

Brussels,  
TAXUD.A.4/  
Taxud.a.4(2022)317234

**SENSITIVE<sup>1</sup>**

**CUSTOMS CODE COMMITTEE  
TARIFF AND STATISTICAL NOMENCLATURE SECTION  
MINUTES OF THE 227<sup>TH</sup> MEETING OF THE CUSTOMS CODE COMMITTEE  
(TEXTILES AND MECHANICAL / MISCELLANEOUS SUB-SECTION)**

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<sup>2</sup> To meet the restrictive measures on movement taken to combat the spread of COVID – 19 virus.

1. **Approval of the agenda of the 227<sup>th</sup> meeting of the Customs Code Committee.**
2. **Adoption of the minutes of the 223<sup>rd</sup> meeting of the Customs Code Committee.**
3. **Measures referred to in Article 57(4) of Regulation (EU) No. 952/2013 (draft Commission Implementing Regulations) submitted to the Committee for an opinion, in accordance with the examination procedure referred to in Article 285(4) of Regulation (EU) No. 952/2013.**

*(none)*
4. **Measures referred to in Article 9(1)(e) of Regulation (EEC) No. 2658/87 (draft Commission Implementing Regulations) submitted to the Committee for an opinion, in accordance with the examination procedure referred to in Article 10 of Regulation (EEC) No. 2658/87.**

*(none)*
5. **Decisions referred to in Article 34(11) of Regulation (EU) No. 952/2013 (draft Commission Implementing Decisions) submitted to the Committee for an opinion, in accordance with the advisory procedure referred to in Article 285(2) of Regulation (EU) No. 952/2013.**

*(none)*
6. **Explanatory Notes referred to in Article 9(1)(a) of Regulation (EEC) No. 2658/87 (draft Explanatory Notes to the Combined Nomenclature) submitted to the Committee for an opinion, in accordance with the examination procedure referred to in Article 10 of Regulation (EEC) No. 2658/87.**

*(none)*
7. **Items submitted to the Committee for discussion under Articles 34 and 57 of Regulation (EU) No. 952/2013 or under Article 8 of Regulation (EEC) No. 2658/87.**
  - 7.1 *Running vest with bottles (draft Regulation, TAXUD/2512114/2021Rev1)T*
  - 7.2 *Picnic rug (draft Regulation, TAXUD/6222450/2021)T*
  - 7.3 *Multifunctional display-monitors for vehicles II (draft Regulation, TAXUD/6222438/2021)*
  - 7.4 *LED curtain lights (draft CNEN, TAXUD/6222431/2021)*
  - 7.5 *Tariff classification of Garden room (TAXUD/2511663/2021)*
  - 7.6 *Tariff classification of Qi charger for a smartwatch (TAXUD/2512015/2021)*
  - 7.7 *Tariff classification of Spinal fixation systems (TAXUD/2512002/2021)*
  - 7.8 *Tariff classification of Electric under-blanket (TAXUD/2512063/2021) T*
  - 7.9 *Tariff classification of LED star (TAXUD/2512139/2021)*

- 7.10 *Tariff classification of Accelerator pedal sensor (TAXUD/2512125/2021)*
- 7.11 *Tariff classification of Tarpaulins (TAXUD/2512350/2021) T*
- 7.12 *Tariff classification of Load binders (TAXUD/6222426/2021)*
- 7.13 *Tariff classification of Stand for tablet or book (TAXUD/2512430/2021)*
- 7.14 *Tariff classification of Empty atomizer for e-cigarette (TAXUD/2512380/2021)*
- 7.15 *Tariff classification of Aluminium structure for greenhouses (TAXUD/2512474/2021)*
- 7.16 *Tariff classification of Videophone monitor (TAXUD/6222440/2021)*

## **8. Any other business**

### **8.1. List of pending cases**

*Files to be closed:*

*Products of other alloy steel (TAXUD/254526/2021, TAXUD/899990/2021REVI)*

*Floor standing lamp (TAXUD/610256/2021, TAXUD/899979/2021)*

### **8.2. Information on court cases**

### **8.3. Information on written procedure**

**1. Approval of the agenda of the 227<sup>th</sup> meeting of the Customs Code Committee.**

The MS were (virtually) present for all days of the meeting/for all the items with the following exceptions: two MS were absent on the first day of the meeting (for items 7.3, 7.4, 7.5, 7.6 and 7.15), one MS was partially absent for item 7.2, one MS was absent or partially absent for items 7.2, 7.3 and 7.14.

See list of participants in Annex I.

The agenda was adopted adding some items under AOB.

**2. Adoption of the minutes of the 223<sup>rd</sup> meeting of the Customs Code Committee.**

Under item 7.7. Tariff classification of Antimicrobial bathing system – in the last line of the first paragraph under “discussion” - the text in the brackets (“as claimed by...”) is deleted. Also, under “tour de table” – reference to one MS should be under heading 3922 and not under heading 3924 and reference to another MS should be under heading 3924 and not under heading 3922.

Under item 7.10 Tariff classification of USB controllers/mixers – in the fifth paragraph under “discussion” – the text “...application of GIR 1 and 6 and Note to Section XVI...” is replaced by “...application of GIR 1 and 6 and Note 3 to Section XVI...”

Under item 7.17 Tariff classification of Cable head – in the second paragraph of the “conclusions” the reference to “Note 3 to Chapter 39” should be replaced by the reference to “Note 8 to Chapter 39”.

The minutes were adopted.

**3. Measures referred to in Article 57(4) of Regulation (EU) No. 952/2013 (draft Commission Implementing Regulations) submitted to the Committee for an opinion, in accordance with the examination procedure referred to in Article 285(4) of Regulation (EU) No. 952/2013.**

*(none)*

**4. Measures referred to in Article 9(1)(e) of Regulation (EEC) No. 2658/87 (draft Commission Implementing Regulations) submitted to the Committee for an opinion, in accordance with the examination procedure referred to in Article 10 of Regulation (EEC) No. 2658/87.**

*(none)*

**5. Decisions referred to in Article 34(11) of Regulation (EU) No. 952/2013 (draft Commission Implementing Decisions) submitted to the Committee for an opinion, in accordance with the advisory procedure referred to in Article 285(2) of Regulation (EU) No. 952/2013.**

*(none)*

- 6. Explanatory Notes referred to in Article 9(1)(a) of Regulation (EEC) No. 2658/87 (draft Explanatory Notes to the Combined Nomenclature) submitted to the Committee for an opinion, in accordance with the examination procedure referred to in Article 10 of Regulation (EEC) No. 2658/87.**

*(none)*

- 7. Items submitted to the Committee for discussion under Articles 34 and 57 of Regulation (EU) No. 952/2013 or under Article 8 of Regulation (EEC) No. 2658/87.**

**7.1 *Running vest with bottles (draft Regulation, TAXUD/2512114/2021Rev1)T***

*Facts:*

At its 220<sup>th</sup> and 223<sup>rd</sup> meetings, the Customs Code Committee (Committee) discussed the classification of a sleeveless running vest with a V-neck opening and a zip fastening and pockets at the front, put up together with two plastic flasks. In the light of the comments received during the 223<sup>rd</sup> meeting, the revised draft Regulation presenting two scenarios (separate classification and classification as a set according to GIR 3(b)) was submitted for a final discussion.

*Discussion:*

The group of MS that was in favour of classifying the items separately referred to the guidelines on the classification in the Combined Nomenclature of goods put up in sets for retail sale (2013/C 105/01, OJ C 105 of 11.4.2013, p. 1), that suggest a narrow interpretation of the expression “put up together to meet a particular need or carry out a specific activity”. These MS argued that the articles are three individual items that can be used independently from each other. Moreover, wearing a garment and drinking are two different activities and do not meet the same specific need, as the garment is covering the upper part of the body and the flasks are used for drinking. Also, the design of the pockets does not limit their use to carrying a specific flask.

A second group of MS was in favour of classifying the items as a set by application of GIR 3(b). They considered exercising and running as being one specific activity.

The description of the draft Regulation was amended following suggestions by some MS.

*Conclusions:*

An indicative tour de table showed that 18 MS favoured separate classification of the articles following a narrow interpretation of the legal provisions and the guidelines on sets. Seven MS were in favour to classify the articles as a set within the meaning of GIR 3(b). Two MS abstained.

*Action points:*

DG TAXUD will revise the draft Regulation classifying the articles separately, taking account of the suggestions made during the meeting. The revised text will subsequently be presented for vote at a forthcoming meeting of the Committee or by written procedure.

## 7.2 Picnic rug (draft Regulation, TAXUD/6222450/2021)T

### Facts:

Following the discussion at the 223<sup>rd</sup> meeting of the Committee, DG TAXUD has submitted a draft Regulation classifying a so-called “picnic rug” under CN code 6307 90 10 to harmonize the existing divergence in the classification of these products.

### Questions:

Classification under CN codes 6301 40 10/90 as blankets and travelling rugs, under CN codes 6304 91/93 00 as other furnishing articles, under CN code 6306 90 00 as camping goods or under CN code 6307 90 10/98 as other made-up articles of any textile fabric?

The main question is whether these articles have to be classified under any of the headings that provide a more specific description or under the subsidiary heading 6307.

### Discussion:

The MS made some editorial and linguistic suggestions to the draft Regulation.

One MS stated that it did not agree with the reasons for excluding classification in heading 6301, because there are no Explanatory Notes that would indicate how the blankets of heading 6301 may be used and, consequently there is no requirement that blankets must be designed to cover the body. One can sit and lie on the blankets in question, which is sufficient for the blanket of heading 6301. Due to the coating they are not so flexible to hug the person tightly, but they still can be wrapped around the body.

DG TAXUD replied that, although all the objective characteristics of blankets of heading 6301 are not mentioned in the Harmonised System Explanatory Notes (HSEN) to heading 6301, the term “blankets” in the heading text has to be interpreted within the meaning of GIR 1. Thus, the common knowledge of the objective characteristics of the word blanket have to be taken into consideration. It is common knowledge that a blanket generally is designed to cover a person to protect from the cold by wrapping it around the body or covering the body.

### Conclusions:

An indicative “tour de table” showed that:

- 21 MS were in favour of classification under heading 6307 as other made-up articles of any textile fabric,
- four MS were in favour of classification under heading 6301 as blankets.

Two MS were absent.

No MS was in favour of heading 6304 or 6306.

The indicative “tour de table” thus showed that a qualified majority was in favour of classification under heading 6307. Consequently, articles (so-called picnic rugs) as described in the draft are to be classified under CN codes 6307 90 10/98 as other made-up articles of any textile fabric. Although comparable to blankets of heading 6301 (they protect against moisture and dirt when sitting on them) the articles in question cannot be classified under CN codes 6301 40 10/90 as blankets, because they are not designed as

blankets due to the fact that they lack the typical characteristics of blankets, such as, being suitable to be wrapped around the body and to cover the body.

