



Neutral Citation: [2024] UKFTT 00050 (TC)

Case Number: TC09032

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal reference: TC/2019/02162

Customs Duty – classification – dolls representing only human beings – toys representing animals or non-human creatures – other toys put up in sets - statuettes (of plastic) – appeal allowed in part

Heard on: 28 to 30 September 2022

With written closing submission on 31 October
2023 and further written submission on
22 December 2022

Judgment date: 22 December 2023

Before

**TRIBUNAL JUDGE GERAINT WILLIAMS
JOHN WOODMAN**

Between

STAR-IMAGES ENTERPRISES LTD

Appellant

and

THE COMMISSIONERS FOR HM REVENUE AND CUSTOMS

Respondents

Sitting in public at Taylor House, London

Representation:

For the Appellant: Nigel Gibbon, instructed by The Customs People

For the Respondents: Lyndsey Frawley, of counsel, instructed by the General Counsel and
Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. The Appellant appeals against the Respondents' ("HMRC") decisions to issue two C18 Post Clearance Demand Notices for the underpayment of Customs Duty and Import Tax ("C18") in respect of various items imported by the Appellant during the period 30 November 2015 to 30 March 2016 and the classification of another item as classified by HMRC under the Binding Tariff Information ("BTI").
2. The first C18 (C18279272), dated 28 November 2018 ("First C18"), was in the sum of £4,112.33. The amount was varied on review on 14 March 2019 to £3,196.06 (£2,663.39 Customs Duty and £532.68 Import VAT). One of the items was reclassified in favour of the Appellant on 20 December 2021 and, at the date of the hearing, there remained 12 items in dispute.
3. The second C18 (C18280450), dated 21 December 2018 ("Second C18"), was in the sum of £9,894.85. The amount was varied on review on 30 April 2019 to £9,629.84 and, at the date of the hearing, there remained 34 items in dispute.
4. On 3 July 2019, HMRC issued a BTI decision dated 3 July 2019 ("Third Decision") in respect of a toy figure known as Ahab Predator which was reclassified on 3 December 2021 in accordance with the Appellant's original submission applying customs code 9503 00 49 90 with a 0% rate of duty. The Third Decision is no longer in dispute and is determined in favour of the Appellant.

EVIDENCE

5. We were provided with an electronic hearing bundle containing the appeal documents, relevant correspondence, an agreed spreadsheet referring to all 60 items (this included the items agreed at the hearing) and the following witness statements:
 - (1) For the Appellant, Mr Francis Melinek ("MF") provided a witness statement dated 30 July 2021 which exhibited photographs of all the disputed 60 items; and
 - (2) Officer Christina Pond ("CP"), an officer in the Tariff Classification Service, provided a witness statement dated 30 November 2011, which exhibited photographs of sample items provided to HMRC by the Appellant.
6. MF and CP both gave oral evidence and were cross-examined. Also, in evidence before the Tribunal were some of the items in dispute which were available for the Tribunal to examine.

FACTS

7. From all the evidence we find the following background facts and have later set out descriptions of the items in dispute and the parties' reasons for classification. We consider disputed matters later in the decision.

BACKGROUND

8. On 4 June 2018, HMRC informed the Appellant of its intention to carry out a check of its customs and international trade records and on 20 June 2018, HMRC visited the Appellant's premises. HMRC carried out checks between 23 June 2018 and 20 September 2018 of the Appellant's customs and international trade records for the period 28 October 2015 to 28 August 2018. The Appellant provided assistance and replied to various e-mailed enquiries.
9. On 24 September 2018, HMRC issued a Right to be Heard letter which set out the discrepancies identified along with the calculations of import duties covering the

period 28 October 2015 to 28 August 2018. The schedule clarified that an underpayment of £363,087.56 had arisen because the Appellant had classified all of the 189 items to 9503 00 99 90 which is zero rated for duty and HMRC considered that all of the 189 items were proper to commodity code 9503 00 21 90 which attracts a duty rate of 4.7%. The Appellant was given 30 days to make representations before a final decision was made.

10. On 19 October 2018, the Appellant's representative, The Customs People, disputed the classification to commodity code 9503 00 21 90. The Appellant disputed the classification to commodity code 9503 00 21 90 as it considered that the majority of the products did not attract duty as they were not covered by the commodity code used by HMRC. The Appellant stated:

"Commodity code 9503 00 21 90 covers dolls, other toys, reduced size ("scale") models and similar recreational models, working or not, puzzles of all kinds: including dolls representing only human beings and parts and accessories thereof.

Commodity code 9503 00 99 90 - other covers (amongst other items), dolls, other toys, reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds. With hindsight the commodity code should have been declared as 9503 00 49 90.

Commodity code 9503 00 49 90 covers (amongst other items) dolls, other toys, reduced-size ("scale") models and similar recreational models, working or not, puzzles of all kinds: toys, representing animals or non-human creatures.

The declaration to 9503 00 99 90 followed a customs audit in 2011 where similar non-human creatures imported were reviewed by the Customs Officer and commodity code 9503 00 99 90 was accepted by the officer.

Whilst the officer's letter dated 28 November 2011 does state that a full audit was not carried out it is quite clear from the contents of the HMRC letter that the main objective of the visit was to review commodity codes declared at importation. A copy of this letter can be provided on request.

In addition I believe the customs audit was triggered because of the submission of a repayment claim for items erroneously entered to 9503 00 21 90. The officer also commented "that after seeing the figures at your premises I am satisfied that the goods are proper to the amended tariff heading and that the classification on import was incorrect".

The company accepts that it is the responsibility of the company to ensure accurate import declarations are submitted. It is highly unlikely that the company would seek advice from a source other than HMRC. I understand that HMRC do offer guidance on classification - why should any company seek further guidance especially when the products imported are of a similar non-human nature?

...

In conclusion I do not believe your schedule is correct or relates to the products imported as the majority of the products do not represent human beings."

11. On 28 November 2018, the First C18 was issued by HMRC.

12. On 21 December 2018, the Second C18 was issued by HMRC.

13. On 21 December 2018, a review request was made in respect of the First C18. The letter stated: "In relation to most of the products on the schedule, you have not asked

for any information at all or you have only requested the image.” The remaining 17 lines were disputed on the basis that they should be classified under 9503 00 49 90 (Toys representing animals or non-human creatures, other, other) except for lines two and four that should be classified to 9503 00 35 00 (Other construction sets and constructional toys, of plastics) albeit they included a non-human figure.

14. On 1 February 2019, a review request was made in respect of the Second C18. The letter confirmed that lines one to forty-two were disputed (except line five which was accepted) and should be classified under 9503 00 49 90 (Toys representing animals or non-human creatures, other, other). The letter stated:

“Lines 14 and 20 of the schedule need special mention. These products are toys of Chucky, which is a doll. They are clearly non-human since they are toys representing a doll from the movie 'Child's Play', not toys representing a human being.

With reference to lines 2, 3 and 27 of the schedule, these products are of a single non-human figure. They are not toys put up in sets or outfits.”

15. On 14 March 2019, HMRC’s review conclusion letter was issued in respect of the First Demand and on 30 April 2019, HMRC’s review conclusion letter was issued in respect of the Second Demand. HMRC classified each range of products to one of the following commodity codes:

- (1) 9503 00 21 90 - Dolls representing only human beings and parts and accessories thereof: other - with a duty rate of 4.7%. (“Dolls”)
- (2) 9503 00 70 00 - Other toys put up in sets or outfits - with a duty rate of 4.7%. (“Sets”)
- (3) 9503 00 95 90 - Other toys; of plastics; other – with a duty rate of 4.7%. (“Other”)
- (4) 3926 40 00 00 – Other articles of plastics and articles of other materials of headings 3901 to 3914; statuettes and other ornamental articles – with a duty rate of 6.5%. (“Statuettes”)

16. The Appellant contended that the correct commodity code for most of the 60 ranges is:

9503 00 49 90 – Toys representing animals or non-human creatures; other; other – with nil duty rate. (“Non-human toys”)

17. MF is the sole director and majority shareholder of the Appellant, Star-Images Enterprises Limited. The Appellant is based in London and has for over 25 years been the official UK wholesale distributor of licensed products for a number of international toy manufacturers. During the first 10 years (approximately) of trading, the imported licensed products were paper products: photographs or posters. For the past 15 years, the Appellant has imported licensed collectible toy figures including from (but not limited to) NECA (the National Entertainment Collectibles Association) which is based in New Jersey, USA and specialises in manufacturing toys and figures synonymous with the horror genre as well as other genres; MezcoToyz from Long Island, New York which produces horror figures such as “Chucky” and the “Living Dead” range; Dark Horse which produces figures from the “Game of Thrones” franchise; and Monogram International Inc. which is based in California and which manufactures toys and figures under licenses from Disney, Marvel, DC Comics, Nickelodeon and others. The Appellant is a member of the British Toy and Hobby Association. The Appellant distributes the figures and dolls to specialist toy shops that are more aimed at adults as well as “high

street” toy shops and online retailers. The figures and dolls are advertised by online retailers in their toy section.

