AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

239TACD2025

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction 3
Background 4
First tranche of motor vehicles – July 2021 5
Second tranche of motor vehicles – August 2021 5
Third tranche of motor vehicles – September to November2021 6
Legislation and Guidelines 8
Evidence and Submissions 23
Appellant's evidence 23
Appellant's submissions 27
Respondent's evidence 33
Respondent's submissions 38
Material Facts 41
Analysis 44
Burden of proof 44
The substantive issues 46
Revenue procedures - Jurisdiction of an Appeal Commissioner 47
Representative Status – Article 19 of the UCC Regulation 50
The customs debt – Article 163 of the UCC Regulation 55
The claim of Preferential Origin 56
Conclusion 59
Determination 60
Notification 60
Appeal 60

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought on behalf of [redacted] ("the Appellant") in relation to Notifications of Customs Debt, issued by the Revenue Commissioners ("the Respondent"), dated 30 July 2024, 19 August 2024 and 4 October 2024 in the total amount of €124,387.05 ("the Notifications of Customs Debt"). This amount has now been reduced, such that the agreed amount of customs duty at issue in this appeal is in the amount of €108,208,41.

2. The Notifications of Customs Debt were 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 Regulation").

3. The Notifications 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 a claim under Great Britain ("GB") Preferential Origin ("PO") ("GBPO"). The customs duty related to the importation of 77 vehicles during the periods July 2021, August 2021 and September to November 2021 ("the relevant period"). By claiming GBPO, the customs duty rate on the importation of the vehicles was reduced to 0%.

4. Thereafter, the Appellant made first stage appeals, in relation to the Notifications of Customs Debt, to a Designated Authorised Officer ("DAO") of the Respondent, and on 16 October 2024, 20 December 2024 and 16 January 2025, the DAO issued decisions to the Appellant refusing the first stage appeals.

5. On 26 November 2024 and 4 March 2025, the Appellant duly appealed the decisions of the DAO to the Commission by submitting its Notices of Appeal. On 27 March 2025, in accordance with section 949E TCA 1997, the Commissioner consolidated both the Appellant's appeals. Thereafter, in accordance with section 949Q TCA 1997, the Appellant and Respondent submitted a Statement of Case. Furthermore, on 11 May 2025, in accordance with section 949S TCA 1997, the Appellant submitted its Outline of Arguments and on 7 May 2025, the Respondent submitted its Outline of Arguments. In determining this appeal, the Commissioner has considered all of the documentation submitted by both parties to the appeal, including any additional submissions made following receipt of the parties' Outline of Arguments.

6. The appeal proceeded by way of a physical hearing that took place on Tuesday, 24 June 2025. The Appellant was represented by Mr Anthony Buckley ("the Appellant's representative") and the Respondent was represented by junior counsel. The Appellant called two witnesses to give evidence at the hearing of the appeal and the Respondent called three witnesses to give evidence at the hearing of the appeal. The witnesses were as follows:

   (i) Managing Director of the Appellant ("the Appellant's witness 1");

   (ii) Manager of Credit Control and the Customs Department of the Appellant ("the Appellant's witness 2");

   (iii) ("the Respondent's witness 1");

   (iv) ("the Respondent's witness 2");

   (v) ("the Respondent's witness 3").

Background

7. The Appellant is a . The Appellant

   .

8. ,

9. Prior to the UK exiting the European Union ("EU") ("Brexit"), the Appellant registered for customs and obtained an EORI number. The Appellant also obtained proprietary software to permit the completion and lodgement of import declarations. On 22 May 2022, the Appellant applied for the status of Authorised Economic Operator ("AEO") which was granted. On 28 March 2023, the Appellant received authorisation to operate a customs warehouse.

10. The Appellant's business required the lodging of customs declarations to the Respondent's Automated Import System ("AIS"). 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.

11. In 2021, the Appellant commenced lodging customs declarations on the AIS. Subsequent to the Appellant lodging customs declarations to the AIS, the Respondent opened a Post Clearance Intervention ("PCI") in relation to the importation of motor vehicles.

First tranche of motor vehicles – July 2021

12. On 25 June 2024, the Respondent wrote to the Appellant to inform it that a customs audit was being initiated and the Respondent requested certain supporting documentation, including documentation to establish the Appellant's claim to an entitlement to GBPO in relation to 39 motor vehicles. The audit covered the period to the end of July 2021.

13. On 1 July 2024, the Respondent issued a Notification of Findings to the Appellant stating its intention to establish a debt in the amount of €49,978.36 in respect of the 37 motor vehicles and advising a right to be heard before 30 July 2024.

14. By letter dated 12 July 2024, the Appellant notified the Respondent of its intention to exercise its right to be heard.

15. On 30 July 2024, the Respondent issued a Notification of Customs Debt in relation to the 37 imported motor vehicles in the amount of €49,978.36. On 29 August 2024, the Respondent replied to the Appellant's right to be heard correspondence.

16. On 13 September 2024, the Appellant lodged a first stage appeal in relation to the Notification of Customs Debt in the amount of €49,978.36, to the DAO of the Respondent.

17. On 16 October 2024, the DAO determined that he was satisfied with the decision made by the case officer in relation to the Notification of Customs Debt and the Appellant's appeal was not upheld. Thereafter, the Appellant appealed to the Commission.

18. On 5 February 2025, following engagement between the Appellant and the Respondent and as a result of supporting documentation being submitted by the Appellant, the Respondent wrote to the Appellant reducing the said customs debt for July 2021, to the amount of €45,380.03, and removed 5 imported motor vehicles from that tranche of motor vehicles at issue.

Second tranche of motor vehicles – August 2021

19. On 5 July 2024, the Respondent wrote to the Appellant to request certain supporting documentation, including documentation to establish the Appellant's claim to an entitlement to GBPO in relation to 19 motor vehicles. The audit covered the period to the end of August 2021.

20. On 19 July 2024, the Respondent issued a Notification of Findings to the Appellant indicating its intention to establish a debt in the amount of €22,347.19 in respect of 18 motor vehicles and advised the Appellant of its right to be heard up to 19 August 2024.

21. On 19 August 2024, the Appellant exercised its right to be heard. Also, on 19 August 2024, the Respondent issued a Notification of Customs Debt in the amount of €22,347.19, in respect of 18 motor vehicles. On 18 September 2024, the Respondent issued a response to the Appellant's correspondence relating to its right to be heard.

22. On 25 October 2024, the Appellant lodged a first stage appeal in relation to the Notification of Customs Debt in the amount of €22,347.19, to the DAO of the Respondent.

23. On 16 January 2025, the DAO determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld. Thereafter, the Appellant appealed to the Commission.

Third tranche of motor vehicles – September to November2021

24. On 29 August 2024, the Respondent wrote to the Appellant to request certain supporting documentation, including documentation to establish the Appellant's claim to an entitlement to GBPO in relation to 31 motor vehicles. The audit covered the periods to end of September, October and November 2021.

25. On 6 September 2024, the Respondent issued a Notification of Findings to the Appellant indicating its intention to establish a customs debt in the amount of €64,220.05, in relation to 31 motor vehicles, and advised the Appellant of its right to be heard until 4 October 2024. The Appellant did not exercise its right to be heard. On 4 October 2024, the Respondent issued correspondence to the Appellant stating that *"[a]s you failed to respond within 30 days it is deemed you have waived your right to be heard*".

26. On 4 October 2024, the Respondent issued a Notification of Customs Debt establishing a debt in the amount of €64,220.05 in respect of 31 motor vehicles.

27. On 1 November 2024, the Appellant lodged a first stage appeal in relation to the Notification of Customs Debt in the amount of €64,220.05, to the DAO of the Respondent.

28. On 20 December 2024, the DAO determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld. Thereafter, the Appellant appealed to the Commission.

29. On 3 March 2025, following engagement between the Appellant and the Respondent and as a result of supporting documentation being submitted by the Appellant, the Respondent wrote to the Appellant to advise the Appellant that following review, the

September to November customs debt was revised to the amount of €59,323.86 and 4 imports were removed from that tranche of motor vehicles at issue.

30. The Appellant submitted that it agreed that the Appellant in 2021, did not have signed agreements with its customers in the form set out in the Respondent's eCustoms Helpdesk Notification 027/2020 nor did the Appellant have a signed authority allowing customs clearance agents to use a Trader Account Number ("TAN") for 74 of the 77 imports listed in the final consolidated debt. Nevertheless, the Appellant submitted that it acted as a direct representative in respect of the importation of the motor vehicles the subject matter of this appeal.

31. The Appellant submitted that in April 2025, it wrote to its customers, being the motor dealers, concerned with the imported motor vehicles in this appeal and received signed statements ("the statements") from 16 of the motor dealers. The Appellant submitted that the statements confirmed that the Appellant had acted as a direct customs representative during 2021. The statements are at Exhibit 3 to the Appellant's consolidated Statement of Case.