**Action points:**

DG TAXUD will present the revised draft Regulation for vote at a forthcoming meeting of the Committee or by written procedure.

**7.3 Multifunctional display-monitors for vehicles II (draft Regulation, TAXUD/6222438/2021)**

**Facts:**

Following discussions held at previous meetings, the Committee examined a draft Regulation classifying multifunctional display-monitors designed to be used in vehicles (installed in the dashboard of a car) under CN code 8528 52 91 as other monitors capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471, with a screen of the liquid crystals display (LCD) technology.

At the 223<sup>rd</sup> meeting an indicative “tour de table” showed that 19 MS would classify the “multifunctional display-monitors for vehicles” under CN code 8528 52 91. Seven MS would classify the product under CN code 8528 59 00. One MS abstained.

It was also agreed at the 223<sup>rd</sup> meeting that a draft Regulation classifying the product under CN code 8528 52 91 would be presented for discussion at a forthcoming meeting.

**Questions:**

Should the wording “capable of directly connecting to and designed for use with an automatic data processing machine of heading 8471” in CN code 8528 52 be interpreted as including the type of monitors at issue?

**Discussion:**

After having summarised the case, DG TAXUD presented the draft Regulation. Several linguistic amendments were made to the text. With regard to the tariff classification, arguments already stated at previous discussions were repeated. The submitting MS asked to adapt the draft on the particular product described in one of the BTI referred to in the submission. This MS also asked for considering to raise the issue at the HS level instead of proceeding with the draft Regulation.

**Conclusions:**

An indicative “tour de table” showed that 16 MS supported classification of the product under CN code 8528 52 91, eight MS under CN code 8528 59 00 and three MS were absent.

**Action points:**

DG TAXUD will prepare a revised draft Regulation and share it with MS. It will subsequently be presented for vote at a forthcoming meeting of the Committee or by written procedure.

#### **7.4 LED curtain lights (draft CNEN, TAXUD/6222431/2021)**

##### Facts:

Following the discussion at the 223<sup>rd</sup> meeting of the Committee, DG TAXUD prepared a draft CNEN to subheadings 9405 31 00 and 9405 39 00 (CN 2022). The draft provides guidance on the classification of “lighting strings of a kind used for a Christmas tree”.

##### Questions:

What is the scope of the expression “of a kind used for Christmas trees”?

##### Discussion:

DG TAXUD explained that the English version of the HS 2022 to subheading 9405 31 referring to “lighting **strings** of a kind used for Christmas trees” instead of “lighting sets” was modified in order to align the text to the French version (“guirlandes”). This linguistic alignment has no consequences on previous Committee decisions.

Generally, the MS welcomed the draft CNEN and made some suggestions as well as editorial amendments to the draft.

One MS suggested adding to the products to be classified under subheading 9405 4x as “other electric luminaires and lighting fittings” the example of light chains with a considerable length and very small lights (for example, a micro LED drop light chain of a length of 4,5m with 50 micro LED lamps). These light chains can be used for different decorative purposes throughout the year.

Another MS argued that - due to the neutral lights - such a micro LED light chain can be easily used for decorating a Christmas tree by lighting. According to them, it would be difficult to argue that this light chain is not intended for a Christmas tree.

One MS drew the attention of the Committee to the expression “of a kind used for” in subheading 9405 31 which also permits a use other than for Christmas trees. In this context, some MS raised the question how to interpret the expression “mainly/principally” as suggested in the draft CNEN.

##### Conclusions:

An indicative “tour de table” on the question in which category to include the image of a long light chain with micro LED lamps showed that 16 MS were in favour of classifying them under subheading 9405 4x as “other electric luminaires and lighting fittings”, nine MS would classify them under subheading 9405 31 as “lighting strings of a kind used for Christmas trees”. Two MS were absent.

##### Action points:

DG TAXUD will clarify the use of the images in the draft CNEN and will prepare a revised version. The revised version will be shared with the MS for further comments and depending on the comments received, it will be either presented for vote at a forthcoming meeting or by written procedure or re-submitted for discussion at a forthcoming meeting.



## 7.5 *Tariff classification of Garden room (TAXUD/2511663/2021)*

### Facts:

The product in question consists of a roof and walls constructed of an aluminium frame and glass. The walls have transparent sliding doors. The product has an in-built guttering system and lighting integrated in the roof. It is imported unassembled, with either four or three walls.

There seems to be divergent BTIs.

### Questions:

Classification under CN code 9406 90 90 as prefabricated building, under CN code 7610 90 90 as aluminium structures (excluding prefabricated buildings of heading 9406) or under CN code 7616 99 90 as other articles of aluminium?

The main question was whether these unassembled articles have the essential character of prefabricated buildings within the meaning of GIR 2(a).

### Discussion:

DG TAXUD mentioned the special characteristics of prefabricated buildings as laid down in Note 4 to Chapter 94. This note requires that these buildings are either finished in the factory (smaller prefabricated buildings are manufactured completely at the factory and transported as a complete building to their final destination) or put up as elements, presented together to be assembled on site.

These buildings are particular, because they are manufactured differently from the way buildings are normally manufactured. They are manufactured and constructed using prefabrication, which means –in the case of elements- that whole complete wall-elements including window and door frames and insulation and electricity wires and guttering systems etc. are imported and transported to the building site, where the wall-elements are assembled with the other prefabricated complete walls and the prefabricated roof. Unassembled prefabricated buildings consist of factory-made elements that are transported and assembled on site.

DG TAXUD informed about the bilateral contacts with some MS that have BTIs, in order to clarify whether the tree-wall versions of the products in question have any indications in their design (objective characteristics) that suggest that these products will eventually become a room attached to a traditionally built house. All MS confirmed that it was clear from the design of the products that they will not become stand-alone garden shelters with one open side. They either need to lean on another building or be attached to another building. In some cases, the presence of pre-drilled holes indicated that the product needs to be wall mounted.

One MS pointed out that prefabricated buildings of heading 9406 need to be able to stand on their own. All elements of a prefabricated building have to be manufactured using prefabrication, therefore the fourth wall cannot be the wall of a traditionally built house, as it is the case with some verandas that have three transparent walls and a roof.

Another MS mentioned that generally a building needs four walls. The MS mentioned the HSEN to the future HS code 9406 20 (*Prefabricated buildings include “modular building units” with a steel structure, also referred to as modules. They are normally presented in the size and shape of a standard shipping container intended for multi-modal transport. However, they are substantially or completely pre-fitted internally with internal walls, floorings, ceilings, doors, windows and electrical and plumbing facilities as appropriate to the type of building module. They may also be equipped with other fixtures and fittings such as staircases, built-in furniture, kitchen equipment, sanitary fixtures, external*

*cladding and roofing. They are structurally self-supporting and designed for assembly with other modules horizontally or vertically to become permanent buildings, such as hospitals, hotels, residential, communal facilities, or schools. They may be presented with assembly components to link modules.*).

Another MS mentioned that these modular containers of the future HS code 9406 20 are structurally self-supporting. Thus, they are able to stand on their own even though they are assembled with other modular containers and in that case may not have four walls.

Another MS pointed out that a building has to have walls and a roof. It does not necessarily have to have four walls. The roof is essential for a building.

Another MS pointed out that according to paragraph three of the HSEN to heading 7308 (structures of iron and steel) that apply, mutatis mutandis, to heading 7610 (see the first paragraph of the HSEN to heading 7610) frameworks for greenhouses are structures of heading 7308 and not prefabricated buildings. However, the products in question have roofs which give them the essential character of buildings and not mere structures.

Another MS was of the opinion that a prefabricated building of heading 9406 does not need four walls. It may even lean against another building.

#### Conclusions:

An indicative “tour de table” about the classification of the product that has three prefabricated walls and a roof, an aluminium frame, glass panels, sliding doors of glass and the design (objective characteristics) of which suggests that it has to be attached to an existing building, showed that:

16 MS were in favour of classification under heading 9406 as prefabricated building.

9 MS were in favour of classification under heading 7610 as aluminium structures.

Two MS were absent.

No MS was in favour of heading 7616 as other articles of aluminium.

There are no divergent BTIs, because the MS classifying lean-on greenhouses under 7616 as other articles of aluminium informed the Committee that these greenhouses were other products than the ones under discussion, because the products stand on little feet and therefore they can be easily moved (CNEN to 9406, second paragraph). On these basis the Committee agreed to close the case.

Considering the above, the case regarding the classification of so-called garden rooms is closed by concluding that these buildings of an aluminium frame and glass panels and gliding doors, even with only three walls and a roof and even when having a design that suggests that they have to be attached to another building are considered prefabricated buildings and classified under CN code 9406 90 90, because a building does not necessarily have to have four walls. It, however, needs a roof and some walls.

#### Action points:

DG TAXUD will inform the submitting country that has a BTI application of the outcome of this discussion and conclusions.

MS are asked to check their BTI and, if necessary, revoke them in accordance with the conclusions.

## 7.6 *Tariff classification of Qi charger for a smartwatch (TAXUD/2512015/2021)*

### Facts:

Following the discussion at the 223<sup>rd</sup> meeting of the Committee, it was concluded that the issue requires further examination and several questions remained open.

### Questions:

Is the smartwatch a “telecommunication apparatus” and moreover does the communication over short distance (up to 10 metres) preclude classification as a “telecommunication apparatus”?

How to interpret “telecommunication” for the purpose of classification in the CN?

Is the product capable of charging other devices and could it be used only with the smartwatch?

Could the product in question be compared to the product covered by Commission Implementing Regulation (EU) 2017/1465?

Is the product to be classified as a static converter under CN code 8504 40 30 (static converter of a kind used with telecommunication apparatus, automatic data processing machines and units thereof) or under CN code 8504 40 90 as other static converters? Moreover could the product be classified as other inductor under subheading 8504 50?

### Discussion:

The Chairperson summarized the situation and provided the Committee with additional technical information concerning the Qi technology. Answers to some questions, (i.e. no SIM card contained in the smartwatch, and the smartwatch connects to the phone via Bluetooth/WI-FI) were also given. It was clarified that the product is capable of being powered by any kind of power source via the USB cable (sold separately), and there is no adaptor included. Inside the wireless charging dock there is a magnetic coil and also a wireless charging PCB, next to the cables. Based on this technical information DG TAXUD concluded that the product would qualify as a “static converter” of heading 8504 40, as its technology is comparable to the function performed by products of subheading 8504 40.

Concerning the capability of charging other devices, the submitting MS already at the 223<sup>rd</sup> meeting of the Committee stated that because of its specific shape and small size it could not charge any other device even if equipped with Qi technology. The “wireless charging plate” covered by the above mentioned Regulation could charge any device equipped with Qi technology, while in the current case the product is suitable for use with the smartwatch only.