18. All of the imported collectible figures are licensed products and depict a fictional character from a comic-book, film or television series. The figures are imported packaged for retail sale in cardboard “window boxes.” MF confirmed that each character has a “backstory” based on the comic-book or the film and television series narrative; that “backstory” may include special characteristics. The special characteristics may include some or all of the following: physical features that are different to those found in human beings (i.e. different flesh colour to human beings); the character depicts or portrays a species from another world (“an alien”) or a God from mythology; has superpowers or special abilities which humans do not have; the character depicts or portrays a doll, the character has features that appear human (“humanoid”) but is a robot or the character was “dead” but has been brought back to “life” as a “zombie”.

19. All the items packaged with the licensed figure are not included by chance but are directly connected to the licensed figure and their “backstory”.

20. CP’s evidence consisted of confirming the approach taken by HMRC in classifying the items in dispute. She confirmed that HMRC considered that in order for an item to be classified to the Dolls subheading, the doll must be capable of movement through movement in the joints, head, etc. or have mechanisms which permit movement but that whilst not all “dolls” are jointed or have mechanisms which permit movement, e.g., “plush” dolls which are soft and pliable which means they have movement. Where a figure had clear non-human characteristics, HMRC accepted that the item should be classified as a Non-human toy. Where an item did not have specific non-human physical characteristics and otherwise met the criteria for a doll or humanoid figure, then HMRC would classify the item as either a Doll or Other of plastic. Where the figure’s face was covered by a mask or non-removeable helmet or headdress such that the facial features could not be identified as human or non-human, HMRC classified it as Non-human toy subject to the item potentially being classified as part of a Set. Where an item was held by or physically connected to a toy figure, HMRC were more likely to determine that the item was an accessory, but it was not HMRC’s position that this was the sole test not that it could be applied in all instances. It was HMRC’s position that the tests for determining whether items were accessories to a main item or part of a Set had to be applied on a case-by-case basis and by reference to the objective and essential characteristics of the items. CP’s evidence was that the approach to classification stated in the CNEN dated 31 May 2018 was the one that HMRC had applied since she joined the team in 2015, we accept that unchallenged evidence.

LAW

21. The Harmonized System (HS) of customs commodity codes is an internationally standardised system of names and numbers to classify traded products. It came into effect in 1988 and is maintained by the World Customs Organization (WCO) based in Brussels. The UK is a contracting party to the HS. All EU Member States are also contracting parties to the HS individually and as part of the EU as a contracting party in its own right.

22. Prior to Brexit and the UK’s withdrawal from the EU on 31 December 2020, the UK relied on (and was required to apply the EU Regulations, Combined Nomenclature (CN) and Explanatory Notes to the CN (CNEN). The EU Commission regularly published guidance in the Official Journal and published BTI’s issued by Member States as an aid to interpretation of the CN and HS. The EU also established

the European Commission Customs Code Committee which met regularly to consider tariff rulings and publish meeting agenda and minutes.

23. Under the HS, Contracting Parties are required to work together to achieve a consistent system of application. Accordingly, all Contracting Parties are obliged to take account of any guidance and Explanatory Notes issued by the WCO and Member State Contracting Parties are also obliged to take account of any Explanatory Notes and guidance published by the European Commission when applying the nomenclature of the HS.

24. HMRC's decisions and Statement of Case were provided before 31 December 2020. Accordingly, the decisions of HMRC refer principally to EU legislation and guidance and the Statement of Case and Skeleton Argument similarly follow the same approach. As a then Member State, the UK had a specific compliance obligation in respect of all EU Regulations, Directives and, in this case, the CN and CNEN. In any event, such resources aid interpretation of the HS Headings and Subheadings and therefore remain relevant to customs classification generally notwithstanding the UK's withdrawal from the EU.

THE COMBINED NOMENCLATURE REGULATION (REG EEC) NO 2658/87

25. The Combined Nomenclature Regulation (Reg EEC) No 2658/87 of 23 July 1987 ("Regulation") provides the legal basis for the Community's Tariff (which applied at the time of importation of items the subject of these appeals). An annual amendment to the Regulation contains the CN that is reproduced in the UK Tariff. The CN provides systematic classification of all goods in the international trade and is designed to ensure, with the aid of the General Rules for the Interpretation of the Harmonized System ("GIRs"), that any product falls to be classified in one place and only one place. The six GIRs are also the same as those published by the WCO in support of the HS.

26. The GIRs have legal force, and are intended to be applied, where goods cannot be classified solely by reference to the terms of headings and subheadings or by taking into account Section or Chapter Notes.

27. Explanatory Notes to the CN and HS are not legally binding; but are generally applied by customs authorities to ensure consistency between contracting parties to the HS. Notes to headings and subheadings within the HS do have legal effect. The approach to classification set out in the GIRs is legally binding on contracting parties.

28. There was no dispute between the parties that the provisions relevant to this appeal in the CN are at Chapter 95 and Chapter 39. Chapter 95 applies to "Toys, Games and Sports Requisites; Parts and accessories thereof":

"9503 00 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced size ("scale") models and similar recreational models, working or not; puzzles of all kinds:

9503 00 10 - Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages

- *Dolls representing only human beings and parts and accessories thereof:*

9503 00 21 -Dolls

9503 00 29 - Parts and accessories

...

- *Other construction sets and constructional toys*

9503 00 35 -Of plastics

9503 00 39 - Of other materials
 – *Toys representing animals or non-human creatures:*
 9503 00 41 - Stuffed
 9503 00 49 90 - Other, Other
 ...
 9503 00 70 – *Other toys, put up in sets or outfits*
 – *Other*
 ...
Other
 9503 00 95 – Of plastics
 9503 00 99 – Other”

29. Chapter 39 applies to “Plastics and articles thereof”. Heading 3926 comprises: “Other articles of plastics and articles of other materials of headings 3901 to 3914”. There are 24 commodity codes arising under Heading 3926 but only one is relevant namely:

“3926 40 00 – Statuettes and other ornamental articles”

30. We refer to the sub-headings above as “Dolls”, “Construction Sets”, “Non-human toys”, “Sets”, “Other toys of plastic” and “Statuettes.”

31. Note 2 to Chapter 39 (“Note 2”), which is legally binding, provides as follows:

“This chapter does not cover:

...

(y) articles of Chapter 95 (for example, toys, games, sports requisites)

32. Note 3 to Chapter 95 (“Note 3”), which is legally binding, provides as follows:

“Subject to note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.”

33. Note 4 to Chapter 95 (“Note 4”), which is legally binding, provides as follows:

“Subject to the provision of note 1 above, heading 9503 applies, inter alia, to articles of this heading combined with one or more items, which cannot be considered as sets under the terms of General rule of interpretation 3(b) and which, if presented separately, would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys.”

HSENS

34. The HSENS, which are not legally binding, relevantly state:

Chapter 39

Notes. ...

2. This Chapter does not cover:

...

(y) Articles of Chapter 95 (for example, toys, games, sports requisites);

...

Plastics

Plastics have almost unlimited applications but many articles made therefrom are classified elsewhere (see Note 2 to this Chapter).

39.26 Other articles of plastics and other articles of other materials of headings 39.01 to 39.14

3926.10 - Office or schools supplies

3926.20 – Articles of apparel and clothing accessories (including gloves, mittens and mitts)

3926.30 – Fittings for furniture, coachwork or the like

3926.40 - Statuettes and other ornamental articles

3926.90 - Other

This heading covers articles, not elsewhere specified or included of plastic (as defined in Note 1 to the Chapter) or other materials of headings 39.01 to 39.14

The included:

...

(3) Statuettes and other ornamental articles.”

Chapter 95

“This Chapter covers toys of all kinds whether designed for the amusement of children or adults ...

Each of the headings of this Chapter also covers identifiable parts and accessories of articles of this Chapter which are suitable for use solely or principally therewith, and provided they are not articles excluded by Note 1 to this Chapter.”

35. The HSEs for Chapter 95 under the heading “General” provides:

“Each of the headings of this Chapter also covers identifiable parts and accessories of articles of this Chapter which are suitable for use solely or principally therewith, and provided they are not articles excluded by Note 1 to this Chapter.”

36. The HSEs for heading 9503 identifies four groups A to D and states:

“This heading covers: ...

...

(C) Dolls

This group includes not only dolls designed for the amusement of children, but also dolls intended for decorative purposes (e.g. boudoir dolls, mascot dolls), or for use in Punch and Judy or marionette shows, or those of a caricature type.