32. In its Outline of Arguments submitted in support of its appeal, the Appellant stated that it was appealing the customs debt alleged on three grounds, as follows:

   "*a. Revenue Procedures. The notifications of debt for all three periods, July, August and September to November 2021, did not comply with the obligatory procedure laid down in the Union Customs Code and are therefore invalid;*

   b. Representative Status. There is no requirement for a specific form of proof that an agent is acting as a direct representative. The proof available to ███ and to Revenue is more than adequate to meet the civil standard of proof and therefore ███ is not liable for any debt that may exist; and

   c. Customs Debt. Revenue is incorrect in their interpretation of the rules relating to claims of preferential origin, particularly in their assertion that faulty or incorrect documentation cannot be retrospectively corrected."

33. Following further engagement between the Appellant and the Respondent, the first tranche of motor vehicles, being July 2021, was reduced to 30 motor vehicles and the amount of €40,880.15; the second tranche of motor vehicles, being August 2021, remained at 18 motor vehicles and the amount of €22,347.18; and the third tranche of motor vehicles, being September, October and November 2021, was reduced to 19 motor vehicles and the amount of €44,981.09. As set out in paragraph one of this Determination, the total customs debt at issue in this appeal is in the amount of €108,208.41.

34. The Appellant submitted at the hearing of the appeal that three of the motor vehicles were the subject of a claim in accordance with Returned Goods Relief ("RGR"). However, the Appellant's representative submitted that this was not at issue at this appeal, and it was accepted that the Appellant was not entitled to RGR.[1] Rather the Appellant's appeal was in relation to the Appellant's representative status and the claim to GBPO.

Legislation and Guidelines

35. The legislation and guidelines relevant to this appeal is as follows:

36. Article 5 of the UCC Regulation, *inter alia* 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;

37. Article 15 of the UCC Regulation provides:-

Provision of information to the customs authorities

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

2. The lodging of a customs declaration, temporary storage declaration, entry summary declaration, exit summary declaration, re-export declaration or re-export notification by a person to the customs authorities, or the submission of

[1] Transcript, page 13

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.

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

Customs representative

1. *Any person may appoint a customs representative.*

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

2. *A customs representative shall be established within the customs territory of the Union.*

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

39. Article 19 of the UCC Regulation provides:-

Empowerment

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

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

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.

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

40. Article 46 of the UCC Regulation *inter alia* 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.

41. Article 48 of the UCC Regulation 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.

42. Article 51 of the UCC Regulation *inter alia* 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.

43. Article 61 of the UCC Regulation 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*.

44. Article 64 of the UCC Regulation *inter alia* 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.*

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.*

………………..

45. Article 77 of the UCC Regulation 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.

46. Article 79 of the UCC Regulation 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.

47. Article 104 of the UCC Regulation provides:-

    Entry in the accounts

    1. *The customs authorities referred to in Article 101 shall enter in their accounts, in accordance with the national legislation, the amount of import or export duty payable as determined in accordance with that Article.*

       The first subparagraph shall not apply in cases referred to in the second subparagraph of Article 102(1).

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

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

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

    Time of entry in the accounts

1. Where a customs debt is incurred as a result of the acceptance of the customs declaration of goods for a customs procedure, other than temporary admission with partial relief from import duty, or of any other act having the same legal effect as such acceptance, the customs authorities shall enter the amount of import or export duty payable in the accounts within 14 days of the release of the goods.

However, provided that payment has been guaranteed, the total amount of import or export duty relating to all the goods released to one and the same person during a period fixed by the customs authorities, which may not exceed 31 days, may be covered by a single entry in the accounts at the end of that period. Such entry in the accounts shall take place within 14 days of the expiry of the period concerned.

2. Where goods may be released subject to certain conditions which govern either the determination of the amount of import or export duty payable or its collection, entry in the accounts shall take place within 14 days of the day on which the amount of import or export duty payable is determined or the obligation to pay that duty is fixed.

However, where the customs debt relates to a provisional commercial policy measure taking the form of a duty, the amount of import or export duty payable shall be entered in the accounts within two months of the date of publication in the Official Journal of the European Union of the Regulation establishing the definitive commercial policy measure.

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

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

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

49. Article 150 of the UCC Regulation provides:-

Choice of a customs procedure

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

50. Article 154 of the UCC Regulation provides:-

Loss of customs status of Union goods

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

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

51. Article 163 of the UCC Regulation provides:-

Supporting documents

- *1.* *The supporting documents required for the application of the provisions governing the customs procedure for which the goods are declared shall be in the declarant's possession and at the disposal of the customs authorities at the time when the customs declaration is lodged.*
- *2.* *Supporting documents shall be provided to the customs authorities where Union legislation so requires or where necessary for customs controls.*
- *3.* *In specific cases, economic operators may draw up the supporting documents provided they are authorised to do so by the customs authorities*.

52. Article 173 of the UCC Regulation 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*.

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

Scope and effect of the RGR

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.

54. 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.

55. Article 253 of the UCC Implementing Regulation, Commission Regulation 2015/2447, 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.

56. 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;

57. 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.*

58. 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.

59. 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.

60. Article 58 of the Agreement provides:-

Importer's 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).

61. 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.

62. 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….

…………….

63. Article 63 of the Agreement *inter alia* 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;

………………..

64. Guidance Note Withdrawal of the United Kingdom and EU Rules in the Field of Customs, including preferential origin (23 December 2020) ("the Commission Guidance Note").

Evidence and Submissions

Appellant's evidence

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

65.1. The Appellant's witness 1 testified that he is one of [redacted]. He stated that prior to establishing the Appellant [redacted] [redacted]. He gave evidence that the Appellant commenced trading in 2013 and by 2020, the Appellant was the [redacted]

.

.

65.2. The Appellant's witness 1 gave evidence that prior to the commencement of Brexit, he attended government talks and seminars, and took advice from customs agents in relation to customs procedures, as 90 per cent of the Appellant's work involved imports from the UK. He stated that he travelled through Dublin port regularly, and he was aware that it was "very far behind". He relayed that post Brexit, it was a common occurrence that his drivers would be directed into a yard in Dublin Port and certain paperwork requested. The Appellant's witness 1 testified that in relation to the paperwork requested by customs officials, the goalposts moved about four or five times. He stated that customs officials required "VMSs", then the requirement was for "Oasis Reports", then it changed such that the chassis number could be used. He stated that the trucks were not released until what was requested was provided to the customs officials. He gave evidence that the trucks were not permitted to pass through the port unless what was requested was provided and that this could sometimes take a full day. The Appellant's witness 1 stated that it was very frustrating and that at one point, nearly all of his trucks were "red routed" and stopped, and that there would have been about 20 trucks per week with full loads of motor vehicles on those trucks.

65.3. The Appellant's witness 1 stated that the Appellant was foolish enough to presume that when a truck was "green routed", that customs officials had what was required and that they had accepted what was presented at the time of import. He testified that he was not aware that the documentation for the motor vehicles that were "green routed" was insufficient to make a claim of GBPO. He stated that he was not responsible for uploading the documents and at one stage customs was accepting chassis numbers and then they decided that they were not. He testified that it was hard for the Appellant when the information provided as to what was acceptable and what was not, was consistently changing throughout the year.

65.4. The Appellant's witness 1 was cross examined by counsel for the Respondent. It was put to the Appellant's witness 1 that in 2020, the Appellant

. The Appellant's witness 1 stated that he would not describe the Appellant as .

65.5. The Appellant's witness 1 was asked did the Appellant receive correspondence from the Respondent and the Appellant's witness 1 confirmed that the Appellant received correspondence and advice from the Respondent. In response to the question whether the Appellant took a decision in June 2021 not to make any further declarations based on importer's knowledge (U117), the Appellant's witness 1 confirmed that it did make that decision. He stated that the decision was taken because it was very difficult to prove importer's knowledge as an importer, and he confirmed that he was aware that certain proofs were required in that case.

65.6. The Appellant's witness 1 was asked by counsel for the Respondent if then, would a claim of preferential origin (U116) be made. The Appellant's witness 1 testified that he did not decide the basis of a claim as the motor vehicles were not his motor vehicles but were the importers' motor vehicles. The Appellant's witness 1 was asked who would have made the declarations on the Appellant's behalf and inputted the details into the AIS. The Appellant's witness 1 confirmed that it was the Appellant. The Appellant's witness 1 testified that the Appellant employed a customs consultant to assist the Appellant. He confirmed that it would have been pre-Brexit so that the Appellant could prepare itself for that scenario. He confirmed that in 2021, the customs consultant would have corresponded with the Respondent on the Appellant's behalf. It was put to the Appellant's witness 1 that he had all the advice necessary to understand his obligations in terms of the customs procedures.

65.7. Counsel for the Respondent indicated to the Appellant's witness 1 that in relation to the claims for GBPO, some of the boxes were not completed, in particular the box that specified that the Appellant was acting other than on its own behalf. The Appellant's witness 1 confirmed that he did not make the declarations, but that a former employee had made the declarations. It suggested to the Appellant's witness 1 that right up to the hearing date, customs officials were engaging with the Appellant, taking into consideration any documentation that was presented and consequently, the debt was reduced prior to the hearing date. The Appellant's witness 1 was asked if he was aware that the debt had been reduced on numerous occasions and he confirmed that he was aware that it had been reduced. The Appellant's witness 1 was asked by counsel for the Respondent if he had any additional documentation that might go to the debt that remains outstanding. The Appellant's witness 1 testified that he did not have any further documentation to prove that the customs debt had been paid, as prior to the week before the hearing, he was not aware that he would have to contact all of the

motor dealers to request such documentation. He said that it would be impossible for him to do that and that some of the motor dealers were no longer in business.