One MS stated that they maintain their opinion that the product should be classified under CN code 8504 40 90 and that the product is not necessarily for telecommunication apparatus only. He stated that it is not totally clear that this kind of product could be used with only one brand of smartwatches and this special adapter could in his opinion be used to charge also other products and should be treated as a “universal one”.

One MS agreed that the product could be used to charge both telecommunication equipment and also non-telecommunication equipment.

One MS said that they could agree that the product could be used only for smartwatches, but it is disputable whether the product could be used with a different brand of smartwatch equipped with Qi technology.

One MS added that according to the webpage of the producer the watch that uses the Qi technology standard can be charged with any compatible Qi charger. And any compatible

device (i.e. fitness bracelet or different kind of smartwatch) could be charged with this charger, as its specific shape is not limited to a specific smartwatch. The product should be classified as a static converter (according to the video sent by one MS), because in the product (via the coil and the PCB) AC/DC is changed to electromagnetic field. Therefore they support classification under CN code 8504 40 90.

One MS however stated that there is no possibility to charge with the device in case of any other smartwatch models (and the webpage of the producer contains a compatibility table). Also (as tested by this MS) other devices with Qi technology (electric toothbrush, headphones) with similar electrical/power capabilities/requirements could not be charged.

The submitting MS clarified that during the national tribunal hearing the company stated that there is a limited use of Qi technology in the point of view of current strength, so sometimes it needs more powerful or stronger adapter to charge the device, but i.e. it is impossible to charge a vacuum cleaner with Qi technology.

One MS was still of the opinion that the product itself is a coil which generates magnetic field, so the product should be classified as other inductor under subheading code 8504 50, despite the explanations given by DG TAXUD.

The Committee further focused on the questions how to interpret “telecommunication” and if the product qualifies or not as a “telecommunication apparatus”.

The Chairperson reiterated that according to the facts as described during the national tribunal hearing in the submitting MS the product was limited to charging a specific device (specific smartwatch) of CN code 8517 62 00. The national court then (hence there is no definition in HS, CN or in explanatory notes) used a dictionary definition of telecommunication which is communication by telegraphy, telephony, radio, radar, satellite and television. The court then concluded that as the smartwatch communicates using Bluetooth and Wi-Fi this satisfies the dictionary definition of “telecommunication” and that the smartwatch is therefore a telecommunication apparatus. As the national court used very broad definition for the term “telecommunication” (including also television etc.) the question would be which products could fall under subheading “other” according to the interpretation of the national court.

Reference was made to previous classification Regulations: Commission Implementing Regulation (EU) No 1110/2012 (“universal dual-port car charger”) and Commission Implementing Regulation (EU) 2017/1465 (“wireless charging plate”) – in both cases classification under CN code 8504 40 30 was excluded as the products were designed to charge variety of apparatus. According to Commission Implementing Regulation (EU) 2018/1785 (“stack cables”), in which it is clearly stated that data transfer between apparatuses using telecommunication technology, such as Ethernet, is considered telecommunication.

From a tariff classification point of view the term “telecommunication” should be interpreted narrowly. In this case there is no communication in far distance, and due to the short distance communication between the smartwatch and the host device (smartphone), the product could not be treated as having a “telecommunication” function.

One MS pointed out that in their classification practice there is no difference between induction chargers, they could be used with telecommunication articles and other products, like wireless headphones or smartwatches. They have issued a BTI and they retain their classification in CN code 8504 40 90 according to GIR 3(c) as the product is used for smartphones, smartwatches and headphones.

The submitting MS pointed out that the smartphone is needed to use the smartwatch, and it is important to clarify if Bluetooth/WI-FI function can count as “telecommunication” or not.

One MS said the main problem is that there is no definition for “telecommunication”, hence it means according to the dictionary “communication from distance”. Could it however cover every transmission of data over a distance (including, for example, via Bluetooth)? The submitting MS agreed and questioned whether it is feasible to create a general definition for “telecommunication”.

The Chairperson pointed out that a case by case approach may be needed as similar attempts to create general definition at the HS level were also not conclusive.

One MS referred to one of the definitions according to which “telecommunication is the transmission of information by various types of technologies over wire, radio, optical, or other electromagnetic systems”. This leads to a question which smartwatches could be considered as “telecommunication” devices. There are currently some types of smartwatches (with a SIM card) which can be used independently of the phone. Those ones would be in its opinion classified as phones and would qualify as “telecommunication devices”. The charger in question could be also used for charging those devices.

One MS agreed that the term of “telecommunication” should be clarified via an explanatory text. They consider that the smartwatch is not a telecommunication apparatus and they would classify the charger as “other” under CN code 8504 40 90.

One MS said that considering that the charger could be used with watches classifiable under headings 8517 and 9102, in his opinion GIR 3(c) could be used for classification and this would lead to classification of this product under CN code 8504 40 90.

It was however questioned by the submitting MS whether any smartwatch can nowadays still be classified under heading 9102. In this respect the Chairperson referred to an ongoing discussion at the HS level concerning classification of a device called “running watch with wrist-based heart rate monitor” (which is comparable to a smartwatch) – see under AOB.

The submitting MS further clarified that while there is currently no difference in the conventional rate of duty (“Free”) for the CN codes at stake, the term “telecommunication” is included under other codes/headings of the CN (for example heading 8544) and the interpretation of the term “telecommunication” may thus have impact all over the CN.

While in the current case it could be considered - as suggested by one MS – to delete CN code 8504 40 30, there may be issues for other headings.

To this, one MS added, that they submitted a request for tariff classification of “cables for car kits” (within heading 8544) and there is also a CN code with description of “telecommunication”, which is the main element of that submission.

### Conclusions:

An indicative “tour de table” showed that 13 MS would classify the “Qi charger for a smartwatch” under CN code 8504 40 90. Three MS would classify the product under CN code 8504 40 30. One MS supported classification of the product under CN code 8504 50 00. Eight MS abstained. Two MS were absent.

It was subsequently suggested closing the case for the concrete product considering that there are currently no divergent BTIs, no economic impact (conventional rate of duty “Free” for all the CN codes that merit consideration) and deleting CN code 8504 40 30 will

be also examined. There is a national ruling in the submitting MS that the concrete product should be classified under CN code 8504 90 30, which has however currently no practical impact for heading 8504. There may be still the general issue on how to interpret the term “telecommunication”, which may be valid for other headings or CN codes. For that issue DG TAXUD will focus on the new, separate submission of “Cables for car kits” where the term “telecommunication” definition will be further examined in the scope of heading 8544. In this context no legal measure will be drafted in the current case for the time being. On these basis the Committee agreed to close the case.

Considering the above, the case regarding the classification of “Qi charger for a smartwatch” is closed by concluding that according to the view of the majority of the MS among those whose expressed opinion this particular product is covered by CN code 8504 40 90 by virtue of GIR 1 and 6 and by the wording of CN codes 8504, 8504 40 and 8504 40 90 as a static converter, other than of a kind used with telecommunication apparatus, automatic data-processing machines and units thereof.

**Action points:**

The MS are asked to check their BTIs and, if necessary, revoke them in accordance with the above conclusion.

Considering all the aspects of the discussion, the possible deletion of CN code 8504 40 30 will be examined internally.

**7.7 *Tariff classification of Spinal fixation systems (TAXUD/2512002/2021)***

**Facts:**

The products in question are implants for a surgical stabilisation of the spinal cord consisting of screws, rods, plates, hooks and lateral connectors designed to build a construction (mainly of titanium) stabilising the spinal cord for medical reasons (e.g. fracture, deformity (for example scoliosis), dislocation of the intervertebral discs etc.). The construction either joins bones and/or keeps/forces them in their correct place within the spinal cord.

Following the judgment of the CJEU in Case C-227/17 (Medtronic GmbH) a national court decided that this kind of products have to be classified under CN code 9021 10 10 as orthopaedic appliances.

The classification by the national court is divergent from BTIs issued by other MS.

**Questions:**

Classification under CN code 9021 10 10 as orthopaedic appliances or under CN code 9021 10 90 as splints and other fracture appliances?

The main question is whether these articles that perform multiple functions are mainly functioning as orthopaedic appliances or as fracture appliances within the meaning of Note 3 to Section XVI that applies to Chapter 90 by virtue of Note 3 to Chapter 90.

Discussion:

DG TAXUD pointed out that it is difficult to identify the principal function of this product (Note 3 to Section XVI) considering that at the time of importation the actual use of the article is not known. It may be used to join and stabilize bones after fracture of the spinal cord or to force and keep dislocated discs in place due to degenerative illnesses (e.g. tumours or arthrosis) or due to congenital deviations (e.g. scoliosis). In order to be able to take the intended use into consideration for classification purposes, this use must be inherent to the product. In other words, the intended use must be evident from the objective characteristics of the product (its design).

One MS explained that the product is imported in sets that contain the different parts (screws, rods, plates, hooks and lateral connectors). Only after importation during the operation it is decided how many of the parts of these sets are used to “repair” the spinal cord of a specific patient. The sets consist of the same elements indifferently whether they are later used to join discs and stabilize a fractured spinal cord or whether they are used to force discs back in their correct place and stabilize them. The objective characteristics of the sets are the same indifferent of their later use.

DG TAXUD pointed out that nearly all mentioned potential uses for these sets (the referring national court mentions degenerative disc diseases, spinal stenosis and spinal dislocations or failures in earlier spinal fusions, tumours, scoliosis) will eventually result in fractures of the discs of the spinal cord depending on how advanced the illness will be before operation.

Another MS mentioned that it classified this kind of product under CN code 9021 10 90 in accordance with Commission Implementing Regulation (EU) No 1214/2014.

Conclusions:

An indicative “tour de table” about the classification of the articles in question showed that:

No MS was in favour of classification under CN code 9021 10 10 as orthopaedic appliances.

24 MS were in favour of classification under CN code 9021 10 90 as splints and other fracture appliances.

3 MS abstained.

Consequently, the articles as described under “facts” are classified under CN code 9021 10 90 as splints and other fracture appliances within the meaning of GIR 3(c) together with Note 3 to Section XVI. Due to the fact that the articles will eventually become relatively simple mechanical devices consisting essentially of screws for fixation and lateral bars for joining, straightening and supporting the spinal cord, the design (objective characteristics) of these articles does not give any indication whether the specific articles will eventually at the time of their actual use (during the operation) principally be used as orthopaedic appliances or as fracture appliances. Therefore, a principally intended use cannot be deducted from the objective characteristics of the article at the time of importation.

Besides the fact that the actual use cannot be foreseen at importation, the frequency of the actual use as fracture appliance increases the longer actual patients wait to have the damage caused by degenerative illnesses etc. corrected.

Action points:

DG TAXUD will prepare a draft Regulation classifying the articles in question under CN code 9021 10 90. The draft will be submitted for discussion at a forthcoming meeting of the Committee.

