



[2021] UKFTT 249 (TC)

TC08195

CUSTOMS DUTIES – combined nomenclature – four products: two wireless charging pads, a USB charger and a cable adapter used with iPhones – held that: wireless charging pad with USB cable and 4-port USB charger should both be classified to 8504 40 30 as static converters used with telecoms apparatus etc – wireless charging pad with AC adapter should be classified to 8504 40 90 (static converter – other) (applying general rule of interpretation 3) – cable adapter should be classified to 8544 42 90 (cables – other) – appeal allowed in part

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2018/02807 V

BETWEEN

BELKIN LIMITED

Appellant

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

**TRIBUNAL: JUDGE ZACHARY CITRON
MR NOEL BARRETT**

The hearing took place on 17-19 March 2021. The form of the hearing was V (video) on the HMCTS Video Hearing Service platform. A face to face hearing was not held because of the coronavirus pandemic. The documents to which we were referred included an electronic hearing bundle of 3,167 pdf pages and an electronic authorities bundle of 2,440 pdf pages. Further joint submissions relating to EU Commission classification regulations post-Brexit were provided on 20 May 2021.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public, subject to a direction by the Tribunal that any parts of the hearing disclosing specified information be held in private.

Mr J Grayston, solicitor, and Mr D Rovetta, avvocato, of Grayston & Company, for the Appellant

Mr M Fell, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

1. This appeal was about the customs classification of four products (the “**four products**”) imported and sold by the appellant (“**Belkin**”) and manufactured by Belkin’s US parent company (the “**Belkin manufacturer**”): two “wireless” charging pads, a four-port USB charger, and a cable adapter used with iPhones.

BACKGROUND TO THE APPEAL

2. On 28 November 2017 the respondents (“**HMRC**”) made binding tariff information (“**BTI**”) decisions in respect of two of the four products, the charging pad/USB and the charging pad/AC adapter (both as defined below), classifying both to combined nomenclature (“**CN**”) 8504 40 90.

3. By a letter dated 27 December 2017, Belkin requested a review of these BTI decisions. Belkin later sent further letters in relation to the review of the BTI decisions on 24 January 5 February and 22 March 2018.

4. In a review conclusion letter dated 27 March 2018, HMRC upheld their original BTI decisions.

5. Belkin appealed by notice of appeal dated 25 April 2018.

6. On 6 and 7 March 2018, HMRC made BTI decisions in respect of the other two of the four products, the USB charger and the cable adapter (both as defined below), classifying the first to CN 8504 40 82 and the second to CN 8544 42 90.

7. On 4 April 2018, Belkin requested a review of those BTI decisions. Belkin later sent further letters in relation to the review of the BTI decisions on 9 May and 18 July 2018.

8. In a review conclusion letter dated 23 August 2018, HMRC upheld their original BTI decisions.

9. Belkin appealed by notice of appeal dated 21 September 2018.

10. The appeals in respect of the four products were consolidated.

EVIDENCE

11. We had a witness statement of, and heard oral evidence from, Brian Van Harlingen, chief technology officer of the Belkin manufacturer since 2011.

12. We were shown the four products and their packaging during the hearing. We received samples of the four products shortly after the hearing.

THE FOUR PRODUCTS – BASIC FACTS AGREED BY THE PARTIES

13. The four products were as follows:

(1) The product classified by BTI GB503695643 (the “**charging pad/USB**”) was a wireless charging pad that

- (a) came with a detachable micro USB cable;
- (b) was manufactured to comply with the ‘Qi’ standard; and
- (c) functioned as follows: the pad converted direct current into alternating current and then converted that alternating current into an electromagnetic field (via an induction coil).

(2) The product classified by BTI GB503695545 (the “**charging pad/AC adapter**”) was a wireless charging pad that

- (a) came with an AC adapter with cable;
 - (b) was manufactured to comply with the ‘Qi’ standard; and
 - (c) functioned as follows:
 - (i) the AC adapter converted an alternating current to direct current;
 - (ii) the pad then converted the direct current into alternating current and converted that alternating current into an electromagnetic field (via an induction coil).
- (3) The product classified by BTI GB503808660 (the “**USB charger**”) was a 4-port USB charger that
- (a) came with an attached 10ft cable;
 - (b) permitted the simultaneous charging of up to four devices;
 - (c) took in a 100-240 volt alternating current and supplied a direct current with a charging power of 5.4 amps; and
 - (d) was wall mountable.
- (4) The product classified by BTI GB503818656 (the “**cable adapter**”) was a cable adapter that enabled the user to charge and listen to music at the same time. It was made for Apple devices (iPhone and iPad). It was marketed as “Lightning Audio + Charge RockStar”. It had two sockets at one end and an Apple “lightning” connector at the other.

FINDINGS OF FACT

Belkin

14. At relevant times, the Belkin group of companies manufactured and distributed “connectivity” products and accessories, such as accessories for computers and mobile devices, cables of various types, chargers for mobile phones, surge protectors, wired and wireless networking equipment, and ‘smart’ home devices.

Wireless charging pads – general

15. A wireless charger is a product designed to charge a compatible device without the need for cables to be connected from a power source to the device itself. It is referred to as a “pad” - a plastic enclosure containing electronics. When a compatible device is placed in physical contact and properly aligned with the pad, the device receives power.

16. A wireless charger retail package typically contains a wireless charging pad and a means to connect that pad to a power source. In the case of a wireless charging pad bundled with an AC adapter, the power source is the mains electricity. In the case of a wireless charging pad bundled with a USB cable, that power source is a user-supplied direct current power source.

17. Technically, the function of a pad is to provide a magnetic field which provides power to a receiving device which is equipped with a receiving compatible coil. Thus, the pad works together with a receiving device to enable its battery to be charged without the need for connecting cables.