Dolls are usually made of rubber, plastic, textile materials, wax, ceramics, wood, paperboard, papier mâché or combinations of these materials. They may be jointed and contain mechanisms which permit limb, head or eye movements as well as reproductions of the human voice, etc. They may also be dressed.

Parts and accessories of dolls of this heading include: heads, bodies, limbs, eyes (other than those unmounted of glass, of heading 70.18), moving mechanisms for eyes, voice producing or other mechanisms, wigs, dolls’ clothing, shoes or hats.

(D) Other toys.

This group covers toys intended essentially for the amusement of persons (children or adults). However, toys which, on account of their design, shape or constituent material, are identifiable as intended exclusively for animals e.g., pets, do not fall in this heading, but are classified in their own appropriate heading. This groups includes:

All toys not included in (A) to (C). Many of the toys are mechanically or electrically operated.

These include:

(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

...

Collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature are classified in this heading when they are put up in a form clearly indicating their use as toys (e.g., instructional toys such as chemistry, sewing, etc., sets).

Also as provided by Note 4 to this Chapter, subject to Note 1 to this Chapter, this heading includes articles of the heading combined with one or more items which would be classified in other headings if presented separately, provided that:

- (a) the combined items are put up together for retail sale, but the combination cannot be considered as a set under the terms of General Interpretative Rule 3 (b); and
- (b) the combination has the essential character of toys. Such combinations generally consist of an article of this heading and one or more items of minor importance (e.g., small promotional articles or small amounts of confectionary)."

37. The CNEN published by the Commission on 4 March 2015, stated the following:

“9503 00 21 Dolls

See the HS Explanatory Note to heading 9503, (C), first two paragraphs.

See also the Explanatory Notes to subheadings 9503 00 81 to 9503 00 99

This subheading includes, by application of general rule 2(a) for the interpretation of the Combined Nomenclature, unassembled or disassembled dolls.

9503 00 29 Parts and accessories

See the HS Explanatory Note to heading 9503, (C), third paragraph.

9503 00 35 and 9503 00 39 Other construction sets and constructional toys

These subheadings include construction sets and constructional toys other than reduced-size (‘scale’) model assembly kits, which have the character of toys. Such goods have the following characteristics:

- they consist of two or more individual components presented together in a packing;
- the individual components are mutually complementary and are not suitable for playing with on their own merits. An assembly instruction may be provided with these construction sets.

950300 41 and 9503 00 49 Toys representing animals or non-human creatures

These subheadings include, by application of general rule 2(a) for the interpretation of the Combined Nomenclature, unassembled or disassembled toys representing animals or non-human creatures.

9503 00 70 Other toys, put up in sets or outfits

‘Sets’ of this subheading consist of two or more different types of articles (principally, for amusement), put up in the same packing for retail sale without repacking.

Articles of the same subheading, except for items covered by subheadings 9503 00 95 or 9503 00 99 (since these subheadings may include miscellaneous articles of different types), are not to be considered different types of articles.

Apart from the articles forming a set, simple accessories or objects of minor importance intended to be used with the articles (for example, a plastic carrot or a plastic brush for a toy animal) can be present.

By virtue of note 4 to Chapter 95, this subheading includes sets intended for the amusement of children, consisting of articles of heading 9503 combined with one or more items which, if presented separately, would be classified in other headings, provided that the combinations have the essential character of toys. Examples are:

— sets consisting of toys in the form of injection moulds and moulds for modelling pastes, together with other items such as tubes or tablets of paint, modelling pastes, pencils and chalks,

— cosmetic sets for children, containing articles of heading 9503 combined with preparations of heading 3304.

However, cosmetic sets for children containing preparations of heading 3304 which do not contain any articles of heading 9503 are excluded (heading 3304).

‘Outfits’ of this subheading consist of two or more different articles put up in the same packing for retail sale, without repacking, and are specific to a particular type of recreation, work, person or profession, such as instructional and educational toys.

9503 00 81 to 9503 00 99 Other

These subheadings include humanoid figurines, for example, in the form of film, fairy-tale or comic-book characters, Indians, astronauts or soldiers, not with movable parts and not with detachable clothing, fixed on a base-plate, pedestal or a similar base which enables the figurine to maintain its pose unsupported.

Such figurines often form part of a collection series. Because they are small, light and robustly made, they are, however, usually used as toys by children. Their recreational function therefore outweighs their ornamental value.

These subheadings include, by application of general rule 2(a) for the interpretation of the Combined Nomenclature, unassembled or disassembled humanoid figurines (tin soldiers and the like).

AMENDED CNEN PUBLISHED ON 31 MAY 2018:

“Pursuant to Article 9(1)(a) of Council Regulation (EEC) No 2658/87 (1), the Explanatory Notes to the Combined Nomenclature of the European Union (2) are hereby amended as follows:

On page 381:

9503 00 Tricycles, scooters, pedal cars and similar wheeled toys; dolls' carriages; dolls; other toys; reduced-size (‘scale’) models and similar recreational models, working or not; puzzles of all kinds

The following text is inserted as first and second paragraph:

‘To distinguish between toys representing human beings and toys representing animals or non-human creatures, no account shall be taken of:

— their colour (for example, a purple or green skin colour does not give them the character of a non-human creature), and

— the background of the characters represented by them or their skills and abilities (for example, their place of birth or their ability to fly).

Where a toy is wearing a mask (whether or not with, for example, animal ears) leaving large or recognisable parts of the human face visible or identifiable, or if the mask can be removed and reveals humanoid features, it is to be seen as a toy representing a human being.’

HMRC GUIDANCE NOTE

38. The Appellant relied upon HMRC’s Guidance Note – Classifying toys, games and sports equipment for import and export (2012) which was extant at the time of the importation of the disputed items. The Guidance note was published on 3 August 2012; however, neither party was able to provide the Tribunal with the original guidance only the version that was updated on 27 April 2018. It was stated by the Appellant, which was not disputed by HMRC, that the original and updated Guidance Note relevantly stated:

“Remember that dolls only representing humans are covered by these classification codes.”

GIRs

39. The relevant GIRs (which are required to be applied in numerical order) are as follows:

"1. The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and provided such headings or notes do not otherwise require, according to the following provisions.

2 ...

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

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

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

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

4. Goods which cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. [This provides that cases, boxes and packing material be classified together with the goods they contain.]

6. For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, *mutatis mutandis*, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires."

BTIs

40. Binding Tariff Information notices ("BTIs") are issued by the Customs Authorities of the Member States pursuant to Article 12 of the Common Customs Code (Council Regulation 2913/92/EEC) on request from a trader. BTIs are binding on the relevant authorities in respect of the tariff classification of goods. The Tribunal must exercise care before departing from a settled approach set out in BTIs (see Case C-495/03 *Intermodal Transports BV v Staatssecretaris van Financien* at [34]). The parties relied upon a number of BTIs issued by both the UK and other Member States but we found these largely (save for the BTI in respect of the Third Decision) to be of limited or no assistance as there was frequently either no explanation or only a limited explanation of the reason for the classification and, taken as a whole, we were unable to discern a consistent approach.

PRINCIPLES OF INTERPRETATION

41. The HSEs and the CNENs are an important aid to the interpretation of the scope of the various tariff headings but do not themselves have legally binding force. The content of the HSEs and the CNENs must therefore be compatible with the provisions of the CN, and cannot alter the meaning of those provisions (see *Revenue and Customs*

Commissioners v Honeywell Analytics Limited [2018] EWCA Civ 579 per Davis LJ at [95] and *Invamed Group Limited and ors v HMRC* [2020] EWCA Civ 243 per Patten LJ at [12]).

42. The Upper Tribunal in *Barrus & Kubota v Revenue and Customs* [2013] UKUT 0449 (TCC) at paragraph [41] summarised the approach to be adopted by the Tribunal to the classification of products as follows:

“In our view the following principles can be derived from the authorities we have reviewed:

(1) The decisive criterion for the classification of goods for customs purposes is in general to be found in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and of the notes to the sections or chapters...;

(2) The relevant criteria must be apparent from the external characteristics of the goods so that they can be easily appraised by the customs authorities (*Farfalla Fleming*);

(3) By the examination of the external characteristics the main purpose of the product must be inferred. It does not matter if there are other purposes for the product (*Neckermann*);

...

