TC07332

Appeal number: TC/2017/0387

CUSTOMS DUTY – toilet seats made of wood flour and resin – tariff classification – whether proper to 4421 99 99 99 (wood) or 3922 20 00 00 (plastic) – question as to what gave essential character – appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

BEMIS LIMITED **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE ANNE FAIRPO
MS ANN CHRISTIAN

Sitting in public at Manchester on 25-26 October 2018

Mr P Vaines, Counsel for the Appellant

Mr M Fell, Counsel for the Respondents

DECISION

Introduction

1. This is an appeal against a decision by HMRC classifying the appellant's product as plastic under tariff code 3922 20 00 00.

Facts

2. We were provided with a bundle of documents and witness statements and examples of the product in question.

3. We find the following facts:

(1) The appellant imports toilet seats (including the product in question) from its parent company in the United States.

(2) The product is made from approximately 85% wood flour, which is a powder obtained from grinding sawdust, shavings or other wood waste, and 15% phenolic resin. The percentage is prior to manufacture, the actual percentage of each in the product can vary by ±2%.

(3) The product is made by compressing the wood flour and resin powder, which includes a hardener, in a mould which is then heated, curing the product. In curing, the resin is melted and reacts with the hardener. The effect of curing is to make the product rigid.

(4) The product is marketed to consumers as a wooden toilet seat.

(5) In September 2012, HMRC issued a Binding Tariff Information (BTI) ruling classifying the product as wood under code 4421 90 98 90.

(6) In February 2014, HMRC issued a second ruling which again classified the product as wood, this time under code 4421 90 97 90.

(7) On 7 March 2017, HMRC issued a third BTI ruling which classified the product as plastic, under code 3922 20 00 00.

(8) The appellant requested a formal review of that decision on 14 March 2017. The review upheld the classification and the appellant appealed to this Tribunal on 4 July 2017.

Relevant law

4. A summary of the relevant law relating to tariff classification is set out in the decision of Lawrence Collins J in the High Court in *VTech Electronics (UK) Plc* [2003] EWHC 59 (Ch):

"[7] The level of customs duties on goods imported from outside the EC is determined at Community level on the basis of the Combined Nomenclature ("CN") established by art 1 of Council reg 2658/1987. The CN is established on the basis of the World Customs Organisation's Harmonised System laid down in the International Convention on the Harmonised Commodity Description and Coding System 1983 to which the Community is a party.

…

[10] The CN uses an eight-digit numerical system to identify a product, the first six digits of which are those of the harmonised system, and the two extra digits identify the CN sub-headings of which there are about 10,000. Where there is no Community sub-heading these two digits are "00" and there are also ninth and tenth digits which identify the Community (TARIC) subheadings of which there are about 18,000.

[11] There are Explanatory Notes to the Nomenclature of the Customs Co-operation Council, otherwise known as Explanatory Notes to the Harmonised System ("HSENs"). The Community has also adopted Explanatory Notes to the CN (pursuant to art 9(1)(a) of Council reg 2658/87), known as CNENs.

[12] Binding Tariff Information is issued by the customs authorities of the Member States pursuant to art 12 of the Common Customs Code (Council reg 2913/92/EEC) on request from a trader. They are called "BTIs", and such information is binding on the authorities in respect of the tariff classification of goods. The BTIs issued in this matter were the subject of the appeal to the Tribunal in the present case.

III INTERPRETATION

[13] There are many decisions of the European Court on the interpretation of the tariff headings. The decisive criterion for the tariff classification of goods must be sought generally, regard being had to the requirements of legal certainty, in their objective characteristics and properties, as defined in the headings of the Common Customs Tariff: eg Case C-177/91 *BioforceGmbH v Oberfinananzdirektion Munchen* [1993] ECR I-45, where the function of the product (hawthorn drops) was decisive; Case C-309/98 *Holz Geenen GmbH v Oberfinananzdirektion Munchen* [2000] ECR I-1975, where the intended use of the product (wood blocks for window frames) was said to be such an objective criterion if it was inherent in the product; Case C-338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, where the intended use of the product (pyjamas) was decisive, and the presentation of the goods was regarded as relevant.