Further details of the four products

Charging pad/USB

18. The charging pad/USB was square in shape with rounded corners, measuring about 12 cm by 12 cm. It was slim, about 1 cm in depth, with sloping edges. The “picture” instructions it came with (i.e. just pictures, no words) were just one panel, not much larger than the pad itself – they showed a mobile phone being used with the pad; they also indicated that the device to be charged should be centred on the pad, in order to charge properly. The packaging:

- (1) on the front:
 - (a) had a picture of a mobile phone being used with the pad;
 - (b) said “for Phones, Tablets”;
 - (c) had the ‘Qi’ symbol;
- (2) on the back, said “Wirelessly charge your Qi-enabled devices without the hassle of plugs and cables. Simply set it down, charge, and go.” Further down there was a picture of the charging pad, the USB cable and a “wall charger” into which one end of the USB cable could be inserted;
- (3) at the side, said “Works with Qi-enabled” and then had pictures and words as follows (going downwards): “Smartphones”, “Tablets”, “Cases”, “Receivers”, “Battery Covers”. The pictures for the three latter categories were the front and back of a mobile phone. It then said, at the bottom: “Qi (pronounced “chee”) is the WPC standard for wireless charging. All Qi-certified devices and accessories are supported for charging with this product”.

Charging pad/AC adapter

19. The charging pad/AC adapter’s dimensions were similar to those of the charging pad/USB, except it was circular in shape. The “picture” instructions it came with had the same features noted above for the charging pad/USB. The AC adapter had a three-pronged plug at one end, and a small circular shaped connector (known as a “barrel plug”) at the other (which could be inserted into an opening at the side of the pad); it had an output voltage of 15V. The packaging:

- (1) had a picture of the device at the front;
 - (2) on the back, said “Enjoy convenient wireless charging, just set down your advice and go”; and also said, “AC adapter included” and “Charges through most cases – up to 3 mm”;
 - (3) at the side said “Compatible with” and then had pictures of three iPhones; it then said, “Also works with other Qi-enabled devices and accessories”; it then had a Qi symbol, underneath which was written, “Qi (pronounced “chee”) is the WPC standard for wireless charging. All Qi-certified devices and accessories are supported for charging with this product”.
20. We make the following further findings in relation to the AC adapter:
- (1) the barrel plug on the AC adapter was not proprietary to Belkin;
 - (2) barrel plugs come a large variety of different sizes and lengths; there is no “standard” size of barrel plug;
 - (3) due to the above fact, combined with the 15V output voltage of the AC adapter, it would be unusual and/or difficult to find a device, other than the charging pad/AC adapter, that could be powered by the AC adapter. If, however, such a device were found, the AC adapter could be used with it.

USB charger

21. The USB charger was square, about 8 cm x 8 cm, and about 3 cm deep. The “picture” instructions it came with showed mobile phones and tablets being used with it. The packaging

- (1) on the front, said “for Phones, Tablets” and had a picture of mobile phone connected to the product;
- (2) on the back, said

- (a) “4-port USB charger for family-sized charging”
- (b) “Set on the table or mount on the wall”
- (c) “2.4A ports charge any device”
- (d) “Over-current protection allows up to 6.8A”
- (e) “Smart chip delivers universal compatibility”
- (f) “Optimal charging for up to 2 tablets and 2 smartphones”;

(3) on one side, said “Charges” and then “Tablets”, “Smartphones” and “Other USB Devices”, with small pictures of each.

22. The Belkin website’s page on the USB charger has, towards the bottom, three short sections, headed “Office”, “Home” and “Travel”. Under “Home” it says that the USB charger “allows you to charge up to 4 devices (2 smartphones and 2 tablets) at the same time ...”. Under “Travel”, it says “Take [USB charger] along on your trip - charge up to 4 devices such as a smartphone, tablet, power pack and camera all at the same time”.

Cable adapter

23. The cable adapter was about 12 cm long.

The Qi standard

24. ‘Qi’ is a product standard developed and promoted by the Wireless Power Consortium (“WPC”), a standards development group of some 600 or so member companies worldwide. In addition to publishing the standard, WPC conducts compatibility testing and certification of devices; passing this certification is required to use the Qi trademark on compatible products.

25. WPC describes Qi as “the international wireless-charging standard for hand-held consumer electronics”. The standard ensures that devices that conform to it are capable of operating with one another.

26. A 2017 publication by WPC said this under the heading “What is the Qi wireless power transfer system?”

“The powering of hand-held devices is continuing to evolve. Originally, electrical devices had to be plugged directly into outlets, and the range of operation was limited by the length of the power cord. Next came disposable batteries that severed the power cord’s range restriction.

In recent years, rechargeable batteries have all but replaced disposable batteries, eliminating the need to purchase, store, and throw large quantities of these batteries into landfills. But for frequently-used devices—smartphones in particular—recharging became a daily ritual of plugging and unplugging charging cables.

A new era of convenience emerged in 2011 when the first Qi wireless smartphone case was introduced, followed shortly thereafter by smartphones with built-in Qi wireless support. Qi wireless devices need only to be set down on a Qi wireless charger for recharging to occur. The device remains unplugged and ready to be picked up and used at any moment. With the deployment of Qi chargers in cars, enterprises, and public locations, it becomes possible to no longer worry about running out of charge or carrying charger cables.

The adoption of the Qi standard has grown significantly since the first products were introduced. In a 2014 consumer survey conducted by IHS Inc., 36% of consumers in China, the UK, and the U.S. said they had heard of wireless charging. One year later that number doubled, reaching 76%

consumer awareness. In 2015 more than 150 million Qi systems have been shipped, over 83% of smartphone users want wireless charging, and over 80 phone models around the world are Qi-enabled.

....”

27. In the section entitled “Examples of Qi wireless products”, the 2017 WPC document had two sub-headings, “Mobile devices” and “chargers”:

(1) The sub-section on “mobile devices” says as follows:

“Qi wireless charging is a feature available in dozens of smartphones, and many of the major smartphone makers are participating members of the WPC. For smartphones that do not yet offer wireless charging, third-party manufacturers are integrating power receiver subsystems into smartphone cases or selling charging coils that consumers can insert between the back of their smartphone and the case.