## 7.8 *Tariff classification of Electric under-blanket (TAXUD/2512063/2021) T*

### Facts:

Divergent BTIs exist for electric under-blankets, which exist in various dimensions, with exterior surfaces of textiles, double-layered, with four elastic strips sewn diagonally over the corners for fixing them to a mattress. They are equipped with an integrated electric heating unit with a separable 220-240 volt power supply and a switch for adjusting different heating steps. They are neither stuffed nor lined.

### Questions:

Can the article be classified as an electric blanket in heading 6301 (blankets)?

Is the article similar to a bed sheet or mattress cover, normally of a kind suitable for laundering? Can it be classified in heading 6302 (bed linen, for example, sheets or mattress cover)?

Is the article designed for interior furnishing? Can it be classified in heading 6304 (other furnishing articles)?

Or is it to be classified in heading 6307 (other made-up article of textile fabrics)? This heading is to be taken into account only when the article cannot be classified in any of the aforementioned headings.

### Discussion:

Following a proceeding at a national Court, the submitting MS issued BTI for electric under-blankets under heading 6307 as other made-up articles of textile fabrics. The national Court reasoned that an electric under-blanket cannot be classified under heading 6304 as other furnishing articles because it does not have a decorative impact in a room-related environment, as it cannot be seen by the observer. The under-blanket will be put on a bed and covered by a sheet and/or an article of bedding when used as intended, namely to warm a bed. The national Court also excluded classification under heading 6302 as bed linen saying that the under-blanket is not comparable to bed linen. Usually, bed linen serves to protect articles of bedding of heading 9404 (for example, a sheet protects the mattress) and is in direct contact with the person lying on it/using it, whereas an under-blanket, when placed on the bed, has the main function to warm the bed.

Another MS said that there is currently an appeal against a classification decision in their country. The tendency for classifying the article goes to heading 6307 as other made up articles.

A third MS said that they issued a BTI under heading 6304 as other furnishing articles. They argued that heading 6304 does not only cover articles with a decorative function, but also articles with a practical function, namely to warm a bed or a sofa. An under-blanket is not a typical article to be associated to a bed; it can also be used, for example, on a sofa. They added that the presence of the four elastic strips sewn over the corners would not automatically lead to a classification under heading 6302 as bed linen.

A fourth MS referred to the text of subheading 6301 10 (“Electric blankets”) and to the HSEN to heading 6301, 4<sup>th</sup> paragraph, that specifically includes electric blankets in the heading and said that the article in question is similar to a blanket which can be also put on



a bed. Accordingly, they would classify the electric under-blanket under subheading 6301 10.

Another group of MS considered the classification as bed linen under heading 6302. According to the instructions that come with the article, it is suitable for laundering after separation from the power supply. They said that the article is comparable to a sheet or mattress cover of heading 6302 and argued that the four elastic strips sewn diagonally over the corners for fixing it to the mattress indicate that the article is used on a mattress. One MS added that the HSEN to heading 63.02, first paragraph, (1) explicitly include mattress covers and that the requirement that the article is suitable for laundering is fulfilled. Besides the warming function, the article is also covering the mattress providing protection to the mattress.

The Chairperson referred to the new Note 15 to Section XI (HS 2022). This note specifies that subject to Note 1 to Section XI, textiles, garments and other textile articles, incorporating chemical, mechanical or electronic components for additional functionality, whether incorporated as built-in components or within the fibre or fabric, are classified in their respective headings in Section XI provided that they retain the essential character of the goods of this section.

#### Conclusions:

An indicative “tour de table” showed that one MS would classify the electric under-blanket under heading 6301, 11 MS favoured classification under heading 6302 provided that the article is of a kind suitable for laundering, one MS classified the article under heading 6304 and 12 MS favoured classification under heading 6307. Two MS abstained.

#### Action points

Given the divided opinions within the Committee, the divergent BTIs and the Court ruling in one of the MS, a draft Regulation (description of goods only) will be presented for discussion and further examination at a forthcoming Committee meeting.

### **7.9 *Tariff classification of LED star (TAXUD/2512139/2021)***

#### Facts:

Divergent views on the classification of an electric lighting fitting, made of different materials, of a width of 54 cm and height of 54 cm, consisting of a star-shaped metal wire and a LED rope-light covered with plastics (with 192 LED lights inside the rope and a transformer).

There are BTIs issued under CN code 9405 40 99 as other electric lamps and lighting fittings, of material other than plastics. The submitting MS consulted this issue with the MS involved, but it stands by its classification opinion. Therefore the submitting MS brought the issue to the attention of the Committee in order to ensure uniform tariff classification in the EU.

#### Questions:

Classification under CN code 9405 40 39 as electric lamps and lighting fittings of plastics or under CN code 9405 40 99 as electric lamps and lighting fittings of other materials than

plastics? Should be the product in question classified as a lamp/lighting fitting whose essential character is determined by plastics?

Discussion:

The submitting MS supported classification under CN code 9405 40 39 as other electric lamps and lighting fittings of plastics. This MS believes that since the LED rope-light can be separated from the metal star without damage, the article is a composite goods consisting of a star-shaped metal ornamental item of heading 8306 and a plastic lamp/ lighting fitting of heading 9405. In this MS view - the character of the product is determined by the LED rope-light. The product should therefore be classified under subheading 9405 40 39 as other lamps and lighting fittings of plastics by application of GIR 3(b). Alternatively, both components could also be considered to be equivalent. In that case, application of GIR 3(c) would also lead to classification under CN code 9405 40 39 (considering headings 8306 for metal ornamental frame and 9405 for the LED rope-light).

One MS supported the previous speaker.

Another MS was of the opinion that the lighting rope and the frame create together a lamp of heading 9405.

Another MS involved proposed classification under CN code 9405 40 99 as other electric lamps and lighting fittings, of other material than plastics. The MS argued that the product in question is presented and sold as one product and is not intended to be used in other way (to be separated). It is made of different materials, whereas the metal star is giving to the product its essential character. Regardless of whether the LED loop is removable or not, the intention of it is to be used with the lamp as a unit, in its entirety. The MS admitted that GIR 3(b) should have been applied. Consequently, the product in question should be classified as a lighting fitting under heading 9405 and based on the metal frame under CN code 9405 40 99. The frame gives the product its character, taking into account that the metal gives the product stability and its star-like shape.

One MS supported position and classification under CN code 9405 40 99.

Two MS drew the attention to modifications in heading 8539 and to new Note 11 (b) to Chapter 85 valid as from 1<sup>st</sup> January 2022. They doubted whether the LED rope could fulfil this new Chapter Note and therefore to be classified under heading 8539.

Conclusions:

The Chairperson asked whether the “LED star” in its entirety is covered according to the MS opinions by the scope of heading 9405. During an indicative “tour de table” 23 MS supported classification under heading 9405. From those, 21 MS could follow classification under CN code 9405 40 99 and only two MS would strongly prefer classification under CN code 9405 40 39. Four MS expressed the view that the product must be regarded as composite goods consisting of two elements.

Considering the above, the case regarding the classification of “LED star” is closed by concluding that:

“LED star” made of a star-shaped metal wire and a LED rope-light is classified under CN code 9405 40 99. Classification is determined by general rules 1, 3 (c) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 9405, 9405

40 and 9405 40 99. The product is presented, sold and intended to be used as a lamp/lighting fitting. Regardless of whether the LED rope-light is removable or not, the intention of it is to be used with the metal frame as a unit, in its entirety. Therefore the product is considered a lamp/lighting fitting covered by the scope of heading 9405.

The article consists of different materials. The material giving the lamp its essential character cannot be determined. Therefore it is to be classified under the CN code that occurs last in numerical order among those that equally merit consideration (9405 40 39 and 9405 40 99). The product is therefore to be classified under CN code 9405 40 99 as electric lamps and lighting fittings, other, of other materials than plastics.

**Action points:**

The MS are asked to check their BTIs and, if necessary, revoke them in accordance with the above conclusion.

**7.10 Tariff classification of Accelerator pedal sensor (TAXUD/2512125/2021)**

**Facts:**

A submission was received from one MS having a pending BTI application, for a product referred to as “Accelerator pedal sensor”. The research in the BTI database showed that there are BTI issued by another MS, classifying similar products under CN code 9031 80 20 as other instruments, appliances and machines for measuring or checking geometrical quantities. The submitting MS was of the opinion that these products are to be classified as other parts of the motor vehicles of headings 8701 to 8705, under CN code 8708 99 97. Despite the bilateral communication, no agreement has been reached on the classification between the MS involved.

The product in question is an accelerator pedal provided with a sensor (APS system) and designed to be used in a motor vehicle. The device consists of a base housing for fixing the pedal into the vehicle, a pedal lever, a connection plug, an angle sensor and various small parts (springs, bushings, bearings, screws, etc.). Upon driver’s foot pressure on the pedal, the sensor detects the operating angle and generates an output signal proportional to the concrete angular position of the pedal arm. The signal containing the acceleration data is sent to the control unit in order to set the acceleration.

**Questions:**

Is the product a part of the motor vehicles of headings 8701 to 8705 or is it a measuring device of heading 9031?

Is the product to be classified by application of GIR 1 and 6 or is it to be considered as composite goods by virtue of GIR 3(b)?

If GIR 3(b) was to be applied, which would be the component giving the essential character of the product?

**Discussion:**

After DG TAXUD briefly summarized the case, one MS asked for an explanation regarding the presence of the PCB (printed circuit board) component of the product and whether this PCB is the sensor or not. The submitting MS informed the Committee that the PCB is actually the sensor which detects the angular position of the pedal arm.

The submitting MS also further described the product in question and explained its function. This MS was of the opinion that the article is a part of the vehicle and is to be classified under heading 8708 because it fulfils the conditions of HSEN to heading 8708, namely it is identifiable as being suitable for use solely or principally with the vehicles of headings 8701 to 8705 and it is specified in HSEN to heading 8708, under point (L). Moreover, the product cannot be considered as a measuring device provided with a pedal lever, since the angle sensor itself is not a measuring device of heading 9031 but only a part of it, therefore GIR 3(b) is not to be applied.

The MS involved expressed the opinion that the intended use of the product is the angle measuring. Therefore classification under heading 8708 is not possible since measuring devices are excluded from heading 8708 according to Note 2 (g) to Section XVII and the relevant HSEN, part III, (A), (8), (g). In addition to the above, it was mentioned that other parts which operate electronically, such as electro-magnetic clutches, are also excluded from Section XVII, according to the HSEN to Section XVII, part III, (A), (7), (b). The product consists of a pedal-like lever which acts as input and a measuring device of heading 9031. The pedal is equipped with a sensor which detects the position of the lever and sends the data to the measuring instrument. This operation is angular measurement, which is a function of heading 9031. Concerning the reference to Commission Implementing Regulation (EU) No 709/2013 made during the preparation of the file, it should not be taken under consideration, since the product described in the Regulation does not measure temperature whereas the product under discussion does measure the angle of the pedal lever. Acceleration is not the objective use of the product because it is not the traditional “accelerator pedal” of heading 8708 which functions with Bowden cables. This MS also supported the view that GIR 3(b) is not to be applied since the pedal lever is not a part of the vehicle but it is part of the measuring device.