65.8. Counsel for the Respondent asked the Appellant's witness 1 whether there was in existence any documentation to prove a claim for GBPO in respect of the declarations made herein and the Appellant's witness 1 confirmed that the Respondent had been provided with everything that was in the possession of the Appellant. Counsel for the Respondent asked the Appellant's witness 1 had the Appellant produced documentation to justify a claim for GBPO in respect of the motor vehicles at issue herein and the Appellant's witness 1 relayed that the Appellant had not.

65.9. The Appellant's witness 1 was questioned by counsel for the Respondent in relation to the agreements that emanated from the motor dealers. The Appellant's witness 1 confirmed that the correspondence was as a result of a letter that the Appellant had issued to the motor dealers. It was suggested to the Appellant's witness 1 by counsel for the Respondent that the signed correspondence from the motor dealers did not correlate to any of the motor vehicles at issue herein, and that the documentation did not exist in 2021. The Appellant's witness 1 agreed that the correspondence did not exist in 2021. The Appellant's witness 1 stated that it was the motor dealers that were liable for the customs debt and not the Appellant. The Appellant's witness 1 stated that he wanted to give evidence to highlight the business of the Appellant, but that he accepted that the claims of GBPO were not supported adequately.

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

66.1. The Appellant's witness 2 confirmed that she is the Manager of the credit control and the customs departments of the Appellant. She confirmed that in 2021, her role commenced with the Appellant in the credit control department, but it was not until in January 2023, that she commended her role with the customs department. The Appellant's witness 2 stated that the Appellant presently has four employees.

66.2. The Appellant's witness 2 testified that since 2023, she has been responsible for managing the customs department and ensuring that all the procedures are carried out correctly and that the required paperwork is sought from the Appellant's customers. She stated that in 2021, a former employee was responsible for entering the customs declarations, but that he had not carried out

the role correctly. The Appellant's witness 2 confirmed that she was not involved with the lodging of customs declarations in 2021.

66.3. The Appellant's witness 2 was cross examined by counsel for the Respondent. She confirmed that she has carried out her current role since 2023, but that it was a former employee who had carried out the role of lodging the customs declarations in the customs department, in relation to the motor vehicles at issue herein.

Appellant's submissions

67. The Commissioner sets out hereunder a summary of the submissions made by the Appellant's representative both at the hearing of the appeal and in the documentation submitted in support of its appeal:-

67.1. As there was no transition period when Brexit commenced, anything deemed by the Respondent to be a breach of the rules was subject to penalty and there was no scope for the provision of warnings. The Respondent interpreted the law in the most restrictive way and at times exceeded the intention and letter of the law. In such a confused environment, as it was in early 2021, the Respondent's post-clearance checks were unquestionably necessary to address malpractices. However, the Appellant did not engage in fraudulent behaviour at any point, nor is it alleged by the Respondent that it did.

67.2. The Appellant followed the instructions of its customers and accepted assurances that the motor vehicles qualified for the relief claimed. The Appellant was surprised to find that many of the declarations were found to be deficient and that the deficiencies could not be rectified. However, the Appellant was at all times acting as a direct representative of its customers.

67.3. The Appellant did not routinely obtain a formal signed agency agreement with each customer until 2022 and, in some cases, 2023. This was an oversight, and it has had serious consequences, but at the time the Appellant did not appreciate the importance of the agreements, which it had never previously sought pre-Brexit. The Appellant was confident that the customs and excise form, in addition to the Appellant's correspondence with customers, was sufficient to evidence the relationship between the Appellant and its customers. This belief was borne out in 2021, when all of the Appellant's customers accepted liability for underpayments from the post-clearance check.

67.4. The Respondent decided the proofs advanced by the Appellant were not sufficient to prove its status as a direct representative and further concluded that insufficient evidence was advanced to establish a claim of GBPO. The customs debt has since been revised twice by the Respondent.

67.5. The Appellant's first ground of appeal is that the Respondent did not follow the procedures laid down by the UCC and consequently, the Notifications of Customs Debt are invalid. The form of debt notification is not prescribed in any of the EU legal instruments. Therefore, it must be assumed that the prescription of the form is a matter for the national customs authority. In Ireland, there is a procedure for prescribing revenue forms for various purposes, but it is clear that the form for the notification of customs debt has not been prescribed. The fact that standard usage and format may have evolved is not a substitution for formal prescription. In addition, the Respondent took no account of the Appellant's right to be heard submissions, and the law is clear that the submissions must be considered before a decision is taken.

67.6. The importance of correct procedures was emphasised by the Court of Justice of the European Union ("CJEU") in Case C-39/20 *Staatssecretaris van Financiën v Jumbocarry Trading GmbH*, where the CJEU considered the right to be heard under Article 22(6) UCC and held that this right was an integral part of the right to a defence which is a fundamental principle of EU law. The case confirms that even if the failure to follow procedure did not have a negative effect, that was immaterial, as the procedural and substantive rules form an indivisible whole, the individual elements of which cannot be considered in isolation with regard to their temporal effect. It is important to achieve a consistent and uniform application of EU legislation in the field of customs. For these reasons, the purported Notifications of Customs Debt failed to meet the mandatory conditions and are invalid.

67.7. On the question of the jurisdiction of the Commissioner to make declarations and to decide on the validity of the Notifications of Customs Debt, as this appeal is dealing with the UCC Regulation, Article 44 of the UCC Regulation is relevant which states that "*any person shall have the right to appeal...*".

67.8. On 17 June 2025, the Appellant was provided with documents from a motor dealer indicating that the amount of customs debt, in relation to certain motor vehicles imported in this appeal, had been paid. This information was provided to the Respondent by the Appellant. In response, the Respondent issued

correspondence to the Appellant dated 19 June 2025, revising the customs debt and reducing it to the amount of €108,208.41. This evidence was significant in two respects: firstly, the reliability of the Respondent's computation of the customs debt and secondly, the evidence of the Appellant's status as a direct representative.

67.9. The Appellant has on several occasions raised the question of whether any amount of the customs debt had already been paid. The Appellant has no means of confirming this information. As a result, the procedures followed by the Respondent to establish the customs debt are open to question.

67.10. There are two elements to representative status: firstly, whether the person lodging the customs declaration was acting as an agent of another person and, secondly, whether the nature of that agency was "direct", in which case the agent acts "in the name of and on behalf of" the other person, or "indirect" where the agent acts "in his/her own name but on behalf of another person".

67.11. The relevance of representative status is closely linked to the definition of "declarant". The declarant is the person responsible for any customs debt that arises and is defined by Article 5 of the UCC Regulation as "*the person lodging a customs declaration... in his or her own name, or the person in whose name the declaration or notification is lodged*". Thus, an agent acting as a direct representative is not the declarant, but an agent acting as an indirect representative is the declarant. The effect of this provision is that, in the absence of evidence to the contrary, the person lodging the declaration is taken to be the declarant and thus bears full responsibility for compliance with customs requirements.

67.12. Customs law does not specify a form of evidence to meet the requirements of Article 19(2) of the UCC Regulation. The Respondent issued eCustoms Helpdesk Notification 027/2020, which states: "*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*." The Appellant accepts that it did not have signed authorisations in this format from the motor dealers for the relevant periods.

67.13. The evidence advanced by the Appellant as empowerment documentation to establish that it acted as a direct representative is of two types; firstly, documents signed by the individual motor dealers ("the statements") and secondly, correspondence, and other objective evidence that makes clear the nature of the

relationship between the Appellant and the motor dealers. This evidence taken together, establishes beyond a reasonable doubt that the Appellant's relationship with its customers was that of a direct representative. The Appellant has obtained signed statements from 16 of the 30 motor dealers in this appeal. The wording of the statements is unequivocal. The fact that the documents have been recently signed does not affect their validity as empowerment documentation. The requirement is that empowerment existed at the time of the declarations, but evidence of that fact can be obtained and presented at any time. The statements confirm the following:

> *"I hereby confirm that [the Appellant], trading as [the Appellant], acted as our direct customs representative, acting in our name and on our behalf, in regard to lodging customs declarations for the importation of motor vehicles from the UK in the course of 2021."*

67.14. Prior to acting on behalf of its customers, the Appellant obtained signed authorisations which were lodged with the eCustoms accounts unit of the Respondent's customs division. This is known as a TAN authorisation. On foot of the authorisations, the Appellant declared the customer as the importer and quoted their EORI or VAT reference for payment of the debt.