(5) Marketing materials and a product's targeted use are not to be taken into account (*Kamino, Honda*)”

43. The approach to customs classification was summarised by the Court of Appeal in *Build-A-Bear Workshop UK Holdings Ltd v HMRC* [2022] EWCA Civ 825 (“*BaB CA*”) at [15], quoting the decision of the Upper Tribunal in *Build-a-Bear Workshop UK Holdings Ltd v HMRC* [2021] UKUT 67 (TCC) (“*BaB UT*”):

“16. For present purposes, suffice to say that:

(1) The GIRs provide a set of rules for interpretation of the CN in order to ensure that all products are classified under the correct code and (unlike the HSEs and CNENs) all have “the force of law” (*Vtech* [16]).

(2) It is common ground that, in the interests of legal certainty and ease of verification, the decisive criteria for the tariff classification of goods must be sought in their objective characteristics and properties as defined by the wording of the relevant heading of the CN and of the notes to the sections or chapters of the CN (*Holz Geenen GmbH v Oberfinanzdirektion Munchen* (Case C-309/98) at [14]).

(3) The intended use of the goods may be considered as part of the classification analysis where that use is inherent to the goods and that inherent character is capable of being assessed by reference to the objective characteristics and properties of the goods (see *Hauptzollamt Hamburg-St. Annen v Thyssen Haniel Logistic GmbH* (Case C-459/93) ... at [13]).

(4) Having regard to the objective characteristics and properties of the goods, a combined examination of the wording of the headings and the explanatory notes to the relevant sections and chapters should be undertaken to determine whether a definitive classification can be reached, in accordance with GIR 1 and GIR 6. If not, then in order to resolve the conflict between the competing provisions, recourse must be had to GIRs 2-5 (see the opinion of Advocate General Kokott in *Uroplasty v Inspector van de Belastingdienst* (Case C-514/04) ... at [42]).

(5) GIR 3 will apply only when it is apparent that goods are *prima facie* classifiable under a number of headings (see *Kip Europe SA & Ors and Hewlett Packard International SARL v Administration de douanes* (Cases C-362/07-C363/07) ... at [39] and the wording of GIR 3 itself).

(6) Classification must proceed on a strictly hierarchical basis, taking each level of the CN in turn. The wording of headings and subheadings can be compared only with the wording of headings and subheadings at the same level (see the opinion of Advocate General Kokott, *Uroplasty* [43]).

44. It is for the national court, in this case the Tribunal, to determine the objective characteristics, having regard to a number of factors including their physical appearance, composition and presentation (*Wiener SI GmbH v Hauptzollamt Emmerich* (Case C-338/95 at [21]).

Parties' submissions

Appellant's submissions

45. Mr Gibbon's submissions, on behalf of the Appellant, are summarised as follows.

Dolls

46. The only extant guidance during the period of the imports was the HMRC Guidance Note – Classifying toys, games and sports equipment for import and export (2012) which stated:

“Remember that dolls only representing humans are covered by these classification codes”.

47. From 31 May 2018, the insertion of the additional Note into the CNEN for 9503 00 applies but only from 31 May 2018 and cannot have retrospective effect, that position was accepted by both HMRC Review Officers.

48. HMRC's Guidance draws from the working of the commodity code which specifies that dolls representing only human beings are covered by it. The only specified test (from both the commodity code and the Guidance) for a toy figure to be classified to the representing only human beings' commodity code is that it must represent a human being and only a human being. The corollary must also be true: if a figure represents something other than only a human being it cannot be classified under the representing only human being's commodity code. The test is not whether a toy figure “looks like” a human being, or whether some human-like features are discernible. The test is whether a specific toy figure only “represents” a human being. It is to be assumed that the word “only” was not used gratuitously, and it must signify that the phrase means something different to shorter phrase “represents a human being”.

49. A typical dictionary definition of the word “represent” (in the context in which it is used in the commodity code) is to “depict” or “portray”. It follows that in order to fall within the commodity code a toy figure must “depict” or “portray” only a human being. The Appellant submits that the colour of a toy figure, the background of the character which the figure depicts or portrays and any special characteristics which that character may have are all relevant in determining whether it does or does not “depict” or “portray” only a human being.

50. There are a number of reasons why the individual attributes of a toy figure might dictate that it does not depict or portray only a human being even if it has some features which might be said to look humanoid:

- (1) Its features, or some of them, are different to those found in human beings;
- (2) It is a different colour to human beings;
- (3) The character which it depicts or portrays is another species, for instance an alien or a God, or from a different world to Earth;

(4) The character which it depicts or portrays has superpowers or special abilities which human beings do not have;

(5) The character which it depicts or portrays is a doll.

51. If a figure does not “depict” or “portray” only a human being then it must depict or portray something which is other than human, i.e., a non-human creature. Support can be found in Note D(i) to Heading 9503 of the EN to the HS provides that the following will be considered non-human:

(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g., angels, robots, devils, monsters), including those for use in marionette shows.

52. It is clear that even a figure with human physical characteristics or predominantly human physical characteristics may qualify as representing a non-human creature by virtue of Note D. All the items imported by the Appellant are licensed products and it is not impractical to classify a figure based on the individual characteristics of the character it represents (the backstory) as the answer can be found one mouse click away on Google.

Sets

53. In respect of sets the CNEN for sets (9503 00 70) provides:

Other toys, put up in sets or outfits

‘Sets’ of this subheading consist of two or more different types of articles (principally, for amusement), put up in the same packing for retail sale without repacking.

Articles of the same subheading, except for items covered by subheadings 9503 00 95 or 9503 00 99 (since these subheadings may include miscellaneous articles of different types), are not to be considered different types of articles.

Apart from the articles forming a set, simple accessories or objects of minor importance intended to be used with the articles (for example, a plastic carrot or a plastic brush for a toy animal) can be present.

54. It follows that a toy figure with which accessories are boxed does not lose its status as a toy figure and become a toy set just because of the presence of those accessories. HMRC re-classified the Predator toy in the Third Appeal as they recognised that the accessories packaged with the main figure did not give the character its essential character but were accessories purely to be used with the figure.

55. A toy figure may only be classified within the commodity code for Sets if the package contains items which are not directly connected with the figure. If items are directly connected with the figure and are to be used together with the figure (i.e., they are accessories) then the figure cannot be classified as a set. It does not matter how many such items are within the package or how large they are. In addition, an accessory is something which is necessarily either removeable or separate from the main toy figure, Note 3. The test is whether the article is for use solely or principally with the main figure; independent use is irrelevant unless such use suggest that the article is not for use solely or principally with the main figure.

56. In its written closing submissions, the Appellant relied upon the meaning and application of Note 3 in *BaB CA*. Whilst the Appellant accepted that the decision was not on point with this appeal, it was submitted that some useful principles can be derived from it. *BaB CA* held that Note 3 does apply to the subheading for toys representing animals or non-human creatures. At [94] Whipple LJ stated:

“Where a chapter or section note such as Note 3 applies, classification is determined according to that chapter or section note, and no further enquiry or comparison with any other subheading is required or permitted.”

57. At [23] and [25], the CA referred to the finding which had been made by the FTT at [170] and [187] that the articles were suitable principally for use with stuffed toys. At [80], The CA stated that the UT had upheld the FTT finding and that the issue was not an issue before the CA. At [171] of its decision the FTT interpreted the meaning of Note 3 as this:

“On their natural meaning I interpret the word “suitable” to mean right or appropriate and the term “principally” to mean for the most part or chiefly.”

58. That interpretation was approved in *BaB UT* at [81]; and the CA was not required to interpret or reinterpret the meaning of Note 3, referring throughout to the language of the Note. It follows that Note 3 does apply to articles which are packaged with, and which are subordinate to toy figures which represent non-human creatures (as was contended for by HMRC in *BaB CA*). Such packages are not transformed into sets just because the subordinate articles would be classified under a different sub-heading if put up separately; nor because a subordinate article might be capable of use for independent play. If such articles are “right or appropriate” for use “for the most part or chiefly” with the main toy figure, then they should be classified together with the toy figure.

59. In order to be able to assess accurately whether a subordinate article is suitable for use either solely or principally with the main toy figure, one must have some understanding of the nature of the character which the figure represents and its connection to the subordinate article(s). This must be so even after 31st May 2018. This may require some knowledge of the backstory of the character. For instance, the hammer packaged with Thor at Line 33 below can, according to the backstory, only be wielded only by Thor which means that it is suitable for use at least principally, and probably solely, with the main figure. The fact that a toy is licensed is, therefore, automatically evidence of a strong connection between the figure and any subordinate articles and those subordinate articles must, therefore, be suitable for use at least principally with the main toy figure.

Other toys of plastic

60. In respect of other toys of plastic there is an EN in CNENs which covers this commodity code:

These subheadings include humanoid figurines, for example, in the form of film, fairy-tale or comic book characters, Indians, astronauts or soldiers, not with movable parts and not with detachable clothing, fixed on a base-plate, pedestal or a similar base which enables the figurine to maintain its pose unsupported.