Wireless charging is also appearing in a growing number of other consumer product categories — smart watches, power banks, Bluetooth headsets, cameras, electric shavers, etc. Virtually anything that uses a rechargeable battery can be designed to use Qi wireless technology. However, Qi wireless power transfer is not limited to charging batteries: it can also be used to power devices that require electric current and will remain stationary while in use, such as desktop lamps or speakers.”

(2) The sub-section on “chargers” refers to charging pads, charging stands and “power banks” (similar to charging pads, but contain internal batteries as power source).

28. The 2017 WPC document said that in order to carry the Qi logo on a product, the product designer “must apply with the WPC for compliance and interoperability testing, and demonstrate that the product is both fully compliant with the Qi specification and will work with other registered Qi products.”

The charging pads – Belkin manufacturer’s intentions and commercial perspective

29. The two charging pads were designed and developed by the Belkin manufacturer for use specifically with mobile phones of various brands and models. This was reflected in the size and shape of the charging pads. In addition, the Belkin manufacturer’s own testing of the charging pads (as opposed to that done by WPC) was performed specifically on mobile phones. This commercial focus on the mobile phone market was consistent with the Belkin products adopting the Qi standard, as mobile phones were the lion’s share of Qi-enabled products: of the 464 Qi devices listed in the product database on the WPC website in May 2019 (excluding development tools), 60% were mobile phones, 25% were adapters or adapter cases for mobile phones without wireless charging built in, and 5% were battery cases or headsets for mobile phones.

The charging pads – what devices they worked with

30. The two charging pads were capable of working effectively with any device of suitable size and shape that was Qi-enabled (size and shape were important as the coils in the device and the charging pad would need to align). This means that the charging pads would not generally have worked effectively with devices such as Qi-enabled toothbrushes or shavers, due to difficulty in aligning the coils without the device falling off the pad. The charging pads could have worked effectively with other small, compact Qi-enabled devices – such as small cameras, “power banks”, wireless mice, small speakers, wireless in-ear headphones and smart watches – provided that the coils could align without the device falling off the pad.

LAW

The CN

31. The CN are set out in Annex 1 to EC Council Regulation 2658/87. The CN use an eight-digit numerical code to classify products. The first six digits are referred to as headings, eight digit level numbers are referred to as subheadings. The relevant CN are as follows:

8504	Electrical transformers, static converters (for example, rectifiers) and inductors:
8504 40	– Static converters:
8504 40 30	– – Of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof
	– – Other:
8504 40 82	– – – – Rectifiers
	– – – – Inverters:
8504 40 84	– – – – – Having a power handling capacity not exceeding 7,5 kVA
8504 40 88	– – – – – Having a power handling capacity exceeding 7,5 kVA
8504 40 90	– – – – Other
8504 50	– Other inductors:
8504 50 20	– – Of a kind used with telecommunication apparatus and for power supplies for automatic data-processing machines and units thereof
8504 50 95	– – Other
8544	Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors:
8544 42	– – Fitted with connectors
8544 42 10	– – – Of a kind used for telecommunications
8544 42 90	– – – Other

General rules for interpretation of the CN

32. The annex also contains general rules for the interpretation of the CN (the “**GRI**s”). The relevant rules are as follows.

33. Under GRI 1 classification is determined according to the terms of the headings and any relative section or chapter notes, and, provided that such headings or notes do not require otherwise, according to the other GRI.

34. Under GRI 3 when goods are prima facie classifiable under two or more headings, classification is effected as follows:

- (1) 3(a): the more specific heading is preferred; however, when two or more headings each refer 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;

(2) 3(b): composite goods and goods put up in sets for retail sale, which cannot be classified under GRI 3(a), shall be classified as if they consisted of the component which gives them their essential character so far as this criterion is applicable;

(3) 3(c): goods which cannot be classified by reference to GRI 3(a) or (b) are classified under the heading which occurs last in numerical order amongst those which equally merit consideration.

35. GRI 3(a) to (c) are applied in order. The ‘essential character’ test under GRI 3(b) is applied by determining whether the product would retain its characteristic properties if one or other of its constituents were removed from it: *Sportex* (Case C-253/87; 21 June 1988) at [8] and *Turbon International* (Case C-276/00; 7 February 2002) at [26].

36. GRI 6 provides that classification of goods in the subheadings are to be determined according to the terms of the subheadings and any related subheading notes in accordance with the other GRIs, on the understanding that only subheadings at the same level are comparable.

Explanatory notes

37. The World Customs Organisation promulgates explanatory notes, known as HSEs. The EU Commission also promulgates explanatory notes, known as CNENs. CNENs and HSEs may be an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force: *Moevenpick Deutschland* (Case C-405/97; 28 April 1999) at [18].

38. The HSEs in respect of CN 8504 say:

(1) that “electrical static converters” are “used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g. valves) of different types. They may also incorporate various auxiliary devices (e.g. transformers, induction coils, resistors, command regulators etc)”.

(2) that such static converters include: (a) “Rectifiers by which alternating current...is converted to direct current, generally accompanied by a voltage change”; (b) “Inverters by which direct current is converted to alternating current”; and (c) “Alternating current converters and cycle converters by which alternating current...is converted to a different frequency or voltage”.

(3) that “inductors” consist of “a single coil of wire which, inserted into an AC circuit, limits or prevents by its self-induction, the flow of the AC”.

39. The CNENs on 8504 40 30 say: “Static converters for telecommunication apparatus or for automatic data-processing machines and units thereof serve to convert, for example, the alternating current (AC) drawn from the mains supply into the requisite direct current (DC).”

40. The HSEs in respect of CN 8544 explain that the heading “covers electric wire, cable and other conductors.....used as conductors in electrical machinery, apparatus or installations”.

41. The CNENs in relation to CN 8544 42 10 say that, for this subheading, the phrase “of a kind used for telecommunications” includes “electrical conductors fitted with connectors used in telecommunications networks, for example, to connect an automatic data processing (ADP) machine with a modem.” However, they say that the subheading does not include

(1) “electrical conductors fitted with connectors, to be used for connecting different apparatus (for example, a DVD player with a monitor, or an ADP machine with a monitor, a printer, a keyboard, a projector etc)”;

(2) “electrical conductors which serve only to supply power (for example, power cables)”.