67.15. The Appellant imported many cars in respect of which customs duty was paid from the customers TAN accounts under this authorisation. The authorisations were in place for all but three of the 67 imports in this appeal. The authorisations leave no doubt that the Appellant was authorised as a customs clearance agent. It does not specify whether the agency was one of direct or indirect representation. However, in the case of indirect representation the Appellant would have been the declarant and liable for all taxes and duties.

67.16. In 2021, the Appellant believed that the TAN authorisations were sufficient and at that time, the Appellant was unaware of the Respondent's guidance in eCustoms Helpdesk Notification 027/2020. The Respondent does not accept the TAN authorisation form as evidence of empowerment, because it was designed for a different purpose. Regardless of the original use of the form and the rationale for its design, the fact remains that the form unambiguously shows that the named agent(s) are appointed customs clearance agents of the person submitting the form. The signed evidence is sufficient to show that the Appellant acted as a direct representative.

67.17. The Appellant communicated with its customers by circular email to keep them informed of important developments. The first notice issued on 11 January 2021. This notice showed good intent, but very poor knowledge because it showed a very imperfect understanding of the law on the part of the Appellant. It contains two elements of relevance: that the customer was the importer and that the customer would need to authorise the Appellant to use their TAN account to pay the duties and tax arising. In the second notice to customers in June 2021, the Appellant said *"[w]e must therefore advise against claiming preference based on Importer's Knowledge for the time being, unless or until the Customs ruling is changed.*"

67.18. In October 2021, the Appellant again notified its customers involved in the post-clearance check of that year. Given the volume of evidence presented, there cannot be any reasonable doubt that the Appellant acted in the capacity of direct representative and that its customers fully understood and agreed with that arrangement. The Appellant never purchased motor vehicles on its own account, it never sold motor vehicles on its own account, but rather, it acted as an agent, and the evidence derived from the Appellant's normal day-to-day business makes that quite clear.

67.19. Almost all of the customs debt arises due to deficiencies in documentation. The correction of those deficiencies should be allowed. However, as the Appellant was not a party to the original transactions, it cannot directly obtain the corrections required by the Respondent. So even if there was a finding by the Commissioner that corrections were to be allowed, the Appellant could not make those corrections. Nevertheless, the Appellant should be permitted to make the necessary corrections if and when presented.

67.20. The declarations lodged by the Appellant and the motor vehicles which the Appellant claimed were entitled to GBPO, were all generally known to be entitled to GBPO by reference to the treatment of identical new motor vehicles and publicly available information. The barrier to receiving the claim to GBPO was the absence of satisfactory documentation. In the case of the great majority of the motor vehicles, correct documentation could have been procured if the importers had a full understanding of the requirements.

67.21. The Respondent has interpreted Article 163 of the UCC Regulation as requiring that the correct documents, perfect in every respect, had to be in the possession of the declarant when the declaration was lodged. This meant that any corrected

or rectified documents could not be accepted and errors could only be corrected, if the precise documents could be proven to be in the declarant's possession when the declaration was lodged. It is unreasonable and unsustainable to interpret this article as preventing correction, rectification or improvement of documentation, and this is particularly the case where the deficiencies identified are the result of error rather than any attempt to perpetrate a fraud.

67.22. The primary purpose of Article 163 of the UCC Regulation appears to be to avoid delays in decision-making and to ensure that the documents are available if requested by the customs officials. It expedites the process of checking and allows customs officials to refuse the procedure sought, when documents are not immediately available.

67.23. Article 65 of the Community Customs Code, Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ("the CCC") is very similar to Article 173 of the UCC Regulation, permitting a declaration to be amended subject to conditions. In Case C-156/16 *Tigers GmbH v Hauptzollamt Landshut* ("*Tigers*"), the CJEU considered the meaning of Articles 62 and 78 of the CCC. The dispute in *Tigers* concerned the application of an EU regulation imposing anti-dumping duty on certain imports of ceramic tableware and kitchenware from China. At the time when the relevant goods were imported, the invoice presented by *Tigers* was not accompanied by the required declaration signed by the manufacturer. *Tigers* subsequently produced a valid invoice complying with the requirements of the regulation, but the customs office refused to accept it. Following a reference from the German courts for a preliminary ruling, the CJEU considered whether an invoice complying with the requirements of the regulation could be submitted to the customs authorities retrospectively. The CJEU said at paragraph 21 of its decision that:

> "*According to settled case law, for the purpose of interpreting the provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs, and the objectives pursued by the rules of which it is part."*

67.24. The wording of the CCC is not the same as the wording in the UCC Regulation that succeeded it, but the effect of the relevant articles is the same, namely that the documents required must be available at the time a declaration is submitted and that in the event of error or omission, a subsequent correction may be permitted, provided fraud or criminality is not suspected. For that reason, the *Tigers* decision may be used to support this appeal.

67.25. The Appellant requests that the Notifications of Customs Debt be declared invalid, the evidence of empowerment to act as a direct customs representative be accepted as meeting the required standard of proof and the Respondent's interpretation of Article 163 of the UCC Regulation be declared incorrect.

67.26. The Appellant has advanced several different types of evidence. Whilst the TAN authorisations established that there was a relationship of agent and client, they do not establish whether that was direct or indirect representation, but they do so in an implied manner, in that the form itself would be unnecessary if the relationship was indirect. The evidence advanced in terms of the nature of the interactions between the Appellant and its customers has a cumulative effect, such that while any one element is not conclusive, the emails, the procedures, and the payment of the customs duty from the TAN accounts all go to the issue of whether the Appellant was acting as a direct representative. The terms and conditions of the Appellant stated that the Appellant was acting in all cases as a direct representative.

67.27. In relation to the statements signed by the motor dealers, there was not in place from the outset, a formal comprehensive agreement at the time the declarations were made on the AIS. However, what was required was evidence of the relationship, in accordance with Article 19 of the UCC Regulation, evidence of empowerment and evidence that empowerment existed at the time of the declarations. The statements are clear evidence, unless there is an assertion or an implication that the statements are false, which has not been made. The statements are evidence that the motor dealers accept that at the time of the declarations, a relationship of direct representation existed and that has to be valid to some degree at least.

67.28. There is no connection between Article 19 and Article 163 of the UCC Regulation. The Appellant has shown that empowerment existed, and the relationship existed, and the evidence that has been produced, exceeds the relevant standard of the balance of probabilities, which is well established in case law as the requirement in an appeal.

Respondent's evidence

68. [redacted] gave evidence on behalf of the Respondent ("the Respondent's witness 1"). The Commissioner sets out hereunder a summary of the evidence given by the Respondent's witness 1:-

68.1. The Respondent's witness 1 confirmed that she is a Higher Executive Officer in the policy unit of the Respondent that deals with origin and valuation matters and which has the role of advising on policy matters. She stated that the unit is also responsible for publishing comprehensive guidance on origin matters and drafting manuals and eCustoms notices.

68.2. The Respondent's witness 1 gave evidence that customs duty is not collected for the Irish Exchequer, but that it is collected on behalf of the EU. She stated that any case may be selected for an audit by the EU. In relation to a claim of PO, the Respondent's witness 1 gave evidence that there are two types of origin, non-preferential origin that applies in the normal course of events, such as where trade defence measures are collected, like anti-dumping duty and preferential origin which refers to the rules that are set down in the Agreement.

68.3. The Respondent's witness 1 stated that a statement on origin is what would be expected in such a claim of PO, which is issued by the exporter and in which case the exporter takes responsibility for proving that proof of origin. However, it is also possible to make a claim on the basis of importer's knowledge, which places all of the responsibility on the importer to prove that the particular product was manufactured in the other contracting party, in line with the rules that are set down in the Agreement. She stated that the statement of origin has specific wording that must be used and that this is set out in Annex 7 of the Agreement.

68.4. The Respondent's witness 1 stated that specific record-keeping requirements are set down in the Agreement, such that an importer making a claim on the basis of importer's knowledge, must keep all records to show that the goods qualify as originating for three years. An importer using a statement on origin must keep that statement for three years and that coincides with the three-year deadline for collection of customs debt.

68.5. The Respondent's witness 1 testified that "green routing" means that there was no intervention at the port, as it was not feasible, nor would it facilitate trade to carry out checks on all importation declarations at the port. She stated that Article 105 of the UCC Regulation puts a responsibility on the customs authorities in the Member States to ensure that the release of goods is as efficient as possible, and that trade is facilitated.

68.6. The Respondent's witness 1 gave evidence that Article 15 of the UCC Regulation requires that any person involved in completing customs formalities has a responsibility as to the accuracy of the information given, but also to the accuracy

and validity of the documents relating to that customs procedure. In addition, the Respondent's witness 1 testified that Article 19 of the UCC Regulation is clear that at the time the declaration is made, the information must be in the possession of the person making the declaration. She said that Article 163 of the UCC Regulation is also relevant in that regard.

68.7. The Respondent's witness 1 was cross examined on her evidence by the Appellant's representative. The Respondent's witness 1 was asked whether an importer who was stopped, "red routed" and then cleared or "green routed", would be forgiven for assuming that the requisite checks had been performed and the documentation was adequate. The Respondent's witness 1 stated that a customs officer cannot be expected to carry out a full audit-type intervention at the port, as the Respondent must facilitate trade as best it can.

