



TC05043

CUSTOMS DUTIES — specialised aluminium wire used in manufacture of semiconductors, printed circuits and similar devices — whether within CN heading 7605 (aluminium wire) or 8541 (diodes, transistors etc) — appeal against BTI in heading 7605 — whether BTI correct — yes — appeal dismissed

Appeal number: TC/2015/00930

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

BETWEEN

INSETO (UK) LIMITED

Appellant

- and -

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

Respondents

Tribunal: Judge Colin Bishopp

Sitting in public in London on 18 April 2016

Mr Tony Brown, managing director, for the appellant

Mr Ben Lloyd, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the respondents

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DECISION

1. The appellant, Inseto (UK) Limited, is an importer of aluminium wire produced to a precise, and very high, specification in order that it can be used in the manufacture of semiconductors, integrated circuits and similar devices. It is the means by which various electrical connections within the devices are made. The evidence, which as I understand it the respondents, HMRC, do not dispute, is that the wire is produced for this sole purpose and that it has no other practical use. Indeed, it is imported wound onto spools which are designed specifically for use in the specialist machines which incorporate the wire into the semiconductors as they are manufactured.

2. The question I must determine is whether the wire should be classified in heading 7605 or heading 8541 of the Combined Nomenclature (“the CN”). HMRC say the former, and have issued a binding tariff information (“BTI”) in that heading. Inseto argues that the correct heading is 8541, and it has accordingly appealed against the BTI, which was upheld on the customary review. The underlying reason for the appeal is that goods of heading 7506 attract customs duty at 7.5% while goods of heading 8541 are free of duty. The parties are agreed that no other heading of the CN might be relevant.

3. The CN is the annually revised Annex I to Council Regulation (EEC) 2658/87 (“the Tariff Regulation”). It sets out systematically the classification of goods to Sections, Chapters, headings and subheadings, for the purpose of determining (among other things) the rate of customs duty which they attract on importation into the European Union. A BTI, issued in accordance with art 12 of Council Regulation 2913/92/EEC (“the Implementing Regulation”), as its name implies, contains a decision, said by the Implementing Regulation to be binding on the customs authority but in practice binding on the holder as well, relating to the correct tariff classification of the goods described in it.

4. Chapter 76 of the CN deals with “aluminium and articles thereof”. Heading 7605, entitled simply “aluminium wire”, is divided into various categories of wire, by reference to such features as their dimensions or the extent to which the aluminium has been alloyed with other metals. Inseto imports wire of differing dimensions, but I understand all of its imports are of particularly pure aluminium, not alloyed with other metals, and that the only other material in the product is 1% of silicon, which is a necessary additive in the manufacturing process to which the wire is to be put in order to be effective.

5. Heading 8541 is rather more complex. It includes, as HMRC accept, goods of the kind into which the wire is designed to be incorporated—that is, semiconductors, integrated circuits and similar products—and various other electronic goods. The heading concludes at code 8541 90 00 with “parts”, meaning parts of the various devices which have previously been listed. Inseto’s case is that the wire answers to that description, because it is essential to the operation of the semiconductor or integrated circuit, and that accordingly the eight-digit code 8541 90 00 is correct. HMRC do not disagree that the wire is essential to the functioning of the devices in which it is incorporated.

6. Mr Tony Brown, Inseto's managing director who represented it before me, distinguished the wire from the ink cartridges in issue in Case C-276/00 *Turbon International GmbH v Oberfinanzdirektion Koblenz*. In that case, the question before the court was whether an ink cartridge was a part of a computer-driven printer. The court decided it was not, because the functioning of the printer itself was unaffected by the presence or absence of the cartridge; its inability to place ink on the paper if a cartridge was not present was caused by the absence of ink, rather than because of any malfunction of the printer. Here, Mr Brown said, the view to be taken must be to the contrary since the semiconductor or integrated circuit could not function at all without the wire; it would instead be no more than a collection of components incapable of performing any function.

7. That interpretation was, he said, consistent with the Notes to Chapter 85 which, at 8(b), described "electronic integrated circuits" as, among other things:

"Hybrid integrated circuits in which passive elements (resistors, capacitors, inductances, etc) obtained by thin- or thick-film technology, and active elements (diodes, transistors, monolithic integrated circuits, etc), obtained by semiconductor technology, are combined to all intents and purposes indivisibly, by interconnections or interconnecting cables, on a single insulating substrate (glass, ceramic, etc)."

8. The "interconnections or interconnecting cables" to which that definition refers are provided by the aluminium wire in issue in this appeal. Since the Chapter Notes are binding, it follows that by the terms of the tariff itself the wire is included within Chapter 85. In addition, Note 8 provides in its concluding paragraph that:

"For the classification of the articles defined in this Note, headings 85.41 and 85.42 shall take precedence over any other heading in the Nomenclature ..."

9. Accordingly, said Mr Brown, although heading 7605 at first sight seems to be correct, the terms in which Chapter 85 are written show that it is excluded, and that the goods are instead to be classified to heading 8541.

10. For HMRC, Mr Ben Lloyd of counsel argued that Inseto's case is misconceived. The court had made it clear, in *Turbon* as well as in many other cases, that goods must be classified by reference to their objective characteristics and properties, by reference to the wording of the relevant headings of the CN and the relevant Section and Chapter Notes. The essential characteristic of the product in issue in this case is that it is aluminium wire, and as there is a heading expressly designed for such a product, that is where it should be classified. Although the intended use of a product might help in its classification in case of doubt it will do so only if the intended use is inherent in the product. That point was made clear by the European Court in Case C-467/03 *Ikegami Electronics (Europe) GmbH v Oberfinanzdirektion Nürnberg* at [23]:

"... According to the Court's case-law, the intended use of a product may constitute an objective criterion in relation to tariff classification if it is inherent in the product, and such inherent character must be capable of being assessed on the basis of the product's objective characteristics and properties."

11. An examination of the intended use of the product was of no assistance when its objective characteristics, in this case of being aluminium wire, were readily identifiable. It was perfectly clear that there was a suitable heading for the product, namely 7605, and it was unnecessary to look to its intended use for assistance.

12. The CN included some general rules for its interpretation, commonly known as the GIRs. Rule 1 provides that “classification shall be determined according to the terms of the headings” and where, as in this case, there was a clear heading covering the product it was not necessary to look any further. But even if, which Mr Lloyd did not accept, there was any doubt whether 7605 or 8541 was the more appropriate heading it was made clear by rule 3(a) that “The heading which provides the most specific description shall be preferred to headings providing a more general description”. It was perfectly clear that “aluminium wire” was more specific than “parts” and for this reason, too, heading 7605 was to be preferred.

13. I was at first attracted by Mr Brown’s argument that the terms of the concluding paragraph of Chapter Note 8 might assist him since, if heading 8541 is to take precedence over any other heading in the CN, it would be irrelevant that there is another heading, 7605, which appears to be more specific. However, I agree with Mr Lloyd that that provision is not engaged. It refers to the “classification of the articles defined in this Note” but those articles consist entirely of completed items, and do not include parts. Accordingly, heading 8541 does not take precedence over other headings in the case of parts. It can apply only if the relevant goods can properly be classified within it.

14. I agree also with Mr Lloyd that GIR 1 is sufficient to show that the goods in this case are to be classified as aluminium wire in heading 7605 but that that if there should nevertheless be any residual doubt it is resolved by GIR 3(a) since “aluminium wire” is plainly a more specific description than “parts”.

15. For those reasons I must, and do, dismiss the appeal.

16. 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.

**COLIN BISHOPP
TRIBUNAL JUDGE**

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RELEASE DATE: 5 MAY 2016