Case law on interpreting the CN

Objectivity

42. In the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be found in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and of the section or chapter notes: *Invamed* (Case C-198/15; 26 May 2016) at [18]. The essential exercise is an objective one; subjective considerations have no part to play: *HMRC v Honeywell Analytics* [2018] EWCA Civ 579 at [96].

43. The objective characteristics and properties of a product may include its external appearance (*Medical Imaging* (Case C-288/15; 9 June 2016) at [34]); but composition of the goods has in many cases a much greater importance and must therefore be taken into account as an essential factor in the classification (*Baupla* (Case C-28/75; 25 September 1975) at [6]).

Intended use of a product

44. The intended use of a product may constitute an objective criterion for classification if it is inherent in the product, and that inherent character must be capable of being assessed on the basis of the product’s objective characteristics and properties: *Invamed* at [22], *System Europe* (Case C-480/13; 17 July 2014) at [31]. Among the factors relevant in that regard, it is necessary to assess the use for which the product is intended by the manufacturer and the methods and place of its use: *SC Onlineshop SRL* (Case C-268/18; 2 May 2019) at [29].

45. With regard to a product having two possible uses – if one of those uses was no more than a purely theoretical possibility, that product was, on the basis of its objective characteristics and properties, naturally intended for the other use and therefore came under the tariff heading relating to that use: *System* at [32].

46. Likewise, in order to be classified under the tariff heading relating to a use, the product to be classified need not be solely or exclusively intended for that use. It suffices that that use is the main use for which the product is intended: *System* at [32].

47. Contrariwise – and specifically as concerns CN 8504 40 30 - when dealing with a classification criterion based on a specific use of the goods involved, that criterion is decisive for the classification of those goods. It is not enough that the goods are compatible with the specified use – it must be the main use for which the goods were intended: *TDK-Lambda* (Case C-559/18; 5 September 2019) at [33-34].

48. Marketing literature and manuals issued by a producer of an item are themselves part of the objective materials to which it is legitimate and appropriate to have regard when considering the application of the tariff headings: *Honeywell* at [127]. The Court of Appeal justified this view by reference to *Sony Computer Entertainment Europe Ltd v Commission of the European Communities* (Case T-243/01; 30 September 2003), which, it said (at [129] – Sales LJ), found that it was appropriate

“... to assess in that regard whether the goods were used mainly for the purpose given by a tariff heading, even though it might also be possible to envisage another use for them: see [110]. It was appropriate to consider as video games “any products which are intended to be used, exclusively or mainly, for playing video games, even though they might be used for other purposes”: [111]. In making that assessment, the CFI had regard to “the manner in which the PlayStation®2 is imported, sold and presented to the public” and to promotional material which indicated how it was marketed and sold to consumers, namely as a video game console: [112]-[113]. These materials and

the way in which the device was configured showed that it was intended for use mainly for playing video games, even though it might be used for other purposes: [112]-[113]”

49. Sales LJ observed at [130] that “given the importance for tariff classification under various headings of the use to which an item is intended to be put, it seems to me that it would be most odd and contrary to principle to leave out of account the way in which consumers are encouraged to use the item in question by materials placed into the public domain and objectively verifiable for the purposes of tariff classification.”

50. In *Sony*, the evidence (including the way the product was sold and presented to the public and configured) indicated a product “intended to be mainly used” for one purpose even though it “may also be used” for another purposes: see at [112]. In contrast, the evidence in *TDK-Lambda* indicated that the products did not seem to have characteristics from which it can be inferred that their main use was intended to be with specific machines; rather, the evidence indicated that the products were designed for use in a large number of different machines (see at [41]).

International agreements

51. The EU Court of Justice in *TDK-Lambda* explained at [37-39]:

“37 ...secondary legislation, such as the CN, must be interpreted, so far as possible, in a manner that is consistent with the international agreements entered into by the European Union (judgment of 20 September 2018, *2M-Locatel*, C-555/17, EU:C:2018:746, paragraph 45 and the case-law cited).

38 In that regard, as the Commission stated in its written observations, CN subheading 8504 40 30 reflects the undertakings given by the European Union in the ITA [the agreement on trade in information technology products]. Therefore, that subheading must be interpreted in a manner that is consistent with that agreement, and with the aim of enhancing market access opportunities for information technology products. For the purposes of attaining that objective, paragraph 2 of the ITA provides that each contracting party is required to bind and eliminate customs duties and other duties and charges of any kind, with respect to certain products, including static converters for automatic data processing machines and units thereof, and telecommunication apparatus.

39 In the light of the specific context of CN subheading 8504 40 30, the interpretation that that subheading must be understood as encompassing only static converters whose main use is intended to be with telecommunication devices, automatic data processing machines and units thereof is compatible with the objectives of the ITA.”

Classification regulations

52. A succinct summary of EU law relating to classification regulations was provided by Lawrence Collins J in *VTech Electronics (UK) Plc* [2003] EWHC 59 (Ch):

[18] Article 9 of Council reg 2658/87 makes provision for the adoption of regulations concerning, inter alia, the classification of goods in the CN. Such regulations are proposed by the European Commission but must be submitted to the Customs Code Committee, a committee composed of representatives of the Member States and chaired by representatives of the Commission (Council reg 2658/87, art 7).

[19] The Customs Code Committee is a body constituted specifically for the purposes of classification, and its composition varies depending on the nature of the product at issue. Where the Committee approves the Commission's proposals, they may be adopted by the Commission; where it does not, they must be communicated to the Council which may take a different decision (Article 10).

[20] The consequence is that the Council has conferred upon the Commission, acting in co-operation with the customs experts of the Member States, a broad discretion to define the subject matter of tariff headings falling to be considered for the classification of particular goods. But the power of the Commission to adopt the measures does not authorise it to alter the subject matter of the tariff headings which have been defined on the basis of the harmonised system established by the International Convention whose scope the Community had undertaken not to modify: Case [C-309/98 Holz Geneen v Oberfinanzdirektion Munchen](#) [2000] ECR I-1975, para 13.