The submitting MS stipulated that the product in question is one of the three pedals (clutch, brake and accelerator) which are used for the control of the vehicle. The measuring of the angle performed by the incorporated sensor is not displayed anywhere, as it only serves to create the proportional signal which is transmitted to the control unit in order to accelerate the car. The sensor itself could only be considered as part of a measuring device.

Another MS added that the objective characteristics and use of the product are those of an accelerator pedal of heading 8708. The only difference with the “traditional” one is that the “communication” with the engine is performed via the sensor, whereas in the conventional accelerator pedal it is performed via the Bowden cables.

The MS involved agreed that the final result of the function of the product is the acceleration of the vehicle. However the product is not an acceleration pedal, within the scope of heading 8708, because it does not actually accelerate the car. The sensor should be regarded separately from the pedal as the pedal is a part of the measuring device, which is only used to measure the angular position of the pedal arm.

Another MS stated that the product in question has the objective characteristics of an accelerator pedal, as it is specified in the HSEN to heading 8708. Heading 8708 includes all accelerator pedals without any indication on the technology used to communicate with the engine. It is thus to be considered as a “modern” version of an accelerator pedal.

Another MS expressed the opinion that the concrete sensor in the form of a PCB, if presented separately, should be classified in Chapter 85. Therefore classification under heading 9031 is excluded.

DG TAXUD summarized the discussion stating that the product should be seen as a whole and to be classified according to its objective characteristics. If the product has the objective characteristics of an accelerator pedal then it is to be classified in heading 8708,

as other part of the vehicle. The question was, therefore, whether the incorporated sensor is to be considered as measuring device and subsequently, whether the pedal lever is to be considered as part of that measuring device.

Conclusions:

An indicative “tour de table” showed that 24 MS supported classification of the product “Accelerator pedal sensor” under heading 8708, as other part of motor vehicles of headings 8701 to 8705, whereas three MS preferred classification under heading 9031, as a measuring or checking instrument, appliance or machine.

Considering the above, the case regarding the classification of “Accelerator pedal sensor” is closed, by concluding that the product consisting of a pedal lever, a base housing for fixing the pedal into the vehicle, an angle sensor, a connection plug and various small parts and designed to be used in vehicles of headings 8701 to 8705, is classified in CN code 8708 99 97 as other parts of the motor vehicles of headings 8701 to 8705. The article is identifiable as being suitable for use solely or principally with the vehicles of headings 8701 to 8705 and it has the objective characteristics of an accelerator pedal specified under HSEN to heading 8708 (L). It differs from a “traditional” accelerator pedal which functions with Bowden cables insofar it incorporates a sensor which detects the different position of the pedal arm and sends the relevant data to the vehicle’s control unit in order to set the acceleration. Heading 8708 however includes all accelerator pedals without any indication on the technology used to communicate with the engine. The product is excluded from heading 9031 because it is not an angle measuring device provided with a pedal-like lever, as its intended use is not the angle measurement.

Action points:

The MS involved agreed to follow the conclusion of the Committee.

The MS were asked to check their BTIs and, if necessary, to revoke them, in accordance with the above conclusion.

### **7.11 Tariff classification of Tarpaulins (TAXUD/2512350/2021) T**

Facts

One MS submitted the question on how to classify a tarpaulin that is coated or laminated on both sides. They have a BTI application and there seems to be divergent BTIs that gave rise to uncertainty on the classification approach for very similar products.

Questions:

How to distinguish between covered or coated and laminated products? Is the tarpaulin in question covered/coated or laminated with plastics?

If the product is a product of Section XI, can it be a tarpaulin of heading 6306, considering its objective characteristics (although it is relatively lightweight)?

How to distinguish between tarpaulins of heading 6306 and flat protective sheets of lightweight material made up in a similar manner to tarpaulins of heading 6307?

### Discussion:

The submitting MS explained that the difficulty lies in establishing if the tarpaulin under discussion had been coated/covered or laminated on both sides. Depending on the layers on both sides, different notes to Chapter 59 have to be applied for the classification. Notes 2(a) and 2(a)(3) to Chapter 59 refer to products that are coated or covered on both sides with plastics, whereas textile fabrics laminated with plastics are referred to in Notes 2(a) and in the new Note 3 (CN 2022) to Chapter 59.

The MS that issued BTIs for coated tarpaulins seem to have a uniform classification approach. They take account of the ECJ ruling in Case C-317/81 that established the principles for the interpretation of the expression “seen with the naked eye”: (1) no account to be taken of the stiffness or shine and (2) instruments such as magnifying glasses, microscopes or chemical analyses are not permitted.

The discussion pursued on how to classify a tarpaulin that is laminated on both sides with plastics and on the expression “laminated” as described in the new Note 3 to Chapter 59, that states that “for the purposes of heading 5903, ‘textile fabrics laminated with plastics’ means products made by the assembly of one or more layers of fabrics with one or more sheets or film of plastics which are combined by any process that bonds the layers together, whether or not the sheets or film of plastics are visible to the naked eye in the cross-section”.

One MS referred to doc. Doc. NR1319 (RSC/55/Nov. 2018), paragraph 12 which states: “It is plausible that if at least the external surface of a laminated fabric is of textile material, the final product will be a textile product regardless of whether there is just one textile layer, or more than one. Likewise, a fabric sandwiched between two thin layers of plastic laminate is excluded from Chapter 59 by application of the provisions of the HS on the classification of fabrics combined with plastic materials.” This MS added that the new Note 3 to Chapter 59 does not require the naked eye-test. Therefore, they were of the opinion that a tarpaulin consisting of a textile fabric being sandwiched between two layers of plastic laminate is classified in Chapter 39.

For the classification of laminated products, various MS questioned if they should rely on the information provided by the importer or if they need to have the product analysed in their Customs laboratory.

One MS drew the attention of the Committee to Note 2(a)(5) to Chapter 59 and suggested to examine if the product under discussion consists of compact or cellular plastic material.

The Chairperson summarized the discussion by saying that if the tarpaulin under discussion is visibly coated/covered on both sides, it is classified in Chapter 39 according to Note 2(a)(3) to Chapter 59. If, on the other hand, the coating/covering cannot be seen with the naked eye, the made up article is to be classified in Chapter 63. If the tarpaulin under discussion is sandwiched between two layers of plastic laminate, it is classified in Chapter 39 by application of the HS provisions on the classification of fabrics combined with plastic materials.

### Conclusions:

The Chairperson concluded that there does not seem to be divergent BTIs, the products described by the MS having different characteristics.

However, due to the complexity of the issue, the impossibility to examine the product in question with the naked eye during the meeting and uncertainties about the composition of the product, the Committee cannot draw a conclusion. In the meantime, the submitting MS will confirm the composition of the product (cellular or compact plastics and whether it is coated/covered or laminated with plastics).

**Action points:**

DG TAXUD will hold bilateral consultations with the MS concerned and will reflect internally on how to proceed.

**7.12 Tariff classification of Load binders (TAXUD/6222426/2021)**

**Facts:**

Divergent views exist on the classification of so-called “load binders”, used for heavy-duty lifting, consisting of two tension hooks on each end and a tightening. Some kinds of “load binders” have a lever mechanism to ‘toggle’ the binder, including a cushioning spring, which serves to protect loads from shock and sway.

The products are primarily made of quenched and tempered alloy or carbon steel, for the absorption of loads (specifically: closed-die forged hooks, closed-die forged handles and a closed-die forged body). The products also include non-closed-die forged ancillary components (springs and balls). The key load-bearing components are made of closed-die forged steel to guarantee a high stress resistance. They may be coated and/or painted.

The articles are used for heavy lifting operations. Their purpose is to ensure that loads are securely and safely tied down by binding hoisting chains.

There are valid BTI decisions issued under CN code heading 7326 90 98 and pending applications for BTI.

**Questions:**

Classification under CN code 7326 90 94 as other articles of iron or steel, closed-die forged or under CN code 7326 90 98 as other articles of iron or steel – other (than closed-die forged)? Should the articles described in the submission be classified as products whose essential character is determined by the “closed-die forged” components? Do the articles derive their essential character from the mass, volume and function of “closed-die forged” components?

**Discussion:**

The submitting MS explained in detail the background of the issue. Given that the articles are predominantly composed of closed-die forged components, this MS proposed classification under CN code 7326 90 94, by virtue of GIR 1, 2 (b), 3 (b) and 6. According to GIR 2 (b): “The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.” Since closed-die forged articles are specifically named (under commodity code 7326 90 94 and elsewhere), the MS concluded that, for the purpose of classification, closed-die forged steel and steel produced by different means should be considered as different materials. As the closed-die forged components outweigh the other components in terms of mass, volume and function, they are considered to determine the essential character of the complete article. Classification

under code 7326 90 98 is in their view excluded since the components that were not created by closed-die forging do not determine the essential character of the articles.

The other MS having issued BTI for “load binders” under CN code 7326 90 98 explained that the product in question must be assessed as a whole. The product which have been assembled from one or more "closed-die forged" steel components (CN code 7326 90 94) and one or more non-closed-die forged steel components (CN code 7326 90 98), once assembled, constitutes a complete product in their own. Taken together, they are directly covered by the wording of CN code 7326 90 98 as "other". Classification under CN code 7326 90 94 would only be considered if the goods had been completely closed-die forged. This is not the case here. Classification under CN code 7326 90 94 by application of GIR 2(b) and 3(b) is not possible, as the entire product is already covered by CN code 7326 90 98 by the wording "other".

Another MS supported the previous speaker underlining that in heading 7326 individual codes are referring to the production process (not the material they are made of) and therefore GIR 3 (b) does not apply.

The submitting MS stated that even if all components are produced by closed-die forging, they still must be assembled together and there would be thus “another production step”. The involved MS replied that there are no different materials here (as the whole product is made of steel). However, there are several processes used (closed-die forging, non-closed-die forging, drilling, coating...), which means that a mix of different processes is used. CN code 7326 90 94 however specifies closed-die forged, which means it specifies only one production process for the product as a whole. As this is not fulfilled the product must be classified under the CN code “other”.

One MS asked whether the article in question should not be classified under CN code 7326 90 60 as “hooks and like articles used in the building industry”. After short discussion the Committee excluded this option clarifying that the articles are used mainly for heavy lifting (not limited for building industry only).

### Conclusions:

An indicative “tour de table” showed that views are rather divided. 13 MS (representing slight majority of the population), would classify the article in question under CN code 7326 90 94 by virtue of GIR 3 (b). On the other hand 14 MS preferred classification under CN code 7326 90 98 based on GIR 1 and 6 (and some of these MS express willingness to follow the majority).