Such figurines often form part of a collection series. Because they are small, light and robustly made, they are, however, usually used as toys by children. Their recreational function therefore outweighs their ornamental value.

To fall within this commodity code, a toy figure without moving parts must be “*small, light and robustly made*” and its recreational function must outweigh its ornamental value.

Statuettes

61. The subheading refers to products which are “statuettes and other ornamental articles” and therefore to be a “statuette” a figure must be ornamental. The Cambridge Dictionary defines “ornamental” as “beautiful rather than useful”; the Britannica

Dictionary defines it as “used for decoration”; the MacMillan Dictionary as “designed to be used as a decoration”; the Merriam-Webster dictionary as “of, relating to or serving as ornament”; the Longman Dictionary as “designed to make something look attractive rather than to be used for a particular purpose”, and the Concise Oxford Dictionary as “serving as an ornament; decorative”.

62. The issue is whether a figure can be said to be purely beautiful, decorative or attractive in which case it may be described a statuette; or whether its play value outweighs its ornamental value, in which case it is properly described as a toy. There is nothing which stipulates that, to be a toy, a figure must have moveable parts. Subheadings 9503 00 81 – 9503 00 95 each cover a category of toy which does not have moving parts. The figures are imported and sold as toys and have recreational value by providing amusement and entertainment including recreational conversation and re-enactment of favourite scenes from films or comic-books. HMRC’s view of play is very old-fashioned and fails to take account of re-enactment, conversational play and interactive play with pictures and social media, as being valid forms of play, with recreational value. These elements are that much more valid because all the figures are licensed. Several BTIs issued by the German authorities in or around 2016 confirm that a figure does not lose its status as a toy because it does not have moveable parts.

HMRC’s submissions

63. For HMRC, Ms Frawley’s submissions are summarised as follows.

64. The Tribunal is required to determine the correct commodity code as applicable in respect of the disputed imported items all of which had been classified by the Appellant to commodity code 9503 00 99 90 which applies to “*toys – other – not of plastic*” dutiable at 0%. Accordingly, this code ought not to have been used by the Appellant or applied on importation. HMRC reclassified all the items to commodity code 9503 00 21 90 “*Dolls representing only human beings*” dutiable at 4.7% but provided the Appellant with the opportunity to present additional information and samples of the goods where the revised commodity code was not accepted. Following correspondence between the parties and formal reviews, HMRC’s classification was affirmed and a spreadsheet setting out the items that remained in dispute provided to the Tribunal at the start of the hearing and updated during the hearing. It is HMRC’s position that in some instances it was not possible to determine the appropriate commodity code without further information from the Appellant.

65. It is HMRC’s case that the Appellant’s suggestion that he classified all items originally to 9503 00 99 90 as he was directed to do so by HMRC is unsupported by the correspondence and it being accepted by the Appellant that no issue of “misdirection” was being advanced. Previously, the Appellant had made greater effort to classify products on importation under a variety of commodity codes and with different rates of duty applying. It is HMRC’s case that if the Appellant had applied the correct approach to classification, he would have considered whether an item was a “doll” and discount this before moving on to other sub-headings such as “toys representing animals or non-human creatures” which, only if properly discounted would then require the Appellant to move on to other sub-headings such as “Other”. Having discounted “*toys representing animals or non- human creatures*” at the material time of importation, the Appellant did not genuinely believe that the items imported fell to be classified under the sub-headings “*animals or non-human creatures*”. As that commodity code was not used it must have been discounted by the Appellant as not being applicable. It is submitted that the Appellant moved down through the list of sub-headings to find a code with a nil rate of

duty ignoring the fact that the commodity code did not apply to items constructed of plastic.

66. It is HMRC's case that the Appellant's reliance on the "backstory" of the product and "non-human" qualities of a particular character rather than the "non-human" physical characteristics of the product is more likely than not to have arisen as a result of the release of CNEN on 31 May 2018 inserting additional text in to the original CNEN to the effect that:

"To distinguish between toys representing human beings and toys representing animals or non-human creatures, no account shall be taken of:

- their colour (for example, a purple or green skin colour does not give them the character of a 'non-human creature') and
- the background of the characters represented by them or their skills and abilities (for example, their place of birth or their ability to fly)."

67. The fact that a licensed item might have special powers as part of their backstory does not override the otherwise physical features of a character appearing in human form. Similarly, simply because a "*doll representing only a human being*" may not retain some human physical characteristics (e.g., for the sake of modesty, nipples or genitalia) does not turn what is otherwise ostensibly a "man", "woman" or "child" into a "non-human creature". HMRC's case is that the expression "*animals and non-human creatures*" is intended to cover items that may not necessarily be so classified in scientific study but would be more akin to an animal than human being. It is not intended to cover "animals" or "creatures" that otherwise represent the human form.

68. A "human being" is simply a "person" and where a "doll" or "figurine" is physically observed as representing a "man, woman or child" and is constructed of plastic it will be classified under 9503 00 21 or 9503 00 95 90 or classified as part of a "set" under 9503 00 80 00.

69. The Appellant's reliance on the "backstory" of the item to classify items as "non-human creature" even when they look and appear as a typical "man, woman or child" is simply wrong as a matter of law and not consistent with the HSEN or CNEN. The publication on 31 May 2018 sought to clarify the correct position as a matter of law rather than publish an amendment that resulted in different treatment, its publication was of no consequence to the Appellant's approach to classification.

70. The "backstory" cannot be relevant to the classification of "goods". Goods are physical items which must be assessed on importation on the basis of their physical characteristics. Such characteristics are to be considered by reference to 'dolls' or 'other' according to the CNEN. So, an item which could be considered to be 'human' or 'humanoid' will properly be classified as a 'doll representing a human being' where it has moveable parts or 'other' where it does not have moving parts and is on a base. The other alternative might be a statuette under commodity heading 3926 where the ornamental value outweighs the recreational function (per the CNEN). In applying the headings and sub-headings objectively and in order and in following the guidance and approach specified in the CNEN, it is clear that items that look like human beings will be classified under 'dolls' or 'other' but not 'toys representing animals or non-human creatures'.

71. The fundamental principles of classification have been stated and re-stated on multiple occasions to be based on the objective physical characteristics, properties and intended use of goods (cf. *BAS Trucks BV v Staatssecretaris van Financiën* (C-400/05) and *Thyssen Haniel Logistic GmbH* C-459/93 cited at para 29 of *BAS Trucks*).

72. It is HMRC's position that the use of "only" in "dolls representing only human beings" simply refers to dolls representing "only" human beings as opposed to an item that would otherwise qualify as a doll, but which represented an 'animal' or other 'non-human creature'.

73. HMRC's evidence also confirmed that where what would otherwise physically appear to a man, woman or child but had, for example, wings, fangs, robot parts in place of limbs or a mask covering a face such that it was not clear if the face underneath was that of a human or non-human; then the item would be considered to represent a 'non-human creature'. But where the item did not have specific non-human physical characteristics, and otherwise met the criteria for a doll or humanoid figurine, then the item would properly fall to be classified as either a 'doll representing only human beings' or 'other of plastic' with a duty rate of 4.7% (if not a set).

Dolls

74. Regardless of the characteristic of their fictional character and the fact some are wearing full bodysuits, if the items clearly show the essential characteristics of a human being, they should correctly be classified to 9503 00 21 90. Where the item has clearly defined non-human features such as fangs, claws, animal type ears, robotic appearance etc. such features warrant classification as a non-human creature.

Accessories

75. HMRC's position is that where an item was held or physically connected to a toy figure, HMRC may be more likely to determine that the item was an "accessory" but it was not HMRC's case that this was the sole criterion nor that such a test would be applied in all instances. HMRC's evidence was that such items could constitute accessories, but that it was Officer Pond's evidence in this appeal that the items presented with Dolls or Non-human were not accessories but were items provided with the principal item as part of a Set unless otherwise stated in the spreadsheet. It is HMRC's position that the tests for Accessories and Sets must be applied on a case-by-case basis and by reference to the objective and essential characteristics of such items.

Sets

76. It is HMRC's position that whether or not items fall to be classified as Sets follows the legal provisions of GIR 1 and 6. The terms of sub-heading 9503 00 70 would apply in respect of mixed items which on their own would fall to be classified under other headings or sub-headings (provided such headings, sub-headings or explanatory notes do not otherwise require an alternative approach). The reference specifically to 'parts and accessories' of 'dolls' represents an alternative approach contemplated by 9503 00 29. There is no such 'alternative approach' contemplated under sub-headings 9503 00 41 or 49 and the terms of the legal Note 3 to Chapter 95 do not upset that conclusion. Accordingly, the terms of sub-heading 9503 00 70 are clear and would apply in respect of items comprising a 'set' which did not comprise 'dolls' and 'parts or accessories' of 'dolls'. 'Non-human toys' and any articles supplied with them therefore fall to be classified as 'sets' subject to the criteria detailed below. To classify items within the terms of the Sets sub-heading 9503 00 70, items must consist of two or more different articles put up in the same packing for retail sale. As a general rule, a 'set' must contain items which are of "different types" i.e., that would be classified under separate subheadings within heading 9503. An exception is for combinations of items which all fall within subheading 9503 00 95 or subheading 9503 00 99. In addition to the main articles which form the set, the set may include accessories which are intended to be used with those articles, see the CNEN to sub-heading 9503 00 70, and [206] of *BaB UT*.