[21] Regulations, including classification regulations, are binding in their entirety from the date of their entry into force: EC Treaty, art 249 (formerly art 189). A regulation providing that goods of a specified description are to be classified under a particular CN code: (a) is determinative of the issue of how goods of that specified description should be classified; and (b) may be applicable by analogy to identical or similar products.

[22] It is common ground between the parties that where a Regulation concerns products which are similar to those in issue, then the classification in the Regulation must be followed unless and until there is a declaration from the European Court that the Regulation is invalid. In Case [C-119/99 Hewlett Packard BV v Directeur Generale des Douanes](#) [2001] ECR I-3981, Advocate General Mischo said (in reasoning which was followed and approved by the Court) that classification regulations are adopted “when the classification in the CN of a particular product is such as to give rise to difficulty or to be a matter for dispute.”(para 18). He went on:

“20. It should be borne in mind that a classification regulation is adopted . . . on the advice of the Customs Code Committee when the classification of a particular product is such as to give rise to difficulty or to be a matter for dispute.

21. It is thus not an abstract classification, since the purpose is to resolve the problem to which a particular product gives rise. But, as the Commission points out, the classification regulation has general implications, in so far as it does not apply to a given undertaking or to a particular transaction, but, in general, to products which are the same as that examined by the Customs Code Committee.

22. The classification regulation constitutes the application of a general rule to a particular case, and thus contains guidance on the interpretation of the rule which can be applied by the authority responsible for the classification of an identical or similar product.”

But, he said, the approach adopted by a classification regulation for a particular product could not unhesitatingly and automatically be adopted in the case of a similar product: “On the contrary, as always, where reasoning by analogy is employed great care is called for.” (para 24)

53. We note that in *Hewlett Packard BV* itself (the case cited by Lawrence Collins J), it was held that “in the interpretation of a classification regulation, in order to determine its scope, account must be taken inter alia of the reasons given” ([20]). In the classification regulation considered in that case, the “reasons” column contained a statement that the “principal function” of the product in question (a “multifunction facsimile machine” according to the “description” column) was the “telecommunication (facsimile) function”. The court held (at [22]) that it followed from the statement in the “reasons” section that the regulation only applied if the “telecommunication (facsimile) function” was, in fact, the principal function of the machine being classified.

54. In *Korado* (Case C-306/18; 15 May 2019) the EU Court of Justice said (at [56]): “Even assuming that that implementing regulation is applicable, the Court has previously held that such an application is not necessary where the Court, by its answer to a question referred for a preliminary ruling, has provided the referring court with all the information necessary to classify a product under the appropriate CN heading (judgment of 26 April 2017, *Stryker EMEA Supply Chain Services*, C-51/16, EU:C:2017:298, paragraph 62).”

55. We were referred to three EU classification regulations:

- (1) 2017/1465 classified an AC/DC adapter with a wireless charging plate to 8504 40 90.
- (2) 1110/2012 classified a universal dual-port car charger to 8504 40 90.
- (3) 1112/2012 classified a USB cable to 8544 42 90.

Position post Brexit

56. Following the UK's departure from the EU, UK courts and tribunals continue to be generally prohibited from declaring EU law instruments invalid; however, such challenges are permitted where provided for in regulations. In particular, the Challenges to Validity of EU Instruments (EU Exit) Regulations 2019/673 permits courts and tribunals in certain circumstances to declare void an EU law instrument (and so a classification regulation) where they find the instrument to be invalid on any of the grounds set out in the second paragraph of article 263 Treaty on the Functioning of the EU. The court or tribunal may not make such declaration of invalidity unless notice of the proceedings has been given to a Minister of the Crown at least 21 days (or such other period as the Tribunal shall direct) before the date on which the declaration is made. The minister is entitled to be joined as a party to the proceedings.

Jurisdiction and burden of proof

57. The Tribunal's jurisdiction in respect of decisions as to tariff classification arises under s16 Finance Act 1994, which is applied by regulation 3(1)(a) Customs Reviews and Appeals (Tariff and Origin) Regulations 1997/534. Accordingly, the Tribunal's powers include the power to quash or vary the decisions under appeal, and substitute its own decisions for any decisions quashed on appeal. This power is in addition to the more limited power, exercisable only where the Tribunal are satisfied that HMRC could not reasonably have arrived at the decisions, to direct that the decisions are to cease to have effect and to direct that HMRC conduct a further review of the decisions.

58. It is for the appellant to show that the grounds on which its appeal has been brought are established: s16(6) Finance Act 1994.

ISSUES IN THE APPEAL

59. The parties agreed the following issues arose in the appeal:

60. As regards the two charging pads:

- (1) At the six digit level are these product classified to 8504 40 under "Static converters" or to 8504 50 under "Other inductors"?
- (2) So far as the products are classified to 8504 40, at the eight digit level is each of these products classified to 8504 40 30 under "Of a kind used with telecommunications apparatus, automatic data processing machines and units thereof" or to 8504 40 90 under "Others"?
- (3) So far as the products are classified to 8504 50, at the eight digit level is each of these products classified to 8504 50 20 under "Of a kind used with telecommunications apparatus, automatic data processing machines and units thereof" or to 8504 50 95 under "Other"?

61. As regards the USB charger:

- (1) At the six digit level is the product classified to 8504 40 under "Static converters" or to 8504 50 under "Other inductors"?
- (2) So far as the product is classified to 8504 40, at the eight digit level is the product classified to 8504 40 30 under "Of a kind used with telecommunications apparatus,

automatic data processing machines and units thereof” or to 8504 40 82 under “Rectifiers”?

(3) So far as the product is classified to 8504 50, at the eight digit level is each of these products classified to 8504 50 20 under “Of a kind used with telecommunications apparatus, automatic data processing machines and units thereof” or to 8504 50 95 under “Other”?

62. As regards the cable adapter:

(1) At the four digit level is the product classified to 8504 under “Static converters” or to 8544 under “Insulated...wire, cable....and other insulated electric conductors, whether or not fitted with connectors”?