[14] The headings and the Explanatory Notes do not have legally binding force and cannot prevail over the provisions of the Common Customs Tariff: Case C-35/93 *Develop Dr Eisbein GmbH & Co. v Hauptzollamt Stuttgart-West* [1994] ECR I-2655, para 21; Case C-338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, per Advocate General Jacobs, para 32; Case C-309/98 *Holz Geenen Oberfinananzdirektion Munchen* [2000] ECR I-1975, para 14. But they are important means for ensuring the uniform application of the Common Customs Tariff and are therefore useful aids to

interpretation: eg Case C-338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* [2000] ECR I-1975, para 11; Case C-309/98 *Holz Geenen Oberfinananzdirektion Munchen* [2000] ECR I-1975, para 14. They may show that a classification by Commission Regulation is invalid, if the error made by the Commission is manifest: eg Case C-463/98 *Cabletron Systems Ltd v Revenue Commissioners* [2001] ECR I-3495, para 22.

[15] It is for the national court (even in a case which has been referred to the European Court for guidance on the applicable principles) to determine the objective characteristics of a given product, having regard to a number of factors including their physical appearance, composition and presentation: Case C-338/95 *Wiener SI GmbH v Hauptzollamt Emmerich* [1997] ECR I-6495, para 21.

[16] The General Rules for the Interpretation of the CN ("GIRs") are contained in s 1A of Pt 1 of Annex 1 to Council reg 2658/87 and have the force of law. They include the following potentially relevant provisions:

"(a) By r 1, classification is to be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the succeeding provisions.

(b) By r 2(b), the classification of goods consisting of more than one material or substance shall be according to the principles of r 3.

(c) Rule 3 provides as follows:

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

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

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

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

"(d) By r 4 "Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin."

(e) By r 6, r 1 is applied mutatis mutandis to the classification of goods in the subheading of a heading."

5. The classification for which HMRC argues is:

SECTION VII	PLASTICS AND ARTICLES THEREOF; RUBBER AND ARTICLES THEREOF
CHAPTER 39	PLASTICS AND ARTICLES THEREOF
	II. WASTE, PARINGS AND SCRAP; SEMI-MANUFACTURES; ARTICLES
3922	Baths, shower-baths, sinks, washbasins, bidets, lavatory pans, seats and covers, flushing cisterns and similar sanitary ware, of plastics
3922 20	Lavatory seats and covers

6. The duty applicable to this tariff classification is 6.5%.

7. The classification for which the appellant argues is:

SECTION IX	WOOD AND ARTICLES OF WOOD; WOOD CHARCOAL; CORK AND ARTICLES OF CORK; MANUFACTURES OF STRAW, OF ESPARTO OR OF OTHER PLAITING MATERIALS; BASKETWARE AND WICKERWORK
CHAPTER 44	WOOD AND ARTICLES OF WOOD; WOOD CHARCOAL
4421	Other articles of wood
4421 99	Other
4421 99 99	Other
4421 99 99 99	Other

8. The duty applicable to this tariff classification is 0%.

9. Relevant chapter notes for this classification state:

> "3. Headings 4414 to 4421 apply to articles of the respective descriptions of particle board or similar board, fibreboard, laminated wood or densified wood as they apply to such articles of wood"

The arguments in summary

10. The appellant argued that the product should fall within classification 4421 because, following *VTech*, a consideration of the chapter notes and heading notes – each of which refer to "articles of wood" clearly cover the product as it is an "article of wood". "Wood flour" is to be regarded as "wood", according to HMRC's guidance on Chapter 44 of the UK Trade Tariff.

11. The appellant submitted that, on this basis, the products fell to be classified under Rule 1 of the General Rules as the product was clearly within the scope of the heading and chapter notes for 4421, which covers all articles of wood which are not included in the preceding headings.

12. If the headings were not considered to be sufficiently specific, then case law, as summarised by *VTech*, has established that the decisive criterion must be sought from the objective characteristics and qualities of the product. These are the observable physical qualities and composition of the product at the time of classification.