77. Whether or not items supplied with items which on their own would fall to be classified under sub-heading 9503 00 41 or 49 ‘non-human’ toys (and indeed any other sub-heading which does not make express reference to ‘parts and accessories’) have to be considered by reference to the tests for ‘accessories’ or ‘sets’ generally. It is HMRC’s position that whether or not items fall to be classified as ‘sets’ follows the legal provisions of GIR 1 and 6. The terms of sub-heading 9503 00 70 would apply in respect of mixed items which on their own would fall to be classified under other headings or sub-headings (provided such headings, sub-headings or note do not otherwise require an alternative approach). The reference specifically to ‘parts and accessories’ of ‘dolls’ represents an alternative approach contemplated by 9503 00 29. There is no such ‘alternative approach’ contemplated under sub-headings 9503 00 41 or 49 and the terms of the legal Note 3 to Chapter 95 do not upset that conclusion. Accordingly, the terms of sub-heading 9503 00 70 are clear and would apply in respect of items comprising a ‘set’ which did not comprise ‘dolls’ and ‘parts or accessories’ of ‘dolls’. ‘Non-human toys’ and any articles supplied with them therefore fall to be classified as ‘sets’

78. Note 3 is only applicable in respect of items otherwise classifiable outside of Chapter 95 but which are supplied with items classifiable under Chapter 95. In such instance, consideration has to be given to whether or not such ‘parts or accessories’ are suitable for use ‘solely or principally’ with articles otherwise classifiable under Chapter 95. That is the only basis upon which the test ‘solely or principally’ comes into play and is not relevant in this case. If for any reason the interpretation of the terms ‘solely’ or ‘principally’ require clarification, plainly ‘solely’ means only. The Tribunal in BAB UT (Paragraph 81) considered “the obvious meaning of the term ‘suitable’ was “right and appropriate” and that ‘principally’ was ‘for the most part mostly or chiefly’.

Other toys of plastic

79. None of the items classified under this heading by HMRC are disputed by the Appellant.

Statuettes

80. Consideration must be given to classification 3926 40 “*Statuettes and other ornamental articles of plastics*”. The question to be asked is whether the quality of the figurine is such that the decorative nature of it, the robustness, the weight and size, is considered to outweigh the recreational function.

81. HMRC consider that an item representing a human being without moveable parts cannot be classified as a Doll under 9503 00 21 90. If the doll is capable of standing unsupported (with or without a base) and maintaining a pose and is not small, light and robustly made whose recreational function outweighs its ornamental value to fall under 9503 0095 90 “other” then it should be classified according to its constituent material in Heading 3926.

Blind bags

82. The evidence was that the “blind bags” would include a principal item such as a “zombie” or a “survivor” together with accessories. The purpose of a ‘blind bag’ is to create a surprise for the buyer who can then go on to collect the items and swap duplicates with other collectors. HMRC took the view that as only three of the 17 in a blind bag series represented a Non-human, the Tribunal should apply a “balance of probabilities” test to classification as it is more probable that not that the bags will include a Doll. In the alternative and as the parties are agreed that the contents of the blind bags are made of plastic the Tribunal may prefer to classify the blind bags to “Other – of plastic” which also attracts duty as the rate of 4.7%.

BaB CA

83. HMRC's position in respect of *BaB CA* is that the reliance on *BAB CA* on the basis contended for by the Appellant is misplaced. Firstly, the expression 'solely or principally' is irrelevant to the test to be applied by the Tribunal in the circumstances of this case. *BAB CA* was only concerned with the distinction between accessories to "Dolls" or accessories to "Toys" at that stage. The questions of Sets had been resolved by the UT and was not a point under appeal before the Court of Appeal. It is not in dispute that all items under consideration in this appeal fall within different sub-headings of Chapter 95, not headings or sub-headings outside Chapter 95. Accordingly, the Appellant's reliance on *BaB CA* for its proposition about the use of the expression 'solely and principally' and the court's approach to Note 3 is not relevant to the circumstances of the appeal as all the *BaB* decisions concerned items that were all imported separately to the main articles to which it was submitted that other parts and accessories were 'suitable for use solely or principally' with.

DISCUSSION

Tribunal approach

84. The approach that we are required to take, and have taken, in determining the appropriate classification of the disputed items, is to determine the objective characteristics and properties of the disputed items as defined by the wording of the relevant heading of the CN and the notes to the sections or Chapter of the CN. Having determined the objective characteristics and properties of the goods, we examined the wording of the headings and the explanatory notes to the relevant sections and Chapters to determine whether a definitive classification can be reached, in accordance with GIR 1 and GIR 6. In the event that a definitive classification could not be reached, we proceeded to consider GIR 3.

85. The spreadsheet agreed by the parties during the course of the hearing referenced all the items that were originally in dispute. We have summarised below the agreed spreadsheet by referencing the remaining 46 items in dispute together with a description of each item based upon our findings of fact following consideration of the evidence, the basis for the parties' respective classification and the classification determined by the Tribunal in accordance with our conclusions on classification under the relevant subheadings to Chapter 9503 and 3926 as set out below.

Misdirection

86. The issue of misdirection was raised by MF during the course of his evidence. MF's evidence was that during the audit visit by HMRC in 2011, the HMRC auditing officer had approved the use of code 9503 00 99 90 in relation to certain items which, like all the disputed items in this appeal, were all licensed products supplied by the same manufacturers and made from the same materials as the items in dispute in this appeal. For those reasons, MF stated he had subsequently authorised the use of code 9503 00 99 90 ("Other, Other not of plastics, Other) for all the disputed items the subject of this appeal. Mr Gibbon confirmed that "misdirection" was not being relied upon in this appeal and it did not have any bearing on the determination of these appeals save as a defence to any suggestion by HMRC that MF deliberately used code 9503 00 99 90 as it attracted zero duty.

87. HMRC relied upon the Appellant's classification of all items to 9503 00 99 90 as confirmation that the Appellant did not consider code 9503 00 49 90 Non-human toys relevant at the time of importation. It was only as a result of the release of CNEN on 31 May 2018 inserting the additional text into the original CNEN that the Appellant in its

appeal relied upon the “backstory” to classify the overwhelming majority of the disputed items to the heading “animals or non-human creatures”.

88. It is clear that this Tribunal does not have jurisdiction to consider the issue of misdirection as that is properly a matter for judicial review and, in any event, it was made clear that the Appellant did not rely upon misdirection. Accordingly, we have not considered the point further. We note that at no point in these proceedings has it been suggested by HMRC that a penalty should be imposed to reflect the Appellant’s use of the incorrect classification code for all the imported items. We also note that HMRC in the Right to be Heard letter classified all of the items to 9503 00 21 90 “Dolls representing only human beings and parts and accessories thereof other” rather than the subsequent classifications sought by HMRC during the course of the appeal and at the hearing.

Backstory

89. In determining the classification of the disputed items, we have had at the forefront of our minds the guidance from the UT in *Barrus & Kubota* at paragraph 42 above that the Tribunal’s function is to determine the objective characteristics and properties of the items from their external characteristics and presentation and, provided it is inherent in the characteristics of the product, its intended use. Marketing materials and a products targeted use are not to be taken into account. We note that in *UT BaB* it was stated: “*That does not rule out, however, that such material [marketing and manual(s)] may contain statements of relevance where, for example, it contains an explanation of how a particular product is intended to operate by reference to its objective characteristics and properties*” but we do not consider that point to be applicable here.

90. Taking account of the approach to customs classification outlined at paragraph 43 above we have no hesitation in rejecting the Appellant’s primary submission that the licensed product’s “backstory” is a relevant and determinative criterion when classifying the products. No support for such an approach can be found in the case law.

91. The product’s “backstory” is clearly not an objective characteristic that is readily apparent from the external characteristics of the product such that it can be easily appraised by the customs authorities. We agree with HMRC’s submission that the Appellant’s reliance on the backstory of the product incorrectly focuses on the “non-human” qualities of a particular licensed character rather than correctly focussing on “non-human” physical characteristics of the product. HMRC submitted that the Appellant’s focus on the “backstory” of the product is more likely than not to have arisen as a result of the CNEN on 31 May 2018 which stated that when distinguishing between toys representing human beings and toys representing animals or non-human creatures no account should be taken the character’s colour or their “backstory”.