There are valid BTI under CN code 7326 90 98 and there is no clear majority against it. The customs duty impact seems to be very limited (conventional rate of duty is in both cases 2,7%). From another issue discussed in the past it follows that there are some open questions concerning the wording of CN codes 7326 19 10, 7326 90 92 and 7326 90 94. Therefore it was decided that DG TAXUD will follow the issue internally (a proposal to merge some “statistical” CN codes will be made). The submitting MS also showed some flexibility. On these basis the Committee agreed to close the case.

Considering the above, the case regarding the classification of “load binders” is closed by concluding that:

“Load binders” made of steel, composed of closed-die forged hooks, closed-die forged handles and a closed-die forged body, are classified under CN code 7326 90 98. Classification is determined by general rules 1 and 6 for the interpretation of the Combined



Nomenclature and by the wording of CN codes 7326 90 and 7326 90 98. The product have been assembled from one or more closed-die forged steel components (CN code 7326 90 94) and one or more non-closed-die forged steel components (CN code 7326 90 98). Once assembled, it constitutes a complete product directly covered by the wording of CN code 7326 90 98 "other".

Classification as a close-die forged product is excluded as CN code 7326 90 94 refers to a specific production process. The goods in question, however, was made by different production processes. Therefore in this case GIR 3 (b) does not apply.

**Action points:**

The MS involved agreed to follow the conclusion of the Committee.

The MS are asked to check their BTIs and, if necessary, revoke them in accordance with the above conclusion.

**7.13 *Tariff classification of Stand for tablet or book (TAXUD/2512430/2021)***

**Facts:**

One MS had a BTI application for a wooden stand for a tablet or a book and identified divergent BTIs for similar goods under subheadings 4420 90 and 4421 91. These articles, although they are different in size, have in common that they all serve as a stand for either a tablet pc, a book or a mobile phone, for a better reading position. They can be placed on a flat surface or hung on a wall rail.

**Questions:**

Are the articles to be classified under heading 4420 as wooden articles of furniture not falling in Chapter 94 or should they be classified under heading 4421 as other articles of wood?

**Discussion:**

It was proposed that wooden stands for a tablet or a book are classified under heading 4420 as wooden articles of furniture not falling in Chapter 94, by application of GIR 1 and 6 and with reference to the HSEN to heading 4420.

One MS explained, that although the size and the appearance of the articles under discussion are not the same, they are still similar in their function because they serve as a stand to hold something. Therefore, they have a utilitarian value and are closer in their appearance and use to the products mentioned in the HSEN to heading 4420, for example, trays for stationery, letter trays or ink-bars than to the articles of wood classified in heading 4421 (for example, wood paving blocks).

Heading 4420 covers small furnishing goods, used in the household or as office furnishings. Such goods are – due to their dimensions – usually placed on other furniture or hung on the wall, therefore they do not meet the requirements of furniture of Chapter 94, because – except from goods referred to in subparagraph (B) of the HSEN to Chapter 94 - the term furniture does not apply to articles used as furniture but designed for placing on other furniture or shelves or for hanging on walls or from the ceiling. Chapter 94 also

excludes a range of goods not designed for placing on the floor such as small articles of cabinet-work and small furnishing goods of wood (heading 4420).

The MS could follow the proposed classification under subheading 4420 90 because the products meet the wording of this subheading and the HSEN to heading 4420. They said that wooden furniture of heading 4420 are articles with a certain utilitarian value, not just decorative, and that they are used in conjunction with other products, for inserting, hanging, holding or laying them, or for eating or entertainment, hobby, etc. More examples were given, such as table tops, stands and boxes, to be placed on other furniture.

Consequently, wooden stands for a tablet, a book, a mobile phone etc. whether or not having a simple shape (for example, a rectangular block with a cut-out for holding a mobile phone) are classified under subheading 4420 90 as other wooden articles of furniture not falling in Chapter 94.

#### Conclusions:

A “tour de table” showed that a large majority of the MS (26) would classify the article in question under subheading 4420 90 as other wooden articles of furniture not falling in Chapter 94. The MS that had issued a BTI for a wooden stand for a mobile phone under CN code 4421 90 00 informed the Committee that they could accept to follow the majority.

Considering the above, the case regarding the classification of a stand for a tablet or book is closed by concluding that wooden stands for a tablet, a book or a mobile phone are to be classified under subheading 4420 90 as other wooden articles of furniture not falling in Chapter 94, by application of GIR 1 and 6 and with reference to the HSEN to heading 4420 and the HSEN to Chapter 94, General.

#### Action points:

The MS are asked to check their BTIs and, if necessary, revoke them in accordance with the above conclusion.

### **7.14 Tariff classification of Empty atomizer for e-cigarette (TAXUD/2512380/2021)**

#### Facts:

A submission was received from one MS having a pending BTI application, for a product referred to as “Empty atomizer for e-cigarette”. The research in the BTI database showed that there are BTIs issued by other MS classifying similar products under CN codes 8543 70 70 and 8543 90 00. Despite the bilateral consultation with one of the MS involved, no agreement has been reached on the legal reasons of the classification.

The product in question is a reusable (refillable) evaporator (atomizer) for an electronic cigarette which is presented empty, without e-liquid. It consists of a mouthpiece, a glass container, a heater with wire and cotton and an evaporator base with an opening for air regulation and a connector for connecting with the power supply device so called “BOX MODE” (not presented with the atomizer). After the glass container is filled with e-liquid the atomizer is connected to the power supply. Electricity heats the metal part (wire) and subsequently the e-liquid is also heated and vaporized. The produced steam is then ready to be inhaled by the user.

Questions:

Has the atomizer, as it is presented, the essential character of the complete electronic cigarette? Or is it to be considered as part of the device?

Is the product to be classified by application of GIR 2(a) as an incomplete e-cigarette, or by application of GIR 1 and 6 and Note 2 to Section XVI as a part?

Discussion:

After DG TAXUD briefly summarized the case, one of the MS involved stated that the product is an incomplete electronic cigarette and, by application of GIR 2(a), it should be classified under CN code 8543 70 70. This MS also agreed to revoke their BTI issued under 8543 90 00, in case the product described in the BTI is similar to the product described in the submission. Nevertheless, this MS would classify a product without a heating element as a part, under CN code 8543 90 00.

The submitting MS was of the opinion that classification of the empty atomizer cannot be determined without taking into consideration the recently discussed case of the cartomizer filled with e-liquid which was classified according to the liquid, since a significant number of MS supported classification of the cartomizer as a part of the e-cigarette. This MS stated that the missing part, namely the power supply/battery is a complex device which performs also important functions (e.g. it controls the heating temperature, resistance and voltage that are required). Therefore, it was of the opinion that the product is a part of the e-cigarette, and it is to be classified by virtue of Note 2 (a) to Section XVI according to its function, under CN code 8543 70 70.

The MS involved supported the opinion that the product is an incomplete e-cigarette, by virtue of GIR 2(a). This MS based its opinion on the fact that the function of the product is to heat and evaporate the e-liquid so that it can be inhaled by the user. However, that is the principal function of the e-cigarette. Therefore, the atomizer has the essential character of the complete product and it is to be classified as an incomplete e-cigarette in CN code 8543 70 70.

Another MS questioned whether GIR 2(a) is to be applied as well as that the product is a part. This MS suggested classification under CN code 8543 70 90, as an article of its own.

The submitting MS replied that classification under CN code 8543 70 90 would not be possible with the new structure of heading 8543.

Another MS supported the view that the atomizer cannot be considered as an incomplete e-cigarette since the complete e-cigarette consists of the atomizer, the e-liquid and the power supply/battery which is also very important component for the function of the e-cigarette. The atomizer is, therefore, only a part of the complete e-cigarette and it is to be classified under CN code 8543 90 00. This view was supported by several other MS.

The submitting MS agreed that the atomizer is a part, however it is to be classified by application of Note 2(a) to Section XVI. According to Note 2(a), the product is to be classified in its respective heading, according to its function, that is under heading 8543. Since the atomizer is a vaporizing device, it is furthermore to be classified under CN code 8543 70 70 (which will be replaced by CN code 8543 40 00 from 1 January 2022 and will correspond to “electronic cigarettes and similar personal electric vaporising devices”).

Another MS pointed out that the atomizer is the main component of the e-cigarette since it performs its principal function, which is the vaporization of the e-liquid. Therefore it cannot be considered just a part.

DG TAXUD summarized the discussion and indicated that the atomizer is to be classified either by application of GIR 2(a) under CN code 8543 70 70 or as a part by application of

Note 2(b) to Section XVI under CN code 8543 90 00. It was also concluded that the description of the new CN code does not refer to e-cigarette atomizers, but to other vaporizing devices.

Conclusions:

An indicative “tour de table” showed that 14 MS supported the view that the empty atomizer is a part of the e-cigarette and is to be classified under CN code 8543 90 00, whereas eight MS preferred application of GIR 2(a) and classification of the product as incomplete e-cigarette, under CN code 8543 70 70. Four MS abstained and one MS was absent.

The submitting MS clarified that although they considered the product as being a part of the e-cigarette, they preferred classification under CN 8543 70 70, by application of Note 2(a) to Section XVI.

Action points:

Since the views of the Committee were divided, it was decided that further information and discussion is needed in order to clarify the issue.

The case will be discussed again at a forthcoming meeting of the Committee.

#### **7.15 Tariff classification of Aluminium structure for greenhouses (TAXUD/2512474/2021)**

Facts:

The product in question consists of profiles of aluminium and fittings designed for building a greenhouse, including frames for doors and windows of aluminium, excluding glass panels. Once assembled the product becomes the frame for a complete greenhouse (roof and four walls and frames for windows and door), measuring approximately 4m x 2.5m x 2.5m (height). At importation the article is incomplete, because the glass panels are missing.

There is a decision of a national tribunal that is divergent from existing BTIs.

Questions:

Classification under CN code 9406 90 90 as prefabricated building or under CN code 7610 90 90 as aluminium structures (excluding prefabricated buildings of heading 9406)?

The main question was whether these unassembled, incomplete articles have the essential character of prefabricated buildings within the meaning of GIR 2(a) or are frameworks for greenhouses of heading 7610 within the meaning of the HSEN to heading 7308, 3<sup>rd</sup> paragraph, that apply mutatis mutandis to heading 7610 according to the HSEN to heading 6710, 1<sup>st</sup> paragraph.

Discussion:

DG TAXUD pointed out that according to Note 4 to Chapter 94 the expression prefabricated buildings of heading 9406 means buildings which are either finished in the factory and imported as complete buildings or put up as elements, presented together to be assembled at site. According to the HSEN to 9406, 2<sup>nd</sup> paragraph, incomplete (the glass/plastics panels are missing) prefabricated buildings (assembled or not assembled) must have the essential character of the complete prefabricated buildings within the meaning of GIR 2 (a). Prefabricated buildings of heading 9406 are, for example, greenhouses within the meaning of the HSEN to heading 9406, 2<sup>nd</sup> paragraph.