13. The appellant argued that the observable characteristics of the products are those of a wooden toilet seat:

(1) It is made substantially of wood flour (classified under heading 4405)

(2) It has the appearance of a wooden product

(3) It has the characteristics of a wooden product: the sound made when the product is knocked or tapped points towards a wooden composition which can be distinguished from the sound of a plastic product; the product is much heavier (weighing approximately 2-3 kg, depending on the model) than the appellant's plastic seats (weighing less than 1 kg); the product is much thicker than a plastic equivalent

14. The appellant submitted that these characteristics and properties made it clear that the product was wooden and not plastic.

15. Further, the product was marketed as a wooden seat. In addition, the European Commission Trade Export Helpdesk guidance on "Classifying Wood" explicitly states that heading 4421 includes "fibreboard toilet seats, which don't have a visible grain and which are commonly coated with an acrylic paint".

16. The appellant submitted that the products were similar to medium density fibreboard, being a wood composite material made with a thermosetting adhesive resin. The only substantial difference is the consistency of the wood component which, in MDF, is generally larger fibres in varying sizes which absorb water. In contrast, the wood flour used in the products is more consistent and uniform, and can be shaped more easily.

17. The appellant submitted that the structure of the products was one of wood flour with a resin adhesive, used to glue together the wooden elements and that, accordingly, it was similar to a number of other items classified as wood under chapter 44 such as:

(1) Densified wood, obtained by gluing together thin sheets of wood under heavy pressure at high temperature;

(2) Solid wood toilet seats, which are generally made of pieces of wood which have been glued together

18. The appellant submitted that these examples show that a clear principle within chapter 44 is that the use of resin to bind together smaller pieces or particles of wood to enable the goods to be shaped does not classify the products by reference to the resin. The products remain products of wood. The appellant submitted that this was supported by Note 3 of Chapter 44, set out at §9 above. The HSEN details that products composed of layers of wood and plastic are classified under chapter 44 and that the essential character of these products is defined by their external layer and does not consider whether the plastic part holds the wood part together.

19. In the alternative, if Rule 1 does not apply and the classification is to be made under Rule 3, the appellant submitted, in summary:

(1) The product must be classified under Rule 3(b) in accordance with the component which gives it its essential character. The appellant submitted that this was the wood flour.

(2) The resin performs the same function in the product as in fibreboard or particle board, that is, binding the particles together; as Note 3 of Chapter 44 (at §9 above) sets that articles of fibreboard must be classified as articles of wood it logically follows that the resin cannot be the component which gives the product its character. Similarly, resin is used in toilet seats made of solid wood to give them stability and form but is not regarded as being the component which gives these their essential character.

20. In response to HMRC's case, the appellant submitted:

(1) HMRC describe the wood flour as "filler" for the resin, a bulking agent. The appellant submitted that this was an incorrect analysis of the role of the wood flour: the wood flour was the key component of the product, held together by the resin. The product was not one made of resin, bulked out by wood flour to achieve a particular size.

21. Finally, if Rule 3(b) does not adequately classify the product, the appellant submitted that the priority rule in Rule 3(c) would apply to classify the product under Chapter 44 as that falls last numerically.

Evidence of Mr Laning, vice-president of operations for the appellant

22. Mr Laning provided a witness statement and gave oral evidence at the hearing. He confirmed that, prior to joining the appellant, he had worked for two large businesses which primarily produced plastic products.

23. His evidence was, in summary:

(1) The manufacturing process of the product is a wood-based process, using a proprietary wood-flour base and a phenolic resin as an adhesive. The mix is approximately 85% wood flour, 15% resin by volume although the densities are not always exact and these figures may vary by ±2%. Those percentages are for the volume before manufacture; he was not aware whether it would be the same after manufacturing. The amount of resin used is only that needed to bind the wood flour together.

(2) The wood flour/resin mixture is tested for two main use tests: the bend-strength of the finished product and a screw-pull test, to check what pressure can be withstood by the product. The tests are to ensure that the product is comfortable, does not come apart in use and does not quickly fail in use.

(3) The wood flour blend is a mixture of hardwood and softwoods to achieve the necessary strength; a pure softwood (such as spruce) wood flour, for example, would not meet the necessary screw-pull test, and screws would pull out of the product given the percentage of wood flour used, and so hardwoods are added for strength. The strength of the product depends on the wood flour mix used and the particle profile of the wood flour. He confirmed that the appellant had not tested screw-pull strength with pure phenolic resin although tests had been undertaken with different resins.