92. We agree and find on the balance of probabilities that it is more likely than not that the Appellant’s focus on the backstory arose as a result of the release of the CNEN on 31 May 2018. MF’s evidence of his approach to classification at the material time placed no reliance upon the “backstory” and we agree with HMRC’s submission that if the Appellant did believe that the skin colour and “backstory” were relevant to the classification of the goods then it is reasonable to conclude that he would have classified the goods to the Non-human subheading (code 9503 00 49 90) rather than the code that was used: 9503 00 99 90 “other-not of plastic”. We agree with Mr Gibbon that the CNENs are not retrospective insofar if its application results in a higher rate of duty payable; however, the CNENs do not have the force of law, and as stated in paragraph 41 above the content of the CNENs must be compatible with the CN and cannot alter the

meaning of those provisions and merely clarifies what the CN has always meant. We note that Ms Pond's evidence was that the approach to classification stated in the CNEN dated 31 May 2018 was the one that HMRC had applied since she joined the team in 2015, we accept that HMRC were applying the correct approach to classification.

93. Accordingly, we have taken no account of the "non-human" qualities in the character's "backstory" but have focused instead on the objective characteristics and properties of the items and their presentation when applying the general approach to customs classification of goods.

Dolls v Non-human toys

94. The Dolls subheading states: "*Dolls representing only human beings and parts and accessories thereof*". As agreed at paragraph 46 above, the only relevant HMRC Guidance extant at the time of importation stated under the heading "Dolls representing humans, their parts and accessories": "*Remember that dolls only representing humans are covered by these classification codes.*" We accept that guidance as correct although it does not take matters any further.

95. Mr Gibbon submitted that the use of the word "only" in the subheading was not used gratuitously and that the word "representing" is to be given its typical dictionary definition as "depicting" or "portraying". We accept that the dictionary definition is a helpful starting point in determining the meaning of ordinary words used in the CN. We agree that the use of the word "only" was not used gratuitously and that "representing" is to be given its typical dictionary definition as "depicting" or "portraying" and it follows that in order to fall within the Dolls subheading the figure must depict or portray only a human being. However, we disagree with the Appellant's submission that the test is not therefore whether a figure "looks like" a human being or whether some human-like features are discernible as the inclusion of "only" means that there must be aspects to the test other than just evident physical human features.

96. As previously stated, we have rejected the Appellant's reliance on the figure's "backstory". Goods are physical items which must be assessed on importation on the basis of those physical characteristics and we agree with HMRC that dolls that look like and depict or portray only human beings will be properly classified under the Dolls subheading. In our view, Note D(i) to heading 9503 of the EN to the HS (relied upon by both parties) supports that conclusion. Note D(i) states that the following will be considered non-human:

“(i) Toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g. angels, robots, devils, monsters), including those for use in marionette shows.”

97. We consider that the use of the words "*even if possessing predominantly human physical characteristics*" indicates that the predominance of human physical characteristics is the test to be applied to determine whether a toy represents only a human being but the presence of obvious non-human or animal physical appendages or features such as angel wings, a devil's horns, furred legs with hooved feet, fangs, mechanical robotic parts in place of human body parts etc. would mean that the toy represents an animal or non-human creatures. There is a clear dividing line in the subheading between dolls in human form and toys in non-human form and the Non-human toy classification complements the Dolls heading by classifying separately other articles which do not represent only human beings but represent animals or non-human creatures.

98. HMRC relied upon the cross-reference contained in the EN to the Dolls subheading in support of its submission that it is clearly implicit from the cross-reference

that where items that are in human form but are not classifiable as Dolls, the fact that they may represent film, comic book or fairy tale characters with special powers does not override their otherwise physical characteristics. The EN to the Dolls subheading states:

“Dolls

...

See also the explanatory note to subheadings 9503 00 81 to 9503 00 99.”

99. The EN to subheadings 9503 00 81 to 9503 00 99 states:

“These subheadings include humanoid figurines, for example, in the form of film, fairy-tale or comic-book characters, Indians, astronauts or soldiers, not with movable parts and not with detachable clothing, fixed on a base-plate, pedestal or a similar base which enables the figurine to maintain its pose unsupported.

Such figurines often form part of a collection series. Because they are small, light and robustly made, they are, however, usually used as toys by children. Their recreational function therefore outweighs their ornamental value.”

100. The Appellant submitted that all the cross-reference is doing is indicating that where a figure cannot be classified as a Doll, it may yet be classified under subheadings 9503 00 81 to 9503 00 99. It goes no further than that. We agree with the Appellant that it goes no further than that but accept HMRC’s submission that it is clearly implicit from the cross-reference that where items that are in human form but are not classifiable as Dolls the fact that they may represent film, comic book or fairy tale characters with special powers does not override their otherwise physical characteristics subject to the item satisfying the requirements that it be “small, light and robustly made”.

Moveable parts

101. It was HMRC’s case that in order for an item to be classified to the Dolls subheading, the item must have moveable parts. It was submitted that whilst not all dolls are jointed or have mechanisms which permit movement, they may be soft and pliable which means they have movement e.g. “plush dolls”. HMRC relied upon the EN for the Dolls subheading which states:

“Dolls

See the HS explanatory Note to heading 9503 (C), first two paragraphs.

See also the explanatory note to subheadings 9503 00 81 to 9503 00 99.”

102. HMRC’s review conclusion letter dated 14 March 2019 in respect of the First C18 stated “*Although clearly representing a human being the item does not have moveable parts ... As the figure does not have moveable parts the item cannot be classified as a doll with human resemblance under 9503 00 21 90*”. HMRC’s Statement of Case was not as definitive and merely stated at para. 31 “*if the doll has moveable parts and the appearance of a human the likelihood is that it should be classified as human*”.

103. The Appellant submitted that the HSEN to heading 9503 (C) does not require that dolls must have movement to be classified to that commodity code but rather it is permissive as it states: “*They may be jointed and contain mechanisms which permit limb, head or eye movements*”. [emphasis added]. The HSEN continues stating: “*They may also be dressed*.” We agree with the Appellant. We note that whilst HMRC rely upon “*may be jointed and contain mechanisms which permit limb, head or eye movements*” for the assertion that in order to be classified as a Doll the item must have moveable parts, no reliance is placed on “*They may also be dressed*” despite it also being worded in similar terms and similarly permissive. The cross reference to the EN to subheadings

9503 00 81 to 9503 00 99 in the EN to the Dolls subheading makes no reference to Dolls and relevantly states:

“These subheadings include humanoid figurines, for example, in the form of film, fairy-tale or comic-book characters, Indians, astronauts or soldiers, not with moveable parts and not with detachable clothing, fixed on a base-plate, pedestal or a similar base which enables the figurine to maintain its pose unsupported.

Such figurines often form part of a collection series. Because they are small, light and robustly made, they are, however, usually used as toys by children. Their recreational function therefore outweighs their ornamental value.”

104. The EN tells us that subheadings 9503 00 81 to 9503 00 99 include humanoid figurines without moveable parts and detachable clothing and are affixed to a baseplate, pedestal or similar base which enables the figurine to maintain its pose unsupported. The second paragraph (not relied upon by HMRC in their submission) states that because such figurines are small, light and robustly made they are usually used as toys by children and, as such, their recreational value outweighs their ornamental value. We agree with the Appellant’s submission that the EN is not providing any guidance on what may or may not be classified as a Doll but is making clear that where an item cannot be classified as a Doll it may be classified under subheadings 9503 00 81 to 9503 00 99 but goes no further than that.

105. We note that HMRC place no reliance on the presence or absence of detachable clothing as a criterion despite the EN stating “not with moveable parts and not with detachable clothing” [emphasis added]. If it had been intended that only dolls with moveable parts and removeable clothing were to be classified as Dolls it could have easily been expressly stated or referred to in the HSEs.

Simple Accessories

106. HMRC accept, in reliance on the CNEN to the Sets subheading and the decision in *BaB UT*, that “*objects of minor importance intended to be used with the articles (for example, a plastic carrot or a plastic brush for a toy animal) can be present*” and that such items presented in the same package may be considered “simple accessories” and the items classified by reference to the main item. HMRC’s position set out in closing submissions was that if other articles were included with the main article, which were more than just simple accessories and which had independent play value, the correct classification may be that of a Set under 9503 00 70 00. HMRC submitted that we need to look at size of accessories, if they are very small, it is accepted that the item is a simple accessory to be used with the main item and does not have independent play value. In response to the Member’s question about the decision tree for accessories, CP confirmed that the starting point was to consider whether the item was a simple accessory that could be used by the main item. The Appellant also relied upon the CNEN to the Sets subheading which states that simple accessories or objects of minor importance intended to be used with the product can be present without altering its classification.