(2) So far as the product is classified to 8504, at the eight digit level is the product classified to 8504 40 30 under “Of a kind used with telecommunications apparatus, automatic data processing machines and units thereof” or to 8504 40 90 under “Others”?

(3) So far as the product is classified to 8544, at the eight digit level is the product classified to 8544 42 10 under “Of a kind used for telecommunications” or to 8544 42 90 under “Other”?

63. So far as the procedure which led to the decisions of HMRC regarding the classification of the four products is concerned:

(1) Does the Tribunal have jurisdiction in these appeals to determine the matters set out at (2)-(4) below?

And, if it does, then:

(2) Have HMRC have breached article 41 Charter of Fundamental Rights of the EU and/or article 296 Treaty on the Functioning of the EU and/or the general principles of EU law and/or article 6 of the European Convention on Human Rights, including by failing to give Belkin a ‘right to be heard’?

(3) Is article 22 Union Customs Code invalid under EU law by reason of a failure to comply with the measures listed in (2) above?

(4) Did HMRC breach articles 16 and 17 Regulation (EU) 2015/2447 by failing to consult the EBTI database?

And, insofar as the Tribunal finds in the affirmative in relation to (1) above and one or more of (2)-(4) above:

(5) What remedy, if any, should it grant Belkin as a result of those findings?

PARTIES’ POSITIONS

The two charging pads

64. HMRC argued that the charging pads should be classified to 8504 40 90. Belkin argued they should be classified to 8504 50 20. In the alternative, Belkin argued for 8504 40 30. A core issue was whether the products were of a kind used with telecommunications apparatus, automatic data processing machines and units thereof (which for ease we shall refer to as “**telecoms apparatus etc**”).

65. HMRC submitted that , whilst the evidence does suggest that the two charging pads may be used with telecommunications apparatus (such as mobile phones) and automatic data processing machines (such as tablets), it also shows that they were designed for use with a large number of different devices; this derives from their being Qi-enabled (and so usable with the wide variety of types of device that are Qi-enabled). Moreover, the objective characteristics of the pads

support such wide-ranging use through their shape: the flat pad will accommodate the charging of a wide array of Qi compatible devices, which can be rested on it whilst charging. The charging pads were also held out to consumers as compatible with a variety of devices. HMRC submitted that Belkin had not shown that the charging pads were intended mainly for use with telecoms apparatus etc.

66. Although it came with a USB cable, HMRC submitted that the charging pad element gave the charging pad/USB its essential character under GRI 3(b) – the USB cable performs no sort of conversion function – and so classification must be in accordance with the pad.

67. However, in respect of the charging pad/AC adapter, HMRC had a further, alternative argument in favour of classification to 8504 40 90, based on the inclusion of the AC adapter in the retail package:

(1) the AC adapter was designed to provide current to a variety of electrical apparatus and must be categorised to 8504 40 90: the AC adapter plugs into the charging pad, which is not itself a piece of telecommunications apparatus or an automatic data processing machine;

(2) even if, contrary to HMRC’s primary case, the pad itself is classified to 8504 40 30, it cannot be said that either 8504 40 90 (the AC adapter) and 8504 40 30 (the pad) is more specific under GRI 3(a);

(3) it also cannot be said that the AC adapter or the charging pad gives the product its essential character under GRI 3(b); both are of equal importance insofar as they carry out separate conversion functions;

(4) accordingly, GRI 3(c) applies and the charging pad/AC adapter is classified to 8504 40 90, as the last in numerical order amongst those which merit equal consideration.

68. In addition, HMRC argued that they were compelled to classify the charging pad/AC adapter in the manner set out in EU classification regulation 2017/1465 (i.e. to 8504 40 90), which applies directly or by analogy.

69. As regards the six-digit level classification, HMRC submitted that a static converter under 8504 40 may include an induction coil. They said this point is also made clear by the text of the CN, which refers at 8504 50 to “Other inductors”. They submitted that the presence of an induction coil will not make the static converter an inductor under 8504 50. Rather, 8504 50 is a residual heading for self-standing inductors not otherwise falling under the static converters heading of 8504 40.

70. As regards international agreements, HMRC relied on *TDK-Lambda* at [39] where the EU Court of Justice held that the application of a ‘main use’ test to subheading 8504 40 30 would meet the requirements of international agreements.

71. Belkin argued that the main use of both charging pads was for mobile phones and tablets; and that classification regulation 2017/1465 was either not applicable by analogy, or invalid.

The USB charger

72. HMRC argued that this should be classified to 8504 40 82 (and that EU classification regulation 1110/2012 confirmed their approach). Belkin argued that it should be classified to 8504 40 30 or 8504 50 20. The core dispute was whether the product was of a kind used with telecoms apparatus etc. HMRC argued that Belkin had not made out a prima facie case in this regard, given that USB was a universal connection used to connect to a variety of devices, not just telecoms apparatus etc.

The cable adapter

73. HMRC argued that this should be classified to 8544 42 90: they said the product was not a static converter; and it was not “for” telecommunications because it could not be used in a telecoms network (its function was power and audio transmission). They said EU classification regulation 1112/2012 confirmed their approach. Belkin argued that it should be classified to 8544 42 10 or 8504 40 30 as it was used both “for” and “with” telecoms.

Consideration of HMRC’s procedures

74. The parties were agreed that the Tribunal had “full” (rather than merely “supervisory”) jurisdiction over HMRC’s BTI decisions with regard to the four products, and so could quash, vary or confirm those decisions based on the evidence before it and the relevant law.

75. The parties’ disagreement was confined to the situation where the Tribunal found that some or all of HMRC’s decisions did not fall to be quashed or varied. Belkin’s position was, in this circumstance, the Tribunal should go on to review the procedure leading to the decisions in question – if there was procedural impropriety under the provisions of EU law cited by Belkin, the Tribunal should then quash the decisions on those grounds. HMRC argued that the Tribunal had no jurisdiction as regards the EU law cited by Belkin (and no powers to remedy any breaches of them); and that it would be senseless for the Tribunal, having fully considered the evidence and the law and declined to quash or vary HMRC’s decision, for the Tribunal then to direct a further review of the decision by HMRC.

DISCUSSION

The charging pads

Were the pads static converters etc or “other inductors” for CN purposes?

76. We find that the charging pads were static converters that included an induction coil. On the wording of the CN (supported by the HSEs in respect of CN 8504 – see [38] above), this means they fall within 8504 40 as “static converters” rather than 8504 50 as “other inductors”.

Were the pads themselves static converters “of a kind used with telecom apparatus etc”?

77. In this section we shall consider the pads in isolation from the devices that came with them (the USB cable and AC adapter respectively); in the next section we shall consider the significance of the accompanying devices.

78. The objective characteristics and properties of the charging pads were clearly compatible with use with mobile phones, as well as with tablets of a certain size. However, that is not sufficient for them to be static converters “of a kind used with telecoms apparatus etc” for the purposes of the relevant CN: such use must be the “main” use for which the charging pads were intended.

79. The manufacturer’s intentions and commercial perspective, as found at [29] above, indicate that use with mobile phones was the main use for which the charging pads were intended. In our view this was reflected in the objective characteristics and properties of the pads as follows:

- (1) their shape and size – these were attuned to the shape and size of standard mobile phones;
- (2) their adherence to the Qi standard (as most mobile phones adhered to this standard); and
- (3) their packaging and instructions: there were prominent references to mobile phones in words and pictures on the front and side of the charging pad/USB packaging, the side of the charging pad/AC adapter packaging, and the instructions for both.

80. We acknowledge that the first two of the foregoing objective characteristics of the pads, whilst indicative of a main intended use with mobile phones for the reasons given, could alternatively be analysed as indicating intended use with mobile phones *as well as the other devices mentioned at [30] above* – and so do not necessarily support an intended *main* use with mobile phones. Such an analysis is supported by another objective characteristic of the pads: the wording on the side of the packaging saying that the pad charges any Qi-certified device.

81. However, we do not think such an analysis would be correct, as the third of the objective characteristics mentioned at [79] above – which involves express reference to mobile phones – needs to be taken into account; the references to mobile phones on the packaging and instructions are both markedly more prominent, and more specific, than the packaging references to use with “other” Qi-enabled devices; such that, when the objective characteristics are considered together and in the round, they support the conclusion that the intended main use was with mobile phones.

82. We also note that the “alternative” analysis in [80] above presupposes that the objective observer of the characteristics of the pads will know that Qi-certification extended to devices of the kind mentioned at [30] above; in our view, if the objective observer knows that, he will also know that the lion’s share of Qi-certified devices were mobile phones – a fact which supports the conclusion that the intended main use of the pads was with mobile phones.

83. The position here is therefore different from that in *TDK-Lambda*, where the evidence before the EU Court of Justice indicated that the products did not seem to have characteristics from which it can be inferred that their main use was intended to be with specific machines; rather, the evidence in that case indicated that the products were designed for use in a large number of different machines. Here, the objective characteristics of the pads

- (1) did indicate intended use with specific machines – mobile phones; and
- (2) did not indicate, on any analysis, design for intended use in a “large number of different machines”; rather, it indicated design for use with mobile phones, tablets and a limited group of other devices (those at [30] above).

84. We thus conclude that both charging pads, viewed in isolation, were static converters of a kind used with telecoms apparatus etc; and so, if sold alone, would be classified to 8504 40 30.

85. We now go on to consider the significance of the fact that they were sold with an accompanying USB cable or AC adapter.

How do the USB cable and AC adapter affect the analysis?

86. GRI 3 is engaged because (i) both pads were sold in retail sets with another device, and (ii) neither of those accompanying devices would, in isolation, be classifiable to 8504 40 30: in the case of the USB cable, because it was not a static converter, and in the case of the AC adapter, because it was not of a kind used with telecoms apparatus etc (rather, as may be inferred from our findings at [20] above, it was designed for use specifically with the accompanying charging pad – which was not itself telecoms apparatus etc).

87. Moreover, due to GRI 3(a) providing that when two headings each refer 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, we need to apply GRI 3(b) as the “tie breaker” as between (i) the classification of the pads in isolation (8504 40 30) and (ii) the classification of the devices sold with them.

88. Applying GRI 3(b) first to the charging pad/USB, the question is whether the product would retain its characteristic properties if the USB cable were removed from it. Here, the characteristic property of the charging pad/USB was its functioning to convert DC to AC, and

then to convert AC to an electromagnetic field: see [13(1)(c)] above. This property would be retained even without the USB cable. Hence, the fact that this pad was sold with a USB cable does not disturb the classification of the product as a whole to 8504 40 30.

89. Applying GRI 3(b) now to the charging pad/AC adapter, the question is whether the product would retain its characteristic properties if the AC adapter were removed from it. Here, the characteristic property of the charging pad/AC adapter was its functioning to convert AC to DC, then to convert DC to AC, and then to convert AC to an electromagnetic field: see [13(2)(c)] above. This property would not be retained without the AC adapter, as it performs the first conversion. Hence, GRI 3(b) is not applicable and so, applying GRI 3(c), classification is to be made to the lower of (i) 8504 40 30 and (ii) the correct classification of the AC adapter. As the correct classification of the AC adapter is in our view 8504 40 90 – it is a static converter, but it is not of a kind used with telecoms apparatus etc (see [86] above) – this means that the charging pad/AC adapter is to be classified to that, lower CN (8504 40 90).

Conclusion as regards the charging pads

90. For the reasons given above, the charging pad/USB is to be classified to 8504 40 30 (and so this part of the appeal will be allowed). However, the charging pad/AC adapter is to be classified to 8504 40 90 (and so this part of appeal will be dismissed)

The USB charger

Static converters etc or “other inductors”?

91. We find, on the wording of the CN (supported by the HSEs in respect of CN 8504 – see [38] above), that the USB charger was classifiable to 8504 40 as a “static converter” rather than to 8504 50 as an “other inductor”.

Of a kind used with telecoms apparatus etc?

92. The core issue here is whether the USB charger was a static converter “of a kind used with telecoms apparatus etc” – and so the same principles are engaged as were considered in our discussion as regards the charging pads (at [78-83] above).

93. The objective characteristics and properties of the USB charger were clearly compatible with use with mobile phones and tablets. But, as in the discussion above, that is not sufficient for the USB charger to be “of a kind used with telecoms apparatus etc” for the purposes of the relevant CN: such use must be the “main” use for which the USB charger was intended.

94. The main evidence before us of objective characteristics and properties of the USB charger indicating an intended main use with telecoms apparatus etc was the packaging and instructions: see [21] above for details, including

- (1) words saying “For Phones, Tablets”, and a picture of use with a mobile phone, on the front of the packaging;
- (2) words saying “Optimal charging for up to 2 tablets and 2 smartphones” on the back of the packaging (and a similar statement on the website).

95. The evidence of objective characteristics and properties indicating that mobile phones and tablets were not the intended main use was:

- (1) the fact that USB connectivity is not limited to mobile phones and tablets;
- (2) references on the website to use with power packs and cameras (in a list starting with mobile phones and tablets);
- (3) reference to “other USB devices” on one side of the packaging (after tablets and mobile phones); and

(4) words saying “Smart chip delivers universal compatibility” on the other side of the packing.

96. The test here is one of intended main use, based on objective characteristics and properties. It seems to us, looking at the objective characteristics and properties in the round, that use specifically with mobile phones and tablets was consistently and markedly more prominent than other types of uses. Power packs and cameras were not specifically mentioned in the packaging, in contrast to mobile phones and tablets, which featured prominently. When power packs and cameras were mentioned on the website, it was in a list that began with mobile phones and tablets. The references to “other USB devices” and “universal compatibility” were both non-specific, and markedly less prominent than the references to mobile phones and tablets. In the round, the facts here, in our view, answer to the description of a product whose intended *main* use, based on its objective characteristics and properties, was with telecoms apparatus etc (although clearly capable of other uses).

97. The position here is thus, as it was in the case of the pads, different from that in *TDK-Lambda*, where the evidence before the EU Court of Justice indicated that the products did not seem to have characteristics from which it can be inferred that their main use was intended to be with specific machines; rather, the evidence in that case indicated that the products were designed for use in a large number of different machines. Here, the objective characteristics of the USB charger

- (1) indicated intended use with specific machines – mobile phones and tablets;
- (2) did not indicate design for intended use in a “large number of different machines”; rather, it indicated design for use with mobile phones, tablets and (markedly less prominently) charger packs, cameras, and unspecified “other USB devices” (there was no indication of the number of machines in the last category).

EU classification regulation 1110/2012

98. EU classification regulation 1110/2012 considered a so-called ‘universal dual-port car charger’ comprising a car cigarette adapter, two USB interfaces and a light indicator (the “**regulation device**”). The “description of the goods” column of the regulation states that the charger in the regulation device was used for supplying power to charge “various apparatus”, such as mobile phones, tablets, GPS, cameras, MP3 and MP4 players. The “reasons” column of the regulation (of which account must be taken in interpreting the regulation’s scope) said that the charger could be used for charging a variety of apparatus and gave examples of telecommunication apparatus, automatic data-processing machines, audio/video recording or reproducing apparatus and radio navigational aid apparatus.

99. The USB charger and the regulation device are clearly not identical. The question is therefore whether the regulation applies to the USB charger by analogy. In our view an analogy with the regulation is difficult to draw because the regulation device is described as being used with “various apparatus” – six examples of “various apparatus” are given, only two of which are telecoms apparatus etc; and there is no indication that any items in the list of examples of apparatus predominate. In contrast, with the USB charger, the objective characteristics and properties as we have found them do not include use with “various” apparatus, in the sense of both telecoms apparatus and non-telecoms apparatus etc, with no particular category predominant: rather, as explained above, they indicate predominant use with telecoms apparatus etc. Given this material difference between the characteristics of the regulation device and those of the USB charger, the classification regulation is not in our view applicable to the USB charger by analogy.

Conclusion as regards the USB charger

100. For the reasons given above, the USB charger is to be classified to 8504 40 30 (and so this part of the appeal will be allowed).

The cable adapter

101. We find that the cable adapter was not a static converter; rather, it should be classified to 8544 under “Insulated...wire, cable...and other insulated electric conductors, whether or not fitted with connectors”. Further, it was not “of a kind used for telecommunications” because its function was to provide power and audio transmission to a telecommunications device (iPhones), rather than itself being used in a telecommunications network (and so “for” telecommunications). We make this finding based on the wording of the CN, supported by the CNENs in relation to CN 8544 42 10 (see [41] above).

102. Accordingly the cable adapter is to be classified to 8544 42 90 and this part of the appeal will be dismissed.

Consideration of HMRC’s procedures

103. The Tribunal’s jurisdiction in this appeal is as summarised at [57] above. Hence, the Tribunal has “full” (rather than merely “supervisory”) jurisdiction over HMRC’s BTI decisions with regard to the four products, and so can quash, vary or confirm those decisions based on the evidence before it and the relevant law. The Tribunal has no other powers to cure or compensate breaches of EU law; and so Belkin’s submissions in these respects cannot be accepted.

104. With regard to the powers that the Tribunal has, Belkin appeared to be inviting the Tribunal, where it has decided, on exercise of its “full” jurisdiction over HMRC’s BTI decisions, against quashing or varying one or more of them, then to exercise its “supervisory” powers, which arise only if we find that HMRC could not reasonably have arrived at one or more of the decisions, and consist of directing that HMRC conduct a further review of the decisions. We do not take this course, as we cannot see the purpose of, or justice in, asking HMRC to review decisions which we, on consideration of the evidence presented by the parties and the law, have decided should stand.

CONCLUSION

105. The appeal is allowed in part: HMRC’s BTI decisions as to the charging pad/USB and the USB charger are quashed; those products are both to be classified to 8504 40 30. The appeal is dismissed with regard to HMRC’s BTI decisions as to the charging pad/AC adapter and the cable adapter.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

106. 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.

**ZACHARY CITRON
TRIBUNAL JUDGE**

RELEASE DATE: 06 JULY 2021