DG TAXUD also mentioned Regulations and CNEN that lay down criteria for distinguishing prefabricated buildings of heading 9406. Commission Implementing Regulation (EU) 2021/956 and Commission Implementing Regulation (EU) 2016/614 that lay down that a prefabricated building of heading 9406 needs to be suitable for long term outdoor use (weatherproof, no flexible walls (plastic sheets)). CNEN to heading 9406 add to those criteria that prefabricated buildings of this heading must enable a person to enter and must not be designed for short term use (thus, they must not be dismantled and moved easily).

One MS mentioned that according to the HSEN to heading 7308, 3<sup>rd</sup> paragraph, a framework for greenhouses is classified under heading 7308 when it is made of iron or steel and under heading 7610 when it is made of aluminium. Therefore, this MS classified this kind of article under heading 7308 as structures of iron and steel. Another MS expressed the same opinion.

Another MS was of the opinion that the article in question does not have the essential character of a prefabricated building, because the panels of glass/plastics are missing, and these panels are essential for the function of a greenhouse.

Another MS was of the opinion that the glass panels have been imported separately just for reasons of transportation. Consequently, the article in question has the essential character of a greenhouse of heading 9406.

Conclusions:

An indicative “tour de table” about the classification of a product as mentioned above under facts showed that:

22 MS were in favour of classification under heading 7610 as aluminium structures.

One MS was in favour of classification under heading 9406 as prefabricated building.

Two MS abstained.

Two MS were absent.

There are no divergent BTIs. After the meeting the MS that is facing a pending national court procedure against their BTI informed DG TAXUD that it does not need a Regulation and agrees that the case can be closed in the minutes of the meeting due to the qualified majority that was in favour of classification in heading 7610.

Considering the above, the case regarding the classification of the product described above under facts is closed by concluding that these unassembled structures of greenhouses of aluminium imported without the glass panels are to be classified as frameworks for greenhouses under CN code 7610 90 90, by application of the HSEN to heading 7309, 3<sup>rd</sup> paragraph, that is applicable mutatis mutandis to heading 7610 in case of aluminium structures according to the HSEN to heading 7610, 1<sup>st</sup> paragraph.

Action points:

MS are asked to check their BTIs and, if necessary, revoke them in accordance with the conclusions.

## 7.16 *Tariff classification of Videophone monitor (TAXUD/6222440/2021)*

### Facts:

Divergent views on the classification of a “Videophone monitor” – which is specifically designed for being a part of a security videophone in the form of a monitor with wall mounting bracket mainly made of plastics. The monitor is a 10.5 cm colour LCD display. The item has control keys for opening a door and an automated gate, and for switching on outdoor lighting. It also has touch-sensitive keys to adjust the ringer and image (brightness, contrast, colour), a CCTV key to display images from two entrance panels and four cameras, a messaging function for recording and listening to an internal message for residents, and a magnetic loop compatible with hearing aids for hearing-impaired people. It offers a choice of four melodies for calls from the entrance panels.

There are pending BTI applications in the submitting MS and according to this MS there were divergent BTIs issued for comparable products in several MS.

The submitting MS issued BTI under CN code 8517 70 00 by virtue of GIR 1 and 6, Note 3 to Section XVI and Note 2(b) to Section XVI. According to their opinion the complete goods correspond to videophones of heading 8517, hence the product in the present case is a part which is solely or principally used for videophones and should be consequently classified under CN code 8517 70 00.

The submitting MS referred in the submission to a BTI issued under CN code 8517 70 00 by another MS for a product which is a part of the videophone indoor unit (front panel).

However, other MS issued several BTIs under CN code 8528 59 00 by virtue of GIR 1, 2(a), 3(c) and 6 for a combination of cameras/LCD screens (“Digital Door Viewer”). These MS argued, that as those products do not contain the “intercom function”, they cannot be classified in heading 8517.

### Questions:

What are the performed functions of the product and can the principal function be determined?

Could we consider that the product is solely or principally designed for being a part of a videophone under CN code 8517 70 00 or has it to be treated as a complete, separate product under CN code 8528 59 00 as it is presented separately?

Concerning the legal reference for the classification, is GIR 1 and 6 sufficient or should also GIR 3 (c) be applied?

### Discussion:

The Chairperson presented the case referring inter alia to a contribution received from one MS prior to the meeting according to which it seems that there might be no divergent BTIs. There seems to be two categories of products: a) products referred as “Digital Door Viewers” (consisting of the monitor and camera, but with no intercom function) and b) products which are parts of the “Videophones”. The Chairperson then referred to the conclusion reached at the 176<sup>th</sup> meeting of the Committee where separately presented indoor and outdoor units of videophone were classified under CN code 8517 69 10 as incomplete videophones (Item 7.21 Tariff classification of Video phone entry system (TAXUD/7166978/2016)).

One MS pointed out that in their opinion the product in the present case (monitor) is a part of the videophone by application of Note 2(b) to Section XVI, because the complete article meets the definition of heading 8517.

On the other hand two MS classified their products under heading 8528.

One of these MS showed some images to clarify that the products covered by “their BTIs” are different from the products classified by the other MS in heading 8517. They are not complete products, they are presented dis-/unassembled and that is why GIR 2(a) is applicable. The product contains two units (monitor + digital camera) which are not working independently, the digital camera has to be installed outside the door. There is no communication (intercom function) between the units, it cannot be treated as a telephone, there is only an option to take and record pictures (which could be stored into an SD card), but there is no possibility to establish a contact with that person who is standing outside the door. For that reason “their products” were classified under heading 8528. The other MS agreed, stating that “their products” are exactly the same as the products classified by the previous speaker.

One of the involved MS agreed that there are two categories of products. In case of “their product” the display could be used only for the videophone of heading 8517 and could transmit audio and video signals to the external unit, which enables communication. On the other hand the product classified by the previous speaker is a camera and display only and should be classified according GIR 3(c) under heading 8528.

The Chairperson referred to the conclusion concerning classification of “Video phone entry system”, where a reference was made to the HSEN to heading 8517, where it is clearly stated that this heading includes videophones for buildings, which are a combination consisting principally of a telephone set for line telephony, a television camera and a television receiver (transmission by line). This means that there is a communication via telephony – referred to as the intercom function (which is not present for the products covered by the BTIs issued by two MS).

The Chairperson explained that during the previous discussion the outdoor unit and indoor unit were described as follows: “*Outdoor unit consists of a microphone and a speaker, one or more push buttons and a television camera combined in one unit*” and “*Indoor unit consists of a telephone handset (microphone and speaker) and a monitor combined in one unit*”, and they were classified under CN code 8517 69 10 by virtue of GIR 1, 2(a) and 6, the wording of the CN codes 8517, 8517 69 and 8517 69 10 and HSEN to heading 8517 part (II),(C).

The product covered by the BTI issued by the submitting MS can then be compared to the “indoor unit” as referred above, but there is not sufficient information concerning the presence of the microphone and the speaker. The product covered by the BTI issued by another MS, also under CN code 8517 70 00, seems more a simple one.

Furthermore, the Chairperson referred back to the discussion concerning the interpretation of Note 2 to Section XVI (see Item 7.14 Tariff classification of Empty atomizer for e-cigarette – TAXUD 2512380/2021) concerning the tariff classification of parts. If the product classified by the submitting MS is a monitor only (monitor of heading 8528), then it should be classified (by virtue of Note 2 (a) to Section XVI) under that heading even if it is clearly identifiable as being used for a videophone (application of Note 2(b) of Section XVI). However if the product is not only the monitor (so it could not fit under the scope of heading 8528), it can be compared to the indoor unit of the videophone phone entry system.

DG TAXUD and two MS then stated that according to the available information (manuals etc.) the product contains a microphone and a speaker and it could be considered as an indoor unit of the whole videophone. One of the MS further noted that the BTI applications

of the submitting MS cover two types of products: one is a full set and the other one is a part of the full set. The whole videophone consist of an indoor and an outdoor unit. The referred part of the full set is an indoor unit, which also could be bought and presented separately.

The submitting MS still expressed some doubts, stating that the product is specifically designed for being part of the videophone, and more time may be needed for comparing it to the products classified at the 176<sup>th</sup> meeting of the Committee.

The Chairperson referred back to the conclusions under Item 7.21 and to the HSEN to heading 8517, (II), (C). At the meeting it was concluded that: *“The indoor unit includes a telephone handset (microphone and speaker) and a monitor. According to the aforementioned HSENs and by virtue of GIR 2 (a) the product is considered to be an unfinished videophone, since it misses the camera. So it doesn’t meet the requirement of being a “combination”, as it is described in HSENs. However, it has the essential character of a videophone since it includes a telephone handset in order to establish oral communication and a monitor which, in combination with the camera incorporated in the outdoor unit, establishes the visual communication. Therefore, it is to be classified under 8517 69 10, as videophone.”*

The Chairperson subsequently concluded that there is no divergence between the products classified in heading 8517 on one side and the products classified under heading 8528 on the other side.

For determining the classification of the product described in the submission it remains to answer the following questions:

- Is it actually comparable to the product classified at the 176<sup>th</sup> meeting of the Committee and should it be classified as an incomplete videophone?
- Are some elements missing, so it could be considered as a part of the videophone?
- Is it only a monitor?

One of the involved MS added to the discussion that “their product” is different than the product described in the submission; it is an incomplete/unfinished product (front panel) which is to be connected to the intercom motherboard to form a whole indoor unit. It is also different from the products classified at the 176<sup>th</sup> meeting.

Another MS added that according to their initial opinion - due to the number of functions of the product - they could not limit it to one function of a monitor of subheading 8528 59, and treated it as a part of a videophone under CN code 8517 70 00. However after the discussion their opinion is that product described in the submission is the indoor unit which incorporates microphone and speaker, and should be classified under CN code 8517 69 10 by virtue of GIR 1, 2(a) and 6.

#### Conclusions:

The Chairperson summarized that there is a agreement in the Committee that there are two category of products. The issue can be solved by concluding that the products known as “Digital Door Viewer” are to be classified under heading 8528 (hence intercom function is missing), and the incomplete/unfinished product (front panel) classified by the third MS is to be classified as part of the videophone under CN code 8517 70 00.

Concerning the product described in the submission there is also a agreement that is should be classified under heading 8517, but further examination is needed concerning the product description and the other characteristics, i.e. if the product has the microphone or the



speaker or not, and considering this information it could be compared to the product classified in the at the 176<sup>th</sup> meeting for determining the correct subheading level.