(4) He accepted that, without the addition of resin, the wood flour would crumble. The moulding pressure would allow it to hold its form, but only until weight was applied.

(5) The manufacturing process differs from the process for making fibreboard such as MDF (medium density fibreboard), OSB (oriented strand board) or particleboard. The products are compressed in a mould and heated to 198 Celsius for approximately 3 minutes, to cure the resin. This produces the product core, which is then sanded and painted with three coats of water-based acrylic paint. The manufacturing process means that the product cannot be classified with other wood composite materials such as MDF, OSB or particleboard.

(6) Although the curing is required to make the product rigid, on its own the cured resin is brittle and has low impact strength. The curing process does not change the chemical composition of the wood flour.

(7) The wood flour is not used as a filler for the resin; it is the product that is being moulded. Although he accepted that wood flour could be used as a filler in phenolic resin, that was not how it was used in the product.

(8) The retail price of the appellant's products depends on the features and functions and vary from tens to hundreds of dollars. The cost of the proprietary wood flour used in the product varies with availability of local wood but is less than the cost of the phenolic resin.

(9) The weight of the product depends on the design and size of the product. The thickness of the product varies according to the design, there is no standard thickness to the product although in general it is not possible to mould the mixture used in the product to be as thin as a polypropylene (plastic) seat, for example. He agreed that, however, a plastic seat could be produced to the same thicknesses as those in the product.

24. Lee Oddie, the finance director of the appellant, confirmed the price range of the product compared with polypropylene and urea seats. He also confirmed that it was the core product that was imported from the US; the products were assembled in the UK.

HMRC's case

25. HMRC made the following submissions as the approach that should be taken by the tribunal, in addition to the approach set out in *VTech*:

(1) The characteristics and objective properties of product generally provide the decisive criterion for classification (*Konïg* (C-185/73)).

(2) The relevant characteristics and objective properties of products are those defined in the relevant headings of the CN, which may include its external appearance (*Medical Imaging* (C-288/15)) or its composition and constituent materials (*Baupla* (C-28/75)).

(3) The intended use of a product can be an objective criterion if it is inherent to the product (*Olicom* (C-142/06); *Holz Geenan* (C-309/98). HMRC noted that the concept of a toilet seat appears in heading 3922 and submitted that use as a lavatory seat represents the product's intended use inherent to it as judged from its shape and rigid character.

26. With regard to the product, HMRC noted:

(1) Although the appearance of the product could be compared to a pure wood product in terms of weight and solidity, a pure resin product might also have significant weight and solidity.

(2) The product has no discernible grain and no fibres can be seen in it.

(3) The resin bonds the particles of wood flour together and the appellant has accepted that in the absence of the resin, the wood flour particles would not adhere together.

(4) The HSEN states that wood flour is largely used as a filler in the plastics industry. There is no difference in the chemical composition of the wood flour before and after manufacture of the product; the wood flour adds thickness to the resin and its role is therefore that of a filler.

27. HMRC submitted that classification should be considered as follows:

Rule 1

(1) Applying Rule 1, the product appears to fall within the following headings:

(a) 3909 – because it is partly composed of phenolic resin;

(b) 3922 – because it as the appearance and use of a toilet seat and is partly composed of plastic;

(c) 4405 – because it is partly composed of wood flour;

(d) 4421 – because it may be regarded as an "other" article partly composed of wood.

(2) However, the product cannot be classified under 3909 or 4405 as these headings refer to raw materials, whereas the other headings refer to articles made from those raw materials.

(3) Accordingly, it was submitted that Rule 1 does not provide a definitive classification of the product as it is a composite article.

(4) Rule 2(b) requires that, in the case of composite articles, Rule 3 applies.

(5) Rule 3(a) provides that headings 4421 and 3922 should be regarded as equally specific in relation to the product even if one provides a more complete description, so that the product cannot be classified on the basis that one of the possible classification headings provides a more specific description than the other.

(6) Rule 3(b) provides that the product should be classified on the basis of the material which gives the product its essential character. The essential character of a product depends on the type of good in question and may be in the nature of the materials, bulk, quantity, weight or role of the material in the goods (*Turbon International* (C-250/05)). HMRC submitted that the essential character of the product, being a toilet seat, was that it should have a flat design with a hole in the centre and a rigid physical character so that it should support the weight of a person using it.