107. The Appellant referred to the Third Decision (which is no longer in dispute in this appeal) as instructive as to the correct approach to be taken when considering whether items supplied with the main figure were simple accessories. The Third Decision concerned the classification of a Predator 8” Ultimate Ahab figure made of plastic; the figure represented an alien creature from the popular film series “Predator”. The figure is fully articulated and boxed with the main figure were alternative hands for different poses together with an Engineer gun, a spear, a gauntlet and a skull trophy. The figure had knee, arm and loin armour, a brown skirt, a silver double buckle belt, a fabric burgundy cape, dreadlocks and a removeable helmet. HMRC classified the boxed items

as a Set (9503 00 70 00) relying upon GIR 3(b) as they considered that the Engineer gun, spear, gauntlet and skull trophy gave the set its essential character.

108. HMRC's stated reasons in their letter dated 3 December 2021 were:

"The reasons for this classification was that the time, we considered the various weapons to have their own play value, independent of the main Predator toy. However, upon receipt of the sample ... it is apparent that the various accessories (weapons, armour, interchangeable hands etc.) do not have independent play value and are all to be used with the Predator toy. ... Given that we now view the small accessories that come with the Predator toy as *simple accessories intended to be used with the article*, this toy cannot be treated as a toy set." [italics provided]

109. We examined the Predator figure and accessories during the hearing and agreed with HMRC's conclusion that the items packaged with the Predator figure were small, simple accessories with no independent play value that were intended to be used with the Predator figure. We agree with HMRC that the correct approach is that each item has to be considered on a case-by-case basis and by reference to the objective characteristics and essential characteristics of such items to ascertain whether the items packaged with the principal item are small, simple accessories with no independent play value that are intended to be used with the main item.

Accessories

110. HMRC's position in respect of Accessories and Sets changed during the course of the appeal and the hearing. CP's evidence was that if the subordinate articles (the items packaged with the principal figure) would fall to be classified within a different subheading if presented separately, then the correct classification of the items would be as a Set. HMRC's Response to the Appellant's Closing Submissions confirmed that it was not HMRC's position that items "could only be an accessory if it could be held by or was otherwise physically connected to the toy figure" but where an item was held or physically connected to a toy figure, HMRC may be more likely to determine that the item was an accessory. It was not HMRC's position that this was the sole test nor indeed that such test would be applied in all instances nor that an item that could not be held or nor attached to the figure could never be an accessory. However, on the facts of this appeal, HMRC's stated position was that all of the items presented with the Dolls and Non-human toys were not accessories but were items provided with the principal figure as part of a Set (unless otherwise stated in the spreadsheet).

111. The Appellant's position was that as all the disputed items are licensed products, all the items packaged with the principal item are automatically closely connected to the principal item such that they are accessories by virtue of the fact that they are licensed products. In support of that submission, the Appellant relied upon the decision of Whipple LJ in *BaB CA*. We cannot find any support in *BaB CA* nor any other authority for the Appellant's submissions on licensed products. We reject that submission.

112. In *BaB UT*, the UT considered the words "parts and accessories" and concluded that the Tribunal in *BaB FTT* had applied the correct test in determining whether items were accessories:

224. The Upper Tribunal in the *Ameona* case ([2013] UKUT 0394 (TCC)) had found that the bra could be regarded as an accessory of the breast form. The Upper Tribunal's decision was reversed by the Court of Appeal ([2015] EWCA Civ 25), but the Supreme Court, in a judgment given by Lord Carnwath, allowed the taxpayer's appeal.

225. In his judgment, Lord Carnwath, acknowledged the difficulties of applying the principles set down by the CJEU in very different contexts to the facts of the case

(*Ameona* [43]), but, in broad terms, endorsed the Upper Tribunal’s approach in finding that the words “parts and accessories” were to be given their ordinary meaning in their context. On that basis the bra was an accessory to the breast form because it enabled the breast form to perform its function. That approach was not inconsistent with the principles set out by the CJEU in the *Unomedical* and *Turbon* cases (*Ameona* [44]).

226. The relevant passage from the Upper Tribunal’s decision to which Lord Carnwath refers at *Ameona* [31] appears at [57] of the report of the Upper Tribunal’s decision. It is as follows:

“... In our view, an accessory is not merely something which is used in conjunction with an item: an accessory must also contribute something to the item. We consider that an accessory must provide some additional functionality or enhance the performance of the item. An accessory is an optional improvement to the product whereas a part is something that is essential or integral to the functioning of the item.”

227. In the present case, the FTT found that the plastic and textile items were not simply things which were used in conjunction with a doll. The plastic and textile items enhanced the amusement or play value of the doll by “adding to the character of the doll and the role play scenarios in which a child can use a doll” (FTT [243]). In doing so, subject to the issues concerning the guidance given in the HSEs to which we refer below, in our view, the FTT applied the correct test to determine whether the plastic and textile items should be regarded as an accessory as applied by the Upper Tribunal and endorsed by the Supreme Court in *Ameona*.

...

230. There is nothing in the wording of Note 3 to Chapter 95 or the headings or subheadings within Chapter 95 to suggest that a more restrictive view of the term “parts and accessories” should be adopted for the purposes of items falling within this subheading.

...

232. If the draftsman had intended there to be a separate principle that only items which can be worn by a doll can be treated as accessories of a doll, he or she would either have said so expressly in Note 3 or, at the very least, referred to such principle in the guidance in the HSEs. Absent any such reference, our conclusion is that there is no such principle. The correct test is that drawn from the case law to which we have referred above. The FTT sought to apply the correct test and the conclusion to which it came regarding the application of that test to the plastic and textile items cannot be impugned.”

113. We have followed that approach in determining whether items supplied with a principal figure are accessories that provide some additional functionality or enhance the performance (here, the amusement or play value of the principal figure).

114. In *BaB CA*, the CA considered the application of Note 3 to Chapter 95 at heading and subheading level.

115. The Appellant submitted that in light of the decision in *BaB CA*, it follows that Note 3 applies to articles which are packaged with and which are subordinate to toy figures which represent Non-human toys. We agree for the reasons set out below.

116. We note at the outset that in *Build-a-Bear Workshop UK Holdings Limited v HMRC* [2019] UKFTT 707 (TC) (“*BaB FTT*”), the Tribunal made findings of fact that that the articles were “suitable principally for use with stuffed toys” and “suitable for use principally, in the sense of for the most part or chiefly, with stuffed bears”. Those findings were upheld in *BaB UT* and were not under appeal in *BaB CA*. Furthermore, it was common ground in *BaB UT* that the accessories (with the exception of hearts) all fell to be classified within Chapter 95. In addition, at [171] *BaB FTT*, the Tribunal interpreted the meaning of “suitable” and “principally” as:

“On their natural meaning I interpret the word “suitable” to mean right or appropriate and the term “principally” to mean for the most part or chiefly.”

117. That interpretation was approved by the UT in *BaB UT* at [81] and, again, was not under appeal in *BaB CA*.

118. In *BaB UT* it was stated (insofar as relevant to this appeal):

“67. We were not referred to any case law which assists on the correct interpretation of Note 3.

...

71. We reject the argument that Note 3 applies solely to differentiate between articles that fall within Chapter 95 and those which do not, for the following reasons:

(1) BAB’s construction seems to us to ignore the express requirements of GIR 1 and GIR 6 to the effect that “The titles of sections, chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes...” and “...the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis to the above rules...”.

(2) Having regard to GIR 1 and GIR 6, classification is expressly to be determined by reference to the terms of particular headings and subheadings, together with related section and chapter notes. GIR 1 does not envisage that classification should be undertaken by reference to chapters, an exercise which would require a focus on the organization of the products into those chapters, rather than on the terms of particular headings and subheadings.

(3) We agree with HMRC that the focus on the phrase “ this chapter “ in Note 3 by BAB is misguided. It accords that phrase a much greater significance than is permitted by the wording of GIR 1 and by the fact that a chapter is merely an organizational device to facilitate reference. In our judgment, the plain and obvious meaning of the words of Note 3 is that the sole or principal use must be in relation to particular “articles”, i.e. particular products falling into a heading in Chapter 95. Thus, the phrase “articles of this chapter” is plainly a reference to articles which fall within the headings contained in Chapter 95.

(4) In this context, we note the reference in GIR 1 to “chapter notes”. Note 3 is plainly not general guidance as to the approach to be taken to the CN whenever “parts and accessories” are in issue. On the contrary, it is a chapter note, designed to determine the classification of items within Chapter 95. We agree with Mr Thomas that an enquