is clear from Articles 162 and 163 of the UCC that a customs declaration shall contain all the particulars necessary for application of the provisions governing the customs procedure for which the goods are declared and the supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.

151. The Commissioner is satisfied that the Appellant did not comply with these provisions of the UCC and has not submitted any contemporaneous documentation to support a claim for GBPO on the basis of a statement of origin. Thus, the Appellant cannot support a claim of GBPO in the absence of documentation being in his possession at the time the declarations were made. Having regard to Article 54 of the Agreement, the Commissioner is satisfied that the Appellant should have had the documentation at the time the declarations were made and have been in a position to produce the requisite documentation to the Respondent, on request, in order to establish the claims for GBPO. However, the relevant documentation and proofs have not been provided to the Respondent. In the absence of the provision of such documentation to the Respondent to support the Appellant's claims for GBPO, the Commissioner is satisfied that the Respondent was correct to issue the Notification of Customs Debt. The Commissioner has already dealt with the reasons why the Appellant was correctly deemed to be acting in his own name rather than as a customs representative (Article 19 of the UCC).

152. The Commissioner notes that the Appellant made the point that the only reason that the Appellant made the claims in accordance with U116 (statement on origin) rather that U117 (importer's knowledge) was due to the fact that the Respondent advised the Appellant that it was not possible to support claims in accordance with U117 having regard to the information that was required. As previously stated in this Determination, the Commissioner's jurisdiction is confirmed in the *Lee* decision and the Commissioner's "*functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment".* Furthermore, the Commissioner has no supervisory jurisdiction in respect of the Respondent, nor she does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent.

153. The Appellant's argument that the customs debt cannot be attributable to the Appellant because only the importers would have such information is misconceived. The Commissioner is satisfied that such an argument ignores the consequences of the Appellant's failure to make clear in the declarations that he was acting as a direct customs representative and the deeming provision in Article 19 of the UCC. Furthermore, it ignores the fact that by selecting option U116, statement on origin, the declarations did not rely on the importer's knowledge but rather relied on the Appellant's representation that a statement on origin was in his possession at the time the declarations were made.

*Ground of appeal 8 - RGR applies on its merits under Article 203 UCC*

154. In relation to the Appellant's eighth ground of appeal, the Appellant's solicitor argued that RGR applied to the Appellant's circumstances and was established as a matter of law to the imported vehicles at issue herein. The Commissioner questioned the Appellant's solicitor in relation to this submission, such that if this was the contention then why had it not been put to any of the witnesses that RGR applied and why had no documentary evidence to support a claim of RGR been submitted to the Respondent prior to the hearing of the appeal, at the hearing of the appeal or in the documentation submitted prior to the appeal. Moreover, the Commissioner notes that the claims made on the declarations at issue all reflected a claim for GBPO as opposed to RGR. The Commissioner notes that the Appellant's solicitor argued that "*it's not necessarily by the provision of documentation. I say that by automatic operation of law when the UK left the European Union at the end of 2020 that they lost customs status and that the particular declarations show them being re-imported into Ireland.*"[8] Furthermore, the Commissioner notes that the Appellant's solicitor stated that the evidence is in the booklets of documentation and that "*they comprise the customs declarations. I say they comprise the public fact of Britain leaving the European Union.*"[9]

155. In reply counsel for the Respondent submitted that RGR was simply not claimed on any of the import declarations and therefore, did not apply on the facts of this appeal. Moreover, no evidence whatsoever had been provided, either to Respondent in advance of this appeal or for the purposes of this appeal, that would support a claim of RGR. The Appellant's solicitor suggested that this was an issue of law only, counsel for the Respondent disagreed with that interpretation and stated that the Respondent relied on the decision in *Bell Transport,* such that RGR was not solely a question of law, but that there would have to be some factual matrix available to the Commissioner to engage with the question of its applicability. Furthermore, counsel for the Respondent submitted that the facts of the appeal herein are not dissimilar to the facts in *Bell Transport,* where no proof in respect of a claim for RGR was available to the Commissioner in that appeal.

156. The Commissioner is satisfied that an entitlement to RGR arises under Article 203(1) of the UCC. The Commissioner is satisfied that her findings in Determination *19TACD2023* in respect of RGR are applicable to this appeal and the Commissioner does not intend to analyse the law in relation to Article 203(1) of the UCC herein, as Mr Justice Kennedy in his judgment in *Bell Transport* confirmed that the Commissioner was correct in her decision in *19TACD2023* as to the interpretation of Article 203 of the UCC. Moreover, and not dissimilar to the facts in *19TACD2023*, the Commissioner observes that the requisite

[8] Transcript Day 1, page 227
[9] Transcript Day 1, page 228

proofs have not been provided herein to the Respondent, in order to establish a claim of RGR. Accordingly, in the absence of the provision of such documentation to support a claim of RGR, the Commissioner is satisfied that the Respondent was correct to impose the customs duty and the Commissioner has been presented with no documentary evidence in this appeal to substantiate a claim of RGR. Whilst the Appellant may have argued that it is applicable as a matter of law, the Commissioner is satisfied that the Appellant has not evidenced his entitlement to avail of RGR, having regard to the absence of documentation to support such a claim. This is aside from the fact that GBPO was claimed on all of the declarations at issue in this appeal.

*Ground of Appeal 9 – Vintage cars*

157. The Appellant's solicitor submitted that a limited number of the vehicles included in the customs debt related to vehicles over 30 years old and in one instance, to a vehicle dating from 1920. It was submitted by the Appellant that those vehicles would be eligible for VAT relief and corresponding customs relief, but such relief was not claimed. The Appellant's solicitor contended that the Appellant had an entitlement to correction but that was refused by the Respondent, in contravention of the principles governing amendment and correction of customs declarations.

158. The Commissioner notes that counsel for the Respondent submitted that no supporting documentation was submitted to the Respondent to support the claim in respect of the vehicles, and as outlined in the Respondent's Outline of Arguments, the Respondent submitted that it received a query in relation to "*one car only, a* [redacted] *In an email to [the Respondent] on 19 April 2021 the Appellant stated that I have rang Ecustoms looking for the box 44 code and to see if anything else needed for the vintage cars and I am waiting there response as it it (sic) those* [redacted] *were made in the UK so should come under the country of origin codes as well. No further correspondence was received after that date*".

159. 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"). 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 encompassing the rules applying

to specific products imported into the EU. The combined nomenclature ("CN") is set out and established in Annex I to the 1987 Regulation as amended.

160. Chapter 97 of the CN provides for "*Works of Art, Collectors' Pieces and Antiques*". The Commissioner is satisfied that an importer must be in a position to provide the relevant proofs to establish an entitlement to classification under Heading 9705 of the CN namely, that the vehicles are in their original state, they are in excess of 30 years old and of a model or type that is no longer in production. The Commissioner is satisfied that the requirements of Heading 9705 of the CN are clear. Furthermore, in the absence of evidence to establish the requisite proofs and requirements of Heading 9705 of the CN the Commissioner is satisfied that the Appellant was not entitled to classification in Heading 9705 of the CN. The Commissioner was presented with no evidence to support the Appellant's claim in respect of these vehicles. In the absence of any evidence to support the Appellant's claims, the Commissioner was satisfied that the Respondent was correct to impose the customs duty in respect of the said imports, in circumstances where the Appellant has failed to provide any documentary evidence to support his claim in this regard. In relation to the Appellant's contention that the Respondent denied the Appellant an entitlement to correction of the declarations and claims, the Commissioner has already addressed in this determination that her jurisdiction does not extend to a supervisory jurisdiction in respect of the Respondent, nor she does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent (as per the *Lee* decision).

*Conclusion*

161. Accordingly, in conclusion and having considered all of the documentation and submissions in this appeal, the Commissioner finds that the Appellant has not discharged the burden of proof and has not shown that the Respondent was incorrect in its decision to issue the Notification of Customs Debt.

162. The Commissioner is satisfied that it was the Appellant who was the declarant on all of the declarations at issue, which reflected the Appellant's name and EORI number in the declarant box. The Commissioner was presented with no documentary evidence to support the Appellant's argument that it was the company and not the Appellant that was acting as a customs representative for the purposes of the imports. Nowhere on the declarations at issue in this appeal, was the name of the company. Furthermore, whilst the company was incorporated on 15 February 2021, no documentary evidence was submitted to support what the Appellant contended, namely that the acts of the Appellant were ratified by the company and it was therefore the company, and not the Appellant,

that was acting as a customs representative. The Commissioner is satisfied that the Appellant was the declarant.

163. Furthermore, the Commissioner is satisfied that the Respondent was correct to issue the Notification of Customs Debt to the Appellant acting in his own name. The Commissioner makes this finding on the basis of there being no evidence of empowerment submitted by the Appellant to establish that he was acting in the role of customs representative. In accordance with Article 19 of the UCC, in the absence of evidence of empowerment, the Appellant was deemed to be acting in his own name. Hence, the Appellant was deemed responsible for the customs debt, in accordance with Article 77 of the UCC. The Appellant testified that he had verbal agreements with the importers and that the only documentation available was the TAN authorisations, which the Commissioner is satisfied do not establish that the Appellant was empowered to act as a direct representative in relation to the imports at issue in this appeal. The Commissioner is satisfied that the Appellant's failure to specify that he was acting in the capacity of a direct representative, means that he must accept the responsibilities and consequences which that omission implied. Article 19 of the UCC places an onus on a customs representative to complete representation details, and in the absence of same, the Respondent was correct to treat the Appellant as the importer where he failed to complete the representation section of the declarations. The Appellant cannot resile from his obligations under the UCC and customs procedures, notwithstanding the difficult circumstances at the time, which affected the entire sector. Furthermore, it is on that basis that the Commissioner is satisfied that there was no exceptional situation as compared with other operators engaged in the same business such that Article 120 of the UCC is engaged herein. The Commissioner is satisfied that the evidence adduced did not establish that the Appellant was in an exceptional situation as compared with other operators engaged in the same business, as provided for under Article 120(2) of the UCC.

164. The Commissioner is satisfied that the Appellant has failed to comply with his obligations in accordance with Article 15 of the UCC, despite having been afforded ample opportunity to comply with same. Moreover, the Commissioner is satisfied that the Appellant also failed to comply with his obligations in accordance with Article 163 of the UCC, that he has supporting documentation required to prove the declarations, in his possession at the time of lodging such declarations. The Commissioner finds that there was no basis to describe the Respondent's demands as unnecessary or unfair. The Appellant was the person lodging the declarations and was responsible for the accuracy and completeness of the information given, the authenticity, accuracy and validity of any document

supporting the information, and compliance with all obligations relating to the placing of the goods under the customs procedure concerned.

165. Moreover, in relation the Appellant's argument that the declarations were invalid due to the Respondent accepting those declarations in circumstances where the representative box was not mandatory, as opposed to the previous system where it was mandatory, and hence the Appellant was not directed towards completion of the representation elements of the system, the Commissioner has set out her reasons why she does not accept this argument having regard to Article 18 of the UCC. The Commissioner notes that it was accepted by the Appellant that the box for representation was left blank, as it was not a mandatory field. Even so, and as stated, the Commissioner does not have jurisdiction to deal with matters such as unfairness or legitimate expectation, nor does she have a supervisory jurisdiction over the Respondent and its procedures. These are matters reserved for the High Court and its inherent jurisdiction. The Commissioner must apply the law as it stands, namely the UCC.

166. In respect of the deficit of documentation to support the claims made on the declarations for GBPO, the Appellant was provided with numerous opportunities to provide documentation to the Respondent to support the claims for PO. However, the Commissioner notes that what was submitted were statements on origin that postdated the making of the declarations on the AIS. The Commissioner has found and set out her reasons why the Appellant was required to have the documentation to support such a claim at the time the declarations were made. The Commissioner does not accept the Appellant's arguments in respect of the reasons why the documentation was not available nor the arguments in relation to any advice or guidance purported to be offered by the Respondent. The Commissioner does not have a supervisory role over the Respondent and its procedures, as has been stated throughout this Determination.

167. The Commissioner has considered the Appellant's arguments in relation to a breach of his Charter rights by the Respondent. The Commissioner finds that the evidence adduced in this appeal and the documentation submitted does not support the position that the Appellant's Charter rights were infringed. In fact, the Commissioner is satisfied that the Appellant was provided every opportunity to furnish the evidence required to satisfy the customs debt. In addition, the Appellant was afforded fair procedures at every point in the process from the commencement of the PCI to the appeals process.

168. In relation to the question of whether the vehicles were entitled to RGR, the Commissioner was presented with no evidence to support such a claim. Moreover, the Commissioner notes, and it was not in dispute, that all of the declarations at issue herein claimed GBPO.

Whilst RGR may be available to the Appellant as a matter of law, in the absence of documentation or evidence to support such a claim for RGR, the Commissioner cannot make a finding that it was applicable to any of the declarations at issue in this appeal.

169. The Commissioner is satisfied that the Appellant imported the vehicles, made the declarations on the AIS without supporting documentation as to empowerment or PO, and in the PCI process was deemed liable for the customs debt. The Respondent does not accept that the TAN documentation which the Appellant contended to hold, constituted evidence of empowerment documentation and the Commissioner has set out her reasons why she accepts the Respondent's position in this regard. The Commissioner notes the evidence of the Respondent's witnesses that an opportunity is always provided to furnish evidence of empowerment at a later date, which would have been accepted if the documentation was dated prior to the original declaration. However, the Appellant accepted that he did not have the evidence of empowerment from the importers, as agreements were conducted verbally. Pursuant to Article 15 of the UCC, it is the responsibility of a declarant, the Appellant herein, to ensure the accuracy of information entered on a declaration.

170. The Commissioner is satisfied that having regard to Articles 5, 15, 19 and 163 of the UCC, when taken together, a person who declares to be acting as a direct representative would be required to have the relevant evidence of empowerment in their possession at the time that the declaration was made. Hence, the Appellant was deemed to be acting in his own name, in the absence of evidence of empowerment at the time the declarations were made. Furthermore, in the absence of contemporaneous documentation to support the Appellant's claims for GBPO, the Commissioner is satisfied that the Respondent was correct to impose the customs duty in respect of the imports. Hence, the Appellant's appeal fails.

**Determination**

171. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the customs duty is not payable. Therefore, the Notifications of Customs Debt in the amount of €93,020.62 shall stand.

172. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.

173. 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**

174. 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**

175. 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
Appeal Commissioner
13 May 2026