68.8. The Respondent's witness 1 was asked if the statements signed by the motor dealers, stating that the Appellant was acting as their direct representative in 2021, were acceptable. She stated that the statements were not acceptable as the purpose of a post-clearance intervention was to confirm the accuracy of a customs procedure, and that includes the declaration and the paperwork. However, the paperwork was not in the Appellant's possession in 2021, at the time the declarations were made and Article 19(2) of the UCC Regulation states that "*Persons who fail to state that they are acting as a customs representative or who state that they are acting as a customs representative without being empowered to do so shall be deemed to be acting in their own name and on their own behalf*." The Respondent's witness 1 relayed that it was the second part of that sentence that led her colleagues to seek evidence of empowerment from the Appellant.

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

69.1. The Respondent's witness 2 testified that he is an employee of the Respondent and a member of the Post-Clearance Check Unit involved in reviewing imported goods post-release, once the goods are imported and cleared, having been either "green, orange or red routed" through the port. He stated that in a PCI a risk assessment is carried out and a three-year review is conducted to ensure that all documents that have been declared are available and can be submitted to the

Respondent, and that any claim for PO is correctly claimed and can be supported by documentation.

69.2. The Respondent's witness 2 testified that the process was a continual one. He confirmed that any documentation or information that is sent to the Respondent is reviewed on an ongoing basis and if appropriate the customs debt is reduced; for example, in this appeal, as a result of further documentation being produced, the customs debt was reduced to the amount of €108,208.41. He confirmed that one import relates to a claim of GBPO on the basis of importer's knowledge (U117), with the balance of the imports being claimed under U116, statement on origin.

69.3. The Respondent's witness 2 gave evidence that sufficient documentation was not submitted to support the claims in respect of the remaining vehicles. He referred to Article 19 of the UCC Regulation and stated that if empowerment documentation was in the possession of the Appellant in 2021, at the time the declarations were made, then the liability would rest with the importer not the Appellant. Article 19 of the UCC Regulation is quite specific, such that if there is no empowerment agreement in place, then the liability is the responsibility of the declarant. He stated that it was unambiguous and quite clearly laid out.

69.4. The Respondent's witness 2 gave evidence that the ticking of the box on Data Element 21, which related to the matter of direct or indirect representation presents three options namely, to tick direct, to tick indirect or the box may be left blank. He said that the consequences of not ticking the box is that the person making the declaration will be deemed to be taking responsibility for the customs debt. The Respondent's witness 2 testified that it was the case that the box was not ticked in respect of any of the declarations made by the Appellant herein. He stated however, that this was not fatal; what it boils down to is the requirements of Article 19 of the UCC Regulation and whether the declarant has a written agreement in place at the time of the declaration being made. That is the crux of it all, he said. However, all that has been provided by the Appellant was documentation that dated from 2022, 2023 and 2024 with the latest tranche of documentation being submitted prior to the hearing.

69.5. The Respondent's witness 2 said that if the Appellant had an empowerment agreement in place in 2021, to act as a direct representative, then the Respondent would be dealing with the importers or the motor dealers rather than the Appellant. But the empowerment documentation was not in the Appellant's possession in

2021 when the declarations were made. The Respondent's witness 2 stated that Article 163 of the UCC Regulation is clear that any document or evidence must be in the possession of the declarant at the time of making the declaration.

69.6. The Respondent's witness 2 was cross examined on his evidence by the Appellant's representative. He was asked if it was possible for him to confirm that at this remove, no other motor dealers had paid the customs debt at issue herein. The Respondent's witness 2 stated that based on the information that had been supplied to him and the information available to him on the Respondent's records, he could confirm that no other motor dealers had paid the customs debt at issue herein.

69.7. The Respondent's witness 2 was asked by the Appellant's representative whether it was possible for the Respondent to take a TAN authorisation cited on a declaration and to procure a listing of all payments made by that TAN account. The Respondent's witness 2 gave evidence that he did not think that was possible, but that even if such a scenario was possible, it would be an enormous task for the Respondent to go through that information, as the TAN authorisations and accounts operate on a monthly basis and are in respect of all imports coming into the State.

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

70.1. The Respondent's witness 3 confirmed that he is an Assistant Principal Officer with the Traditional Own Resources Unit in the Respondent. He gave evidence that the TAN authorisation is a financial technical document which is used to permit payments to be made through the Revenue Online System ("ROS"), but that it was not an empowerment document, in accordance with Article 19 of the UCC Regulation. He said that it is a purely financial document and does not accord with the wording in Annex 7 of the Agreement. The Respondent's witness 3 stated that the TAN authorisation is a financial authorisation, not an empowerment authorisation under the UCC Regulation, as it is a technical authorisation to use a trader's bank account to deduct the amounts that are in question in terms of customs duties. That is the purpose of a TAN authorisation and account.

70.2. The Respondent's witness 3 was cross examined on his evidence by the Appellant's representative. He was asked why, when the TAN authorisation is

signed, it did not constitute evidence of an agent and client relationship between the signatory and the named agent. The Respondent's witness 3 stated that it was evidence of a relationship, but not evidence of empowerment required in accordance with Article 19 of the UCC Regulation.

Respondent's submissions

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

71.1. The net issue is who is the declarant and what was declared. In this instance there is no dispute, and it is uncontroverted, that the declarant was the Appellant.

71.2. It was accepted by the Appellant that empowerment documentation or documentation to support the claim of GBPO does not exist and any available documentation has been furnished to the Respondent. The onus is on the Appellant to show that the Notifications of Customs Debt are incorrect. However, no such evidence has been adduced by the Appellant and both of the Appellant's witnesses were not involved in making the declarations, in 2021. All that has been produced are signed statements by motor dealers from 2023 and 2024, which stated that the Appellant had acted as an agent in 2021, but the statements are not related to specific imported motor vehicles nor are they proof of origin.

71.3. Reference was made to the previous determinations of the Commission in *97TACD2025* and *19TACD2023*. Both determinations are on all fours with this appeal, as the issue before the Appeal Commissioner in the previous appeals was a failure to produce documentation in accordance with Article 19 of the UCC Regulation. As the Appellant herein did not indicate in what capacity it was acting, the Appellant was deemed to be acting in its own name and on its own behalf.

71.4. Reference was made to Article 163 of the UCC Regulation. When Article 19 and Article 163 of the UCC Regulation are cross referenced, a person who declares to be acting as a direct representative, would be required to have the empowerment documentation in their possession, at the time that the declaration was made. In this appeal, there was no empowerment documentation in place at the time the declarations were made and anything that has been adduced since, was created after the event, in 2023 and 2024.

71.5. A number of aspects of the Appellant's submissions touched upon public law remedies, whereby the Appellant requested that the Commissioner make

declarations or quash decisions of the Respondent. Reference was made to the decision in *Lee v The Revenue Commissioners* [2021] IECA 18, which deals with the Commissioner's jurisdiction and wherein the Court of Appeal confirmed it relates only to the tax and the charge, or whether the duty is owing or not.

71.6. Reference was made to the decision of the CJEU in Case C-301/87 *French Republic -v- Commission of the European Communities*, in particular to paragraphs 30 and 31 of the judgment wherein the CJEU held that:

> "30. …………..*The Court held that in so far as the Member State had not been afforded the opportunity to comment on such observations, the Commission could not incorporate them in its decision against that State.*
>
> *31. However, in order for such an infringement to result in annulment, it is necessary to establish that, had it not been for such an irregularity, the outcome of the procedure might have been different."*

71.7. That decision is supported by the Joined Cases C-129/13 and C-130/13 *Kamino International Logistics, Datema Hellmann Worldwide Logistics v Staatssecretaris van Financiën* wherein the court considered the Community Customs Code ("CCC") and the right to defence in connection with the CCC. At paragraph 80 the CJEU held that:

> *"Consequently, an infringement of the principle of respect for the rights of the defence results in the annulment of the decision in question only if, had it not been for that infringement, the outcome of the procedure could have been different."*

71.8. With regard to the right to defence, not alone was the Appellant given a right to be heard, those submissions were heard and answered by the Respondent. The Respondent went beyond what was required because, even to this day, the Respondent is willing to accept documentation and to hear the Appellant. In that regard, there was a full vindication of any right to be heard, and it went beyond the rights which are afforded by EU law to make the submission in advance of the decision, because not only was that done, but the Respondent has also engaged with the Appellant post the decisions having been made.

71.9. The crux of the matter is that the Appellant did not have the empowerment documentation at the time the declarations were made, nor did it have the documentation to substantiate a claim of GBPO. Therefore, the Appellant was deemed to be the declarant, and the debt was the responsibility of the Appellant.

71.10. The Appellant has been afforded a reasonable opportunity to provide the necessary documentation to support the claims for GBPO that it made in relation to the relevant motor vehicles and not alone has it not done so, it accepts that it did not have the requisite documentation at the relevant time. What the Appellant is seeking to do is to absolve itself of responsibility for its admitted failures based on a submission that although it was inexperienced, it made efforts to comply with and to understand the procedures throughout 2021, and that it also co-operated with the post-clearance check.