Considering the above, the case regarding the classification of “Videophone monitor” is closed by concluding that:

“Videophone monitors” as described under facts are to be classified under heading 8517 by virtue of GIR 1 and 6. Classification at subheading level is to be further determined considering the following: Those products which are comparable to the indoor unit of the videophone classified at the 176<sup>th</sup> meeting of the Committee (consisting of a telephone handset (microphone and speaker) and a monitor combined in one unit, and performing the functions mentioned thereto)), should be classified under CN code 8517 69 10 by virtue of GIR 1, 2(a) and 6, the wording of CN codes 8517, 8517 69 and 8517 69 10 and HSEN to heading 8517 part (II), (C). In case these conditions are not met, classification should be as parts under CN code 8517 70 00 by virtue of GIR 1 and 6, the wording of CN codes 8517, 8517 70 00 and Note 2(b) to Section XVI and HSEN to heading 8517.

**Action points:**

The MS are asked to check their BTIs and, if necessary, revoke them in accordance with the above conclusion.

## **8. Any other business**

The Chairperson informed the Committee that a second mid-term review meeting of the Expert Team on pooling expertise to resolve complex cases of divergent tariff classification (BTI – II) will be organized on 13. January 2022.

A second interim report (the draft of which will be presented at the second mid-term review meeting) is currently in preparation by the grant coordinator. In order to contribute to this second interim report, all MS were invited to answer some questions put forward by the grant coordinator until 10. December 2021.

One MS requested an update on an ongoing discussion concerning the classification of so-called “running watch with wrist-based heart rate monitor” (article comparable to a smartwatch) at the HS level. The Chairperson informed the Committee that during the discussion the EU supported classification of the product in heading 9102 as a wrist-watch in line with previous decision of the Committee (conclusion on the classification of “fitness bracelets” at the 213<sup>th</sup> meeting of the Committee). It was nevertheless concluded (at the HS level) that the product should be classified in subheading 8517 62. The case is however still pending, as recently there was a reservation lodged by Switzerland. Until the case is finalised, classification under heading 9102 is to be followed at the EU level (in line with the previous conclusion).

One MS referred to an ongoing discussion on the classification of van vehicles it previously opened via CIRCABC forum and invited more MS to comment on this issue.

This MS also referred to an ongoing discussion with another MS concerning the classification of camshaft actuators – related to an existing suspension. These MS will further follow the issue bilaterally.

### **8.1. List of pending cases**

The list of PC will be distributed to MS via CIRCABC.

#### ***Files to be closed:***

#### ***Products of other alloy steel (TAXUD/254526/2021, TAXUD/899990/2021REVI)***

##### **Facts:**

The classification of products of other alloy steel was discussed at the 217<sup>th</sup>, 220<sup>th</sup> and 223<sup>rd</sup> meetings of the Committee.

The articles are circular forgings with a hole in the middle (ring-shaped forgings), of other alloy steel, with a diameter of 250 mm to 2000 mm and a height of 50 mm to 400 mm. They are made of ingots by so-called 'free forging' method (forging without dies). The production steps are as follows: ingots of other alloy steel are cut into parts of the required volume, then heated to the forging temperature and then a circular forging is formed on a drop hammer/forging press. The ring-shape of the forging is achieved by using universal anvils of simple geometric shapes mounted in the ram and on the drop hammer and by special positioning (continually displacement) of the work-piece during forging. In the final phase, the hole is punched with a special mandrel. The surface of the articles is rough and uneven.

After presentation, the articles do not require any further metallurgical processing and are ready for final machining operations (such as milling or turning). They are designed, after having been subjected to this mechanical working, to be used as parts of mining machines.

There are BTIs issued under CN code 7224 90 90 by one MS. The submitting MS has a pending BTI application and could not agree with the classification of products in question under the above CN code and was of the opinion that the product should be classified in heading 7326.

At the 223<sup>rd</sup> meeting a strong majority of MS (24) supported classification of these articles in heading 7326, two MS in heading 7224 and one MS was absent. At that meeting, it was stated that there are some open questions concerning the wording of CN code 7326 19 10 and, in this context, also the wording of CN codes 7326 90 92 and 7326 90 94 has to be addressed. Therefore it was decided that DG TAXUD will follow the issue internally with the CN sector.

Given that 24 MS preferred classification in heading 7326, it was suggested to close the issue (concerning the classification) in the minutes of the meeting.

After 223<sup>rd</sup> meeting one of the involved MS re-examined the question and admitted that it had not found any evidence supporting the fact whether the goods indicated in their BTI decisions have undergone any further metallurgical process as described in the HSEN to Chapter 72, point (IV) (A) and (B) General. The MS found only information about finishing processes mentioned in point (C) of the same HSEN. Therefore it established that the conclusion of the Committee reached on previous meetings is relevant and supported closing the file with a statement in the report.

Considering the above, the case regarding the classification of “products of other alloy steel” is closed by concluding that:

The described articles should be classified under heading 7326 by virtue of GIR 1.

The forgings, due to their shape with a hole in the middle, do not comply with the wording of Note 1(ij) to Chapter 72 assuming that semi-finished products are products of solid section. Consequently, classification as semi-finished products of other alloy steel of heading 7224 is excluded. See also part (B) of the HSEN to heading 7207, which indicates that the heading covers only those pieces which require considerable further shaping in the forge, press, lathe etc. (and only such pieces can be considered as pieces roughly shaped by forging or semi-finished products of iron or steel). The heading excludes articles which are ready for final machining.

Given its objective characteristics and the production process the articles correspond to the wording of heading 7326, which includes other articles of iron or steel, forged or stamped, but not further worked.

Consequently, the articles are to be classified in heading 7326.

**Action points:**

The MS are asked to check their BTIs and, if necessary, revoke them in accordance with the above conclusions.

***Floor standing lamp (TAXUD/610256/2021, TAXUD/899979/2021)***

**Facts:**

The classification of floor standing lamp was discussed at the 217<sup>th</sup> and 220<sup>th</sup> meetings of the Committee.

The article is an electric floor-standing lamp of a cylindrical shape, of a height of approximately 140 cm, presented unassembled. The floor-standing lamp is other than of a kind used with filament lamps. It consists of a round plastic base, a steel stem, six plastic lamp holders, a lampshade (consisting of a layer of plastic film covered on the outside by a thin layer of a textile fabric made from artificial fibres), two plastic rings, and a plastic lid.

There are BTIs issued under CN code 9405 20 99 and an audit classification decision classifying the lamp in question under CN code 9405 20 40 as an electric floor-standing lamp of plastics.

At the 220<sup>th</sup> meeting 22 MS supported classification under CN code 9405 20 40. Two MS voted against and one MS abstained. Two MS were absent for this item.

Given that 22 MS preferred classification under CN code 9405 20 40 and taking into consideration the significant change of the CN structure in heading 9405 as of 1<sup>st</sup> January 2022, it was suggested to close the issue in the minutes of the meeting. The Chairperson explained that the classification of composite products is always a complicated issue which has to be done on case-by-case basis. A classification Regulation would provide guidance only for this particular and very similar products. Considering that from the 1<sup>st</sup> January

2022 there will be no divergent BTIs, guidance on the classification of the floor standing lamp can be achieved by closing the case in the minutes of the meeting.

Considering the above, the case regarding the classification of a “floor standing lamp” is closed by concluding that:

The described article should be classified under CN code 9405 20 40 by virtue of GIR 1, 2 (a), 3(b) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 9405, 9405 20 and 9405 20 40.

Electric floor-standing lamps are covered by CN code 9405 20. The article in question is a composite goods consisting of three different materials: (1) Plastics (from which the base and the lid, the lampshade, lamp holders and rings are made); (2) Steel (material of the lamp stem); (3) Textile fabric (which covers the lampshade from outside and provides only a decorative effect to the main function of the lamp).

Plastics is the predominant material. The lamp derives its essential character from the quantity of plastics and its functional importance. Consequently, plastics constitutes the material that gives the article its essential character within the meaning of GIR 3(b). The lamp is therefore to be classified under CN code 9405 20 40 as floor-standing lamps of plastics.

**Action points:**

The MS are asked to check their BTIs and, if necessary, revoke them in accordance with the above conclusions.

**8.2. *Information on court cases***

The Committee was informed on the order of the CJEU in case C – 706/20 (concerning interpretation of paragraph 53 of the judgment of 19. December 2019, Amoena (C-677/18, EU:C:2019:1142)).

The Committee was also informed on new cases:

C-542/21 (Mikrotikls) – concerning classification of router aerials and parts thereof,

C-635/21 (LB) – concerning classification of air loungers

T-721/21 (Sunrise medical) - application for annulment of Commission Implementing Regulation (EU) 2021/1367 – classification of “mobility scooters”

T- 566/21 (Steinbach) – application for annulment of Commission Implementing Regulation (EU) 2021/957 – classification of mesh loungers.

One MS informed the Committee on a national ruling on “pedal assisted bicycles”. As there are currently some open questions related to the classification of these bicycles, this MS will share the ruling with DG TAXUD for further use.

### 8.3 *Information on written procedure*

The Chairperson informed the Committee on **the result of a vote by written procedure (October 2021)**:

TAXUD/903550/2021	Roller brakes	positive opinion
TAXUD/903591/2021	Animal beds/baskets/dens	positive opinion

The above draft implementing acts were submitted for adoption on behalf of the Commission and were already published in the Official Journal.

The Chairperson also informed the Committee on the **ongoing vote by written procedure (with a deadline of 17 December 2021)** on:

TAXUD/2512145/2021	Animated toys
TAXUD/2512232/2021	Round knitted and crocheted hairbands

## List of Participants

**Chairperson:** DG TAXUD/A/4  
**Commission representatives:** DG TAXUD/A/4

<b><u>Member States</u></b>	<b><u>Authorities or bodies represented by:</u></b>
AUSTRIA	Bundesministerium für Finanzen
BELGIUM	F.O.D Financiën
BULGARIA	Agence Nationale des Douanes (absent for item 7.2)
CROATIA	Croatian Customs Administration
CYPRUS	Department of customs and excise
CZECH REPUBLIC	General Directorate of Customs
DENMARK	Danish Customs Agency (Toldstyrelsen)
ESTONIA	Tax and Customs Board (not present for items 7.3, 7.4, 7.5, 7.6 and 7.15)
GERMANY	Generalzolldirektion
FINLAND	Finnish Board of Customs (not present for items 7.3, 7.4, 7.5, 7. 6 and 7.15)
FRANCE	Direction générale des douanes et droits indirects
GREECE	Ministry of Finance
HUNGARY	National Tax and Customs Administration
IRELAND	Revenue Commissioners
ITALY	Agenzia Dogane
LATVIA	State Revenue Service (not present for items 7.2, 7.3 and 7.14)
LITHUANIA	Customs Department
LUXEMBURG	Direction des douanes et accises
MALTA	Customs department
The NETHERLANDS	Belastingdienst Douane
POLAND	Ministry of Finance
PORTUGAL	Autoridade Tributária e Aduaneira
ROMANIA	Autoritatea Nationala a Vamiror
SLOVAKIA	Financial Directorate
SLOVENIA	General Customs Directorate
SPAIN	Departamento de Aduanas
SWEDEN	Swedish Customs