(7) The material which gives a product its essential character may be determined by considering whether the goods would retain the essential character if one of the other materials were removed (*Sportex* (C-253/87) and *VauDe Sport* (C-288/89), where the CJEU concluded that the fabric in a child carrier was sufficient on its own for an adult to carry a child, and that the aluminium frame in the carrier was included for added comfort and was not necessary to fulfil the function of the carrier. In *Turbon*, the ink in a printer cartridge was considered to be the most important factor for the purpose of using the goods in that case.

(8) HMRC submitted that the essential characteristics of shape and rigidity are given in this case by the resin, which bonds the wood flour to give the design and shape to the product and the necessary rigidity. If the wood flour were removed, the product would retain its shape and rigidity but if the resin were removed, the product would not retain that shape and rigidity.

(9) HMRC submitted that, accordingly, the product should be classified under heading 3922 because the plastic (resin) is the material which gives the product its essential character as a toilet seat.

(10) HMRC submitted that this was further supported by the explanatory notes to the CNs (CNENs), which can be considered to be a valid aid to the interpretation of the tariff (*Develop Dr Eisbein* (C-35/95)).

(11) The CNENs classify ‘stone paper’ (80% rock powder, 20% resin) as plastic because the resin gives the product its essential character of flexibility; garden ornaments (59% calcium carbonate, 39% plastic) are also classed as plastic because the rock powder is simply a filler. HMRC submitted that the same applied in this case, where the wood flour is a filler and it is the resin that gives shape and rigidity.

(12) Further, case law has established that classification regulations can be applied by analogy to similar goods (*VTech).* Commisison Implementing

Regulation 276/2013 classified 'decking boards' (made from 60% wood fibres, 30% plastics and 10% filling agents) as plastic on the basis that the wood fibres were a filler, and it was the plastic which held the wood together and gave the product its essential character.

(13) HMRC also submitted that three other BTIs have been issued by customs authorities of other member states in relation to toilet seats of wood powder mixed with resin which have classified those products as being plastic.

Evidence of Christina Pond, HMRC officer

28. Officer Pond confirmed that she was the line manager for Sharon Birch, the officer who had made the decision to classify the product as a plastic (under Chapter 39). Officer Birch was unable to attend the hearing.

29. Officer Pond confirmed that she had discussed the decision making process with Officer Birch, but that she had not seen the product. She had agreed with Officer Birch that the resin gave the essential character to the product and that recent explanatory notes to the CN indicated that greater weight should be given to the resin.

Evidence of Andrew Taylor, HMRC officer

30. Officer Taylor gave evidence as to tariff classification in general; he confirmed that he had no direct knowledge of the circumstances in which the product was classified as a plastic under Chapter 39.

31. His evidence was that the Customs Code Committee, Tariff and Statistical Nomenclature Section (Mechanical/Miscellaneous) had, in recent years, discussed the classification of wood composite decking. As the plastic in this composite decking supports the wood component, the majority of the committee concluded that it should be classified as a plastic, under Chapter 39. He noted that other member states argued for classification of this composite decking as wood given the quantity of wood in the product. Nevertheless, the committee classified the composite decking under Chapter 13 on the basis that the wood fibres were used as a filler and the plastic held the fibres, giving the product its essential character.

32. Similarly, the Customs Code Committee, Tariff and Statistical Nomenclature Section (Agriculture/Chemistry) had classified 'stone paper' made of 80% calcium carbonate powder and 20% plastic resin as a plastic under Chapter 39. That committee had also classified garden ornaments, made of 59% rock powder and 39% plastic as being a plastic under Chapter 39. In both cases this was because the plastic was considered to give the products their essential character and the rock powder was used as a filler.

Discussion

33. We do not agree with the appellant's submission that the product should be classified under heading 4421 under Rule 1 on the basis that it is made from wood. Rule 1 classifies products according to the terms of the headings, but subject to the further rules. In addition, we do not consider that the marketing of the product has any relevance to its classification for tariff purposes; there is no provision for the

consideration of marketing terms in the CN or in the General Rules for Interpretation of the CN.

34. We note that Rule 2(b) of the General Rules for the Interpretation of CN require that "the classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3" – the product is made from approximately 85% wood flour, 15% resin. We find that the product therefore clearly made of more than one material or substance and so we are of the view that it is necessary to consider the provision of Rule 3 in determining the tariff classification.

35. For the same reason, we do not consider that the product can be classified under 3922 under Rule 1 simply because that heading includes a reference to a 'toilet seat', as that is qualified by the fact that Chapter 39 applies to plastics. As this is a composite product, Rule 1 cannot apply to determine the classification. In addition, we do not consider that it would be reasonable to classify the product under 3922 simply because the intended use is mentioned in that heading; toilet seats can be made of many materials and, as noted, 3922 specifically refers to toilet seats in the context of plastics.

36. We agree that, given the composite nature of the product and the two potential headings that are agreed to be in contention, Rule 3(a) does not assist as both headings must be regarded as equally specific (following the terms of that Rule).

37. Turning, as then required, to Rule 3(b), the question is as to whether either of the materials provides the essential character of the product.

38. The goods in question are toilet seats. We find that the essential character of toilet seats are that they are a rigid object which conforms to a shape appropriate to its use, and which supports the weight of the person using it and is capable of being secured to the toilet itself to enable the product to be used safely.

39. The appellant's witness accepted that the wood flour alone would not provide the necessary rigidity; HMRC submitted that this supported their submission that the resin (plastic) provided the essential character of the product as it was the resin, once cured, that provided the rigidity required of the product. The appellant argued that the resin was simply an adhesive and that, for example, a toilet seat made out of pieces of wood would similarly fall apart in use but that there was no indication that such a product would be considered to be made of plastic.

40. We considered the parties' submissions and the witness evidence provided. It is agreed that the wood flour alone would not provide the necessary rigidity; the appellant argues that the resin alone would not have any of the characteristics of a toilet seat. HMRC's submission was that the resin gave the product its essential character (which HMRC considered included shape and rigidity) rather than that the resin alone would suffice for the function of the product.

41. Considering the various approaches taken in case law, we do not consider that test of whether either material alone could fulfil the function of the product (as in *VauDe Sport)* assists in classifying the product. It is clear that the wood flour alone

could not fulfil the function of the product, and we do not consider that it was established that the resin alone would fulfil that function.

42. Indeed, the evidence of Mr Laning was that a particular blend of wood flour is required to give the necessary 'screw-strength' to the product and that if spruce wood flour alone were used, for example, the product could not be securely fastened to a toilet as the screws would pull out. It was necessary to use a proportion of hardwood flour to gain the necessary strength. We find, therefore, that the resin alone cannot supply this aspect of the essential character of the product. The ability to fasten the product to a toilet seat is, we consider, part of the essential character of the product as it would not be safely usable if not secured. It is not enough that the product is merely rigid and has a relevant shape.

43. We find, therefore, that the essential character of the product is provided by the combination of the wood flour and resin such that neither material can be regarded as providing that essential character alone. We find, therefore, that Rule 3(b) cannot be applied to classify the product.

44. Turning then to Rule 3(c), this rule classifies a product (where neither Rule 3(a) nor Rule 3(b) can operate to classify the product) under the heading which occurs last in numerical order among those which equally merit consideration.

45. In this case, it is agreed that the headings which merit consideration are 3922 and 4421. Following Rule 3(c) therefore, we find that the product must be classified under heading 4421.

46. We have noted HMRC's comments that there have been three BTIs issued by member states which classify toilet seats made of wood powder and resin as being plastic under heading 3922 but note that it is not possible to tell whether the BTIs address identical products as (for example) the BTIs supplied give no indication of the proportions of wood to resin in those products.

47. The parties made submissions as whether Rule 4 applied but, as we have found that the product can be classified under Rule 3(c) it is unnecessary to consider Rule 4 as the Rules are required to be considered in order.

Decision

48. The appeal is allowed as we find that the products fall to be classified under heading 4421.

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

50. Amended and reissued on 3 March 2020 pursuant to Rule 37 of the Tribunal's Procedure Rules to correct the mistake, slip and/or omission of the original decision dated 16 August 2019.

ANNE FAIRPO

TRIBUNAL JUDGE

RELEASE DATE: 3 MARCH 2020