71.11. Certain proofs are required to qualify for a claim of GBPO. An importer must have a statement on origin or importer's knowledge and a claim for GBPO is made when the import declaration is entered into the AIS. Therefore, the importer must be in possession of the documentation at the time of making the claim and must be able to submit it to the customs authorities, if requested to do so.

71.12. The Appellant does not have the information that was required to support the declarations that were made, and it was on that basis that the PCI was valid and merited, as it found that the claim for GBPO was not evidenced, in relation to the declarations at issue herein.

71.13. The onus is on the declarant. Article 5 of the UCC Regulation defines the "declarant" as the "*person lodging a customs declaration,……in his or her own name or the person in whose name such a declaration or notification is lodged*". The Appellant herein is the declarant on all of the relevant declarations made on the AIS, wherein it failed to indicate whether it acted as a direct or indirect representative. The failure to enter this information on the declaration was not fatal in and of itself, when it came to determining liability for any subsequent debt that arose. The Respondent was willing to accept documentation if it was relevant.

71.14. A TAN authorisation is not proof of representation. The Respondent's eCustoms Helpdesk Notifications 02/2020 and 027/2020, both deal with representation and state *inter alia* that:

> "*While 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*".

Material Facts

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

72.1. The Appellant is a .

72.2. The Appellant .

72.3. By 2020, the t .

72.4. For the purposes of transporting the motor vehicles, the Appellant has been an authorised motor dealer for domestic VRT purposes, as this allowed the Appellant to transport and hold unregistered vehicles, before conveying them to other authorised motor dealers.

72.5. Prior to Brexit the Appellant registered for customs and obtained an EORI number. The Appellant also obtained proprietary software to permit the completion and lodgement of import declarations.

72.6. On 22 May 2022, the Appellant successfully applied for the status of AEO which was granted and on 28 March 2023, the Appellant received authorisation to operate a customs warehouse.

72.7. The Appellant's business required the lodging of customs declarations to the Respondent's AIS.

72.8. In January 2021, the Appellant commenced lodging import declarations to the AIS and various claims were made of GBPO and RGR.

72.9. Subsequent to the lodging of customs declarations to the AIS, the Respondent opened a PCI in relation to the importation of motor vehicles.

First tranche of motor vehicles – July 2021

72.10. On 25 June 2024, the Respondent wrote to the Appellant to inform it that a customs audit was being initiated and requested certain supporting documentation, including documentation to establish the Appellant's claim to an entitlement to GBPO in relation to 39 motor vehicles. The audit covered the period to end of July 2021.

72.11. On 1 July 2024, the Respondent issued a Notification of Findings to the Appellant stating its intention to establish a debt in the amount of €49,978.36 in respect of the 37 motor vehicles and advising a right to be heard before 30 July 2024.

72.12. By letter dated 12 July 2024, the Appellant notified the Respondent of its intention to exercise its right to be heard.

72.13. On 30 July 2024, the Respondent issued a Notification of Customs Debt in relation to the 37 imported motor vehicles in the amount of €49,978.36.

72.14. On 29 August 2024, the Respondent replied to the Appellant's right to be heard correspondence.

72.15. On 13 September 2024, the Appellant lodged a first stage appeal in relation to the Notification of Customs Debt in the amount of €49,978.36, to the DAO of the Respondent.

72.16. On 16 October 2024, the DAO determined that he was satisfied with the decision made by the case officer to issue a Notification of Customs Debt and the Appellant's appeal was not upheld. Thereafter, the Appellant appealed to the Commission.

72.17. On 5 February 2025, following engagement between the Appellant and the Respondent, and as a result of supporting documentation being submitted by the Appellant, the Respondent reduced the said debt for July 2021, to the amount of €45,380.03, and removed 5 imported motor vehicles from that tranche of motor vehicles at issue.

Second tranche of motor vehicles – August 2021

72.18. On 5 July 2024, the Respondent wrote to the Appellant to request certain supporting documentation, including documentation to establish the Appellant's claim to an entitlement to GBPO in relation to 19 motor vehicles. The audit covered the period to end of August 2021.

72.19. On 19 July 2024, the Respondent issued a Notification of Findings to the Appellant indicating its intention to establish a debt in the amount of €22,347.19 in respect of 18 motor vehicles and advised the Appellant of its right to be heard up to 19 August 2024.

72.20. On 19 August 2024, the Appellant exercised its right to be heard.

72.21. On 19 August 2024, the Respondent issued a Notification of Customs Debt in the amount of €22,347.19, in respect of 18 cars.

72.22. On 18 September 2024, the Respondent issued a response to the Appellant's correspondence relating to its right to be heard.

72.23. On 25 October 2024, the Appellant lodged a first stage appeal in relation to the Notification of Customs Debt in the amount of €22,347.19, to the DAO of the Respondent.

72.24. On 16 January 2025, the DAO determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld. Thereafter, the Appellant appealed to the Commission.

Third tranche of motor vehicles – September to November 2021

72.25. On 29 August 2024, the Respondent wrote to the Appellant to request certain supporting documentation, including documentation to establish the Appellant's claim to an entitlement to GBPO in relation to 31 motor vehicles. The audit covered the period to end of September, October and November 2021.

72.26. On 6 September 2024, the Respondent issued a Notification of Findings to the Appellant indicating its intention to establish a debt in the amount of €64,220.05, in relation to 31 motor vehicles, and advised the Appellant of its right to be heard until 4 October 2024. The Appellant did not exercise its right to be heard.

72.27. On 4 October 2024, the Respondent issued correspondence to the Appellant stating that *"[a]s you failed to respond within 30 days it is deemed you have waived your right to be heard*".

72.28. On 4 October 2024, the Respondent issued a Notification of Customs Debt establishing a debt in the amount of €64,220.05 in respect of 31 motor vehicles.

72.29. On 1 November 2024, the Appellant lodged a first stage appeal in relation to the Notification of Customs Debt in the amount of €64,220.05, to the DAO of the Respondent.

72.30. On 20 December 2024, the DAO determined that he was satisfied with the decision made by the case officer and the Appellant's appeal was not upheld. Thereafter, the Appellant appealed to the Commission.

72.31. On 3 March 2025, following engagement between the Appellant and the Respondent and as a result of supporting documentation being submitted by the

Appellant, the Respondent wrote to the Appellant to advise the Appellant that following review, the September to November debt was reduced to the amount of €59,323.86 and 4 imports were removed from that tranche of motor vehicles at issue.

72.32. The Appellant submitted that in 2021, it did not have signed agreements with its customers in the form set out in the Respondent's eCustoms Helpdesk Notifications 027/2020.

72.33. The Appellant submitted that in April 2025, it wrote to the motor dealers concerned with the imported motor vehicles the subject of this appeal and received signed statements from 16 of the 30 motor dealers which stated that the Appellant had acted as their direct customs representative during 2021.

72.34. Following further engagement between the Appellant and the Respondent, the first tranche of motor vehicles, being July 2021, was reduced to 30 motor vehicles and the amount of €40,880.15; the second tranche of motor vehicles, being August 2021, remained at 18 motor vehicles and the amount of €22,347.18; and the third tranche of motor vehicles, being September, October and November 2021, was reduced to 19 motor vehicles and the amount of €44,981.09.

72.35. The total customs debt at issue in this appeal is in the total amount of €108,208.41.

72.36. By claiming GBPO, the customs duty rate on the importation of the motor vehicles was reduced to zero per cent.

72.37. The Appellant did not have the empowerment documentation at the time the declarations were made on the AIS, nor did it have the documentation to substantiate a claim of GBPO. Therefore, the Appellant was deemed to be the declarant and the customs debt was the responsibility of the Appellant.

72.38. The Appellant does not have the information that was required to support the declarations that were made in respect of the motor vehicles.

Analysis

Burden of proof

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

v Appeal Commissioners and another [2010] IEHC 49 at 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*".

74. 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…"*

75. 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.

76. This was recently confirmed in the judgment of 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, where the court considered the question of where the burden of proof lies in relation to the issue of a taxpayer's residency in the State for tax purposes. The Commissioner notes the *dicta* of Mr Justice McDonald at paragraphs 30, 44 and 45, wherein he held that:

> "*30. …..There is a long line of authority both here and in the various jurisdictions within the United Kingdom to the effect that, on an appeal from a tax assessment , the burden of proof lies on the taxpayer in respect of these issues. That was the view taken by Gilligan J. in T.J. v. Criminal Assets Bureau [2008] IEHC 168 at para. 50. In turn, that view was reiterated by Charleton J. (albeit in the context of a V.A.T. appeal) in Menolly Homes Ltd. v. The Appeal Commissioners [2010] IEHC 49 at para. 22.*
>
> *……………………..*
>
> *44. The last sentence in that extract reflects what was said by Lord Brandon in the Rhesa Shipping case in the passage quoted by Chadwick L.J. in Wood v. Holden, at p. 1413 (replicated in para. 15 above) to the effect that a judge or tribunal is not bound to accept the evidence of the party who bears the legal burden of proof and is entitled to reject it where it is unsatisfactory.*
>
> *45. In my view, none of the arguments made on behalf of the appellants withstands scrutiny. The appellants have failed to put forward any plausible basis to support their*

case that CAB bears the legal burden of proof in relation to the issue of residence. It will therefore be for the appellants to put forward sufficient evidence before the TAC to establish, on the balance of probabilities, that they were not resident in the State within the meaning of s. 819 of the 1997 Act during the relevant tax years in issue in their appeals. That is neither surprising nor illogical. To paraphrase Chadwick L.J. in Wood v. Holden, at p. 1413, the relevant facts relating to the appellants' movements are best known to the appellants. They should have no difficulty in giving evidence relevant to the test set out in s. 819 of the 1997 Act".

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

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

98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation………."

The substantive issues

78. The Commissioner notes from the Appellant's Notices of Appeal and its Outline of Arguments that it makes its appeal in relation to the said customs debt on three grounds. The Commissioner intends to address each of the grounds separately hereunder in this Determination. The three grounds of appeal are as follows:

    (i) *Revenue Procedures. The notifications of debt for all three periods, July, August and September to November 2021, did not comply with the obligatory procedure laid down in the Union Customs Code and are therefore invalid;*

    (ii) *Representative Status. There is no requirement for a specific form of proof that an agent is acting as a direct representative. The proof available to* [redacted] *and to*

Revenue is more than adequate to meet the civil standard of proof and therefore ██████ is not liable for any debt that may exist; and

(iii) *Customs Debt. Revenue is incorrect in their interpretation of the rules relating to claims of preferential origin, particularly in their assertion that faulty or incorrect documentation cannot be retrospectively corrected."*

Revenue procedures - Jurisdiction of an Appeal Commissioner

79. The Commissioner notes that the Appellant's first ground of appeal posited that when issuing the Notifications of Customs Debt, the Respondent did not comply with the procedure laid down by the UCC Regulation. Hence, the Notifications of Customs Debt are invalid. Furthermore, the Appellant submitted that the Notifications of Customs Debt form was not a prescribed form of the Respondent. Moreover, the Commissioner heard arguments from the Appellant that the Respondent did not comply with the procedures relating to the right to be heard and in failing to do so, interfered with the Appellant's right to defence in EU law. The Commissioner has set out as aforementioned in this Determination under the heading "Appellant's submissions", that the Appellant relied on the decision of the CJEU in Case C-39/20 *Staatssecretaris van Financiën v Jumbocarry Trading GmbH*, in that regard.

80. Firstly, it is trite law that the Commissioner does not have jurisdiction to make declarations or findings that assessments to tax, or in this appeal Notifications of Customs Debt, are invalid. These are matters reserved for the High Court and its inherent jurisdiction. 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.

81. The Commissioner's jurisdiction was set out clearly in the decision of *Lee v The Revenue Commissioners* [2021] IECA 18, 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.

……………………."

82. 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.

83. 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 Regulation, in relation to the importation of motor vehicles. The Commissioner is satisfied that the substantive issue in this appeal is a net issue and as set out in the judgment in *Lee v The Revenue Commissioners* [2021] IECA 18, the Commissioner's role is to focus on the tax and the charge.

84. 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 *Lee v The Revenue Commissioners* [2021] IECA 18. 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.

85. The Commissioner notes that the Appellant contended that the Respondent breached its right to be heard under Article 22(6) of the UCC Regulation and that the Appellant submitted that this is an integral part of the right to defence, a fundamental principle of EU law. In that regard, the Commissioner notes that the Appellant relied on Case C-39/20 *Financien v Jumbocarry Trading GmbH* and argued that as the Respondent failed to meet the mandatory conditions, the Notifications of Customs Debt are invalid.

86. The Respondent directed the Commissioner to the decisions in Case C-301/87 *French Republic -v- Commission of the European Communities* and in Joined Cases C-129/13 and C-130/13 *Kamino International Logistics, Datema Hellmann Worldwide Logistics v Staatssecretaris van Financiën*. The Respondent argued that the cases clearly established that material on which the assessments and/or decisions are based, must be made available prior to the assessments being raised or decisions made, and that any

person who has been the subject of an administrative decision, have the right to input into that decision.

87. The Commissioner has considered the Appellant's submissions that its right to defence in EU law has been breached. However, having considered the evidence adduced and the submissions made in this appeal, the Commissioner is not satisfied that the Appellant has established on balance that a breach of its right to defence in EU law has occurred. The Appellant was given a right to be heard, and the Commissioner is satisfied that those submissions were heard and answered by the Respondent. The Commissioner notes that following further engagement between the Appellant and the Respondent, the first tranche of motor vehicles, being July 2021, was reduced to 30 motor vehicles and the amount of €40,880.15; the second tranche of motor vehicles, being August 2021, remained at 18 motor vehicles and the amount of €22,347.18; and the third tranche of motor vehicles, being September, October and November 2021, was reduced to 19 motor vehicles and the amount of €44,981.09.

88. Hence, the Commissioner is satisfied that the Appellant's right to defence in EU law has not been breached by the Respondent herein, but rather the Appellant has had ongoing opportunities to engage with the Respondent in relation to the said customs debt, the result of which was that the debt was reduced in favour of the Appellant. Furthermore, the Respondent has indicated that should further documentation and/or information that it considers sufficient to establish either that the Appellant was acting as a direct representative or was entitled to claim GBPO in respect of the vehicles, then the Respondent will continue to consider that documentation from the Appellant. The Appellant bears the burden of proof in an appeal before the Commission and the Commissioner is not satisfied that the Appellant has shown on balance that a breach of its right to defence in EU law has occurred. Furthermore, the Commissioner is satisfied that the cases establish that an infringement of the principle of the right to defence would only result in the annulment of the decision if, had it not been for that infringement, the outcome of the procedure would have been different. The Commissioner is satisfied that in this appeal, that has not been established by the Appellant.

89. The Commissioner notes that the Appellant also argued that the Notifications of Customs Debt are invalid as the form used has not been prescribed. As stated, the Commissioner does not have jurisdiction to consider the validity of an assessment to tax nor does the Commissioner have jurisdiction to made declarations in relation to the validity of a decision made or procedure adopted by the Respondent. That jurisdiction is reserved for the High Court.

Representative Status – Article 19 of the UCC Regulation

90. The Commissioner notes that the Appellant's second ground of appeal, that there was no requirement in Article 19 of the UCC Regulation for a specific form of proof that an agent was acting as a direct representative and that the proof 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.

91. The Commissioner observes that the Appellant's witnesses were not involved in the making of the declarations on the AIS on behalf of the Appellant, but that a former employee was the person who lodged the declarations to the AIS in 2021. The Appellant argued that whilst there was no written empowerment documentation with its customers in place at the time the declarations were made, documentation signed by individual motor dealers and other objective evidence now made clear the nature of the relationship between the parties. The Appellant argued that, taken together, the evidence established beyond a reasonable doubt that the Appellant's relationship with its customers was one of direct representation. The Appellant submitted that it had "*obtained signed statements from 16 of the 30 customers remaining in this appeal*".

92. The Appellant submitted that the fact that the statements had been recently signed does not affect their validity. That was so, the Appellant argued, as the requirement was that empowerment existed at the time the declarations were made. It was argued by the Appellant that evidence supporting this could be obtained and presented at any time. In addition, the Appellant submitted that it had TAN authorisation from its customers which allowed it to pay import duty due on imported motor vehicles, directly from its customer's TAN account, under these authorisations. The Appellant submitted that the TAN authorisations and the statements submitted in support of the Appellant's appeal unambiguously show that the Appellant was acting in the capacity of direct representative and hence, the Appellant has no liability in respect of the said customs debt. The Respondent did not agree and maintained that the requirement was that empowerment documentation be in place at the time the declarations were made on the AIS.

93. Article 19 of the UCC Regulation provides that a representative shall state that it is acting on behalf of the person represented and shall specify whether the representation is direct or indirect. The Commissioner has considered the mandatory use of language in Article 19 of the UCC Regulation, namely "*shall state*". This means that it was mandatory that the Appellant state that it was acting on behalf of a person either directly or indirectly. Furthermore, the Commissioner observes that Article 19 of the UCC Regulation provides that persons who fail to state that they are acting as a customs representative or who

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

94. Article 19 of the UCC Regulation thus 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. Thus, the Commissioner is satisfied 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.

95. The Commissioner is also mindful of Article 15 of the UCC Regulation which provides that documentation and information in relation to the accomplishment of customs formalities or in customs controls shall be produced at the request of the customs authorities, within any time-limit specified. Again, the language used is mandatory in nature.

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 Regulation, but that it was possible to leave that box blank. However, 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 was that the Appellant did not complete the representation section on the AIS or the customs declarations. Moreover, the Appellant accepted that was the case. Consequently, the Respondent treated the Appellant as if it was the importer of the motor vehicles and responsible for the said customs debt in the absence of documentation to verify the claim of GBPO. However, the Commissioner notes the evidence of the Respondent's witness 2 that an opportunity is always provided to the declarant to furnish the empowerment documents at a later stage, and which documentation would be accepted, if the documentation was dated prior to the declaration being made on the AIS. The Respondent's witness 2 stated that opportunities were provided to the Appellant to furnish the empowerment 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 empowerment documentation nor does it accept the statements submitted constitute empowerment documentation, due to the fact that the statements are dated recently and were not in existence at the time the declarations were made.

97. The Commissioner notes the Appellant's submission that the evidence submitted in the form of signed statements from the motor dealers and the TAN authorisations, taken together, establish that the Appellant was acting as a direct representative in respect of the importation of the motor vehicles at issue.

98. In the Commissioner's previous determination *97TACD2025,* at paragraph 88, to which the Respondent directed the Commissioner, the Commissioner found that having had regard to the evidence of the respondent's witness, 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 the TAN authorisation is to grant a financial authorisation, not an empowerment authorisation under the UCC Regulation, as it is a technical authorisation to use a trader's bank account to deduct the amounts of applicable amount of customs duty payable on the importation of goods. Furthermore, the Commissioner noted the evidence that whilst the TAN authorisation was evidence of a relationship, it was not evidence of empowerment required in accordance with Article 19 of the UCC Regulation. Whilst the Commissioner is not bound by her previous determination, the Commissioner is satisfied that she has not been presented with evidence herein, to show why she should depart from her previous decision in *97TACD2025.* Hence, the Commissioner is satisfied herein that the TAN authorisations do not constitute documentation 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.

99. The Commissioner has considered the statements submitted by the Appellant from various motor dealers which the Commissioner notes have all been signed recently. The wording in the statements was as follows:

> *"I hereby confirm that [the Appellant], trading as [the Appellant], acted as our direct customs representative, acting in our name and on our behalf, in regard to lodging customs declarations for the importation of motor vehicles from the UK in the course of 2021."*

100. Of note, the Commissioner observes that the request for the statements by the Appellant of the various motor dealers was made in the following terms:

> "

………”

101. The Commissioner does not accept that the statements constitute empowerment documentation in accordance with Article 19 of the UCC Regulation, that the Appellant acted as a direct representative in 2021, in relation to the importation of the motor vehicles at issue herein. The Appellant posited that the statements, in addition to the extensive evidence of the actual behaviour of the Appellant and its customers, should be sufficient to discharge its burden of proving that the Appellant acted as a direct representative.

102. The Commissioner is satisfied that the wording of Article 19 of the UCC Regulation 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. 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.

103. Furthermore, Article 15 of the UCC Regulation 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. Of note, Article 15 of the UCC Regulation 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, notification or application.

104. The Commissioner notes that the Appellant had experience dealing with customs formalities and she has considered the various notifications that issued from the Appellant to its customers in 2021. In such circumstances, the Commissioner is of the view that the Appellant should have been aware of the importance of establishing the nature of customs representation. Article 15 of the UCC Regulation makes clear the importance of accuracy and completeness in terms of the declaration and Article 19 of the UCC Regulation 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.

105. 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*."

The Appellant accepted that it did not have signed authorisations in this form for the motor dealers involved for the relevant periods.

106. The Appellant submitted that in 2021, it believed that the TAN authorisations were sufficient and at that time, the Appellant was unaware of the Respondent's guidance in eCustoms Helpdesk Notification 027/2020. The Respondent does not accept a TAN authorisation as evidence of empowerment, because it was designed for a different purpose, namely it is a financial consent. The Commissioner notes that there was no dispute that the Appellant failed to state that it was acting as a direct representative and it did not have in its possession at the time of making the declarations, documentation sufficient to show that it was acting as a direct representative. The Commissioner is satisfied that the Appellant has not discharged the burden of proof to establish that it was acting as a direct representative and not the importer at the time the declarations were made on the AIS. 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.

107. Therefore, in circumstances where the Appellant failed to state that it was acting as a direct customs representative and in the absence of documentation to support the Appellant being empowered to do so, the Appellant is deemed to acting in its own name and on its own behalf and thus, is liable for the said customs debt.

The customs debt – Article 163 of the UCC Regulation

108. The Appellant submitted that the Respondent's interpretation of Article 163 of the UCC Regulation was overly restrictive and that a correction of the deficiencies in documentation should be allowed. The Appellant argued that the primary purpose of Article 163 of the UCC Regulation was to avoid delays in decision making and to allow customs officials to refuse the procedure sought, where documents were not immediately available.

109. Article 163 of the UCC Regulation states that 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.

110. The Commissioner notes that Article 5 of the UCC Regulation is of assistance in the interpretation of Article 163 of the UCC Regulation and provides for certain definitions as follows: *""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."*

111. The Commissioner is satisfied that Article 163 of the UCC Regulation emphases the burden of responsibility for declarants and the requirement to have in a declarant's possession the requisite supporting documentation at the time the declaration is lodged. The Commissioner considers this to be an important provision and one which aligns with the evidence adduced by the Respondent's witnesses, that by making declarations in terms of representation, the declarant is confirming that the empowerment documentation was in existence. The Commissioner notes that Article 5 of the UCC Regulation defines "customs declaration" and states *inter alia*, that it is an act "…..*with an indication, where appropriate, of any specific arrangements to be applied."* In addition, Article 15 of the UCC Regulation 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,…….provide those authorities with all the requisite documents and information, in an appropriate form,………for the completion of those formalities or*

controls". The Commissioner notes the reference in Article 15 of the UCC Regulation to customs formalities which is also defined in Article 5 of the UCC Regulation. The Commissioner has set out the requirements of Article 15 of the UCC Regulation in the preceding paragraphs. The Commissioner is satisfied that when taken together, in context, these Articles make it clear that empowerment documentation must have been in being at the time a declaration is made. The Commissioner notes that numerous opportunities were provided by the Respondent to the Appellant to comply with its obligations in terms of the requisite empowerment documentation, yet no empowerment documentation was produced by the Appellant. Accordingly, the Commissioner is satisfied that the Respondent was correct to treat the Appellant as the importer.

The claim of Preferential Origin

112. For completeness, the Commissioner will address the articles of the Agreement that deal with the rules of origin for goods imported into the State where a claim of GBPO is made. 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.

113. 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 claims at issue were made on the basis of U116, Statement of Origin.

114. 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.

115. 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."

116. 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, including, information on the originating status of the materials used in the production of the product*." [Emphasis added]

117. 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.

………………"

118. The Commissioner is satisfied that the Appellant has not submitted any additional documentation to support a claim for GBPO on the basis of statement of origin. Therefore, the Commissioner is satisfied that the Respondent was correct to issue the Notifications of Customs Debt in relation to the imported motor vehicles at issue herein. Having regard to Article 54 of the Agreement, the Commissioner is satisfied that the Appellant should have been in a position to produce the requisite documentation to the Respondent, on request, in order to establish the claim 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 claim for GBPO, the

Commissioner is satisfied that the Respondent was correct issue the Notifications of Customs Debt.

Conclusion

119. Accordingly, in conclusion and having considered all of the evidence, 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 impose the customs debt.

120. Pursuant to Article 15 of the UCC Regulation, it is the responsibility of a declarant, the Appellant herein, to ensure the accuracy of information entered on a declaration. The Appellant neglected to indicate in what capacity it was acting, in accordance with Article 19 of the UCC Regulation. Hence, the Appellant was deemed to be acting in its own name and on its own behalf.

121. The Commissioner is satisfied that having regard to Articles 5, 15, 19 and 163 of the UCC Regulation, when taken together, a person who declares to be acting as a direct representative, would be required to have the relevant empowerment documentation in their possession at the time that the declaration was made. The Commissioner is satisfied that there was no empowerment documentation in place at the time the declarations were made on the AIS by the Appellant and any documentation adduced by the Appellant was dated years after the declarations were made on the AIS.

122. The Commissioner does not accept the Appellant's argument that the actual facts must take precedence over a technical requirement, that particular forms must be completed, or particular boxes ticked, and that the debt should be paid by the motor dealers on whose behalf the Appellant claims to have acted as direct representative. The Commissioner accepts that at the time the declarations were made, Brexit had commenced and there may have been challenging circumstances at the point of entry in the port and new procedures to grapple with. However, the Commissioner is satisfied that this does not absolve the Appellant of its legal obligations in terms of the applicable customs procedures. The Commissioner is satisfied that the Appellant failed to state that it was acting as a direct representative, but importantly the Appellant had no evidence to establish that it was being empowered to do so. Therefore, the Appellant was correctly deemed to be acting in its own name and on its own behalf.

123. As stated, the Appellant was provided with numerous opportunities to establish empowerment. Nevertheless, no empowerment documentation that was in existence at the time the declarations were made in 2021, was produced by the Appellant. Therefore,

in the absence of that documentation the Appellant is deemed to be the importer and thus liable for the said customs debt. Furthermore, in the absence of documentation to support the Appellant's claim 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

124. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in showing that the customs duty is not payable. Therefore, the Notifications of Customs Debt in the agreed reduced and amended sum of €108,208.41 shall stand.

125. 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.

126. 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

127. 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

128. 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
29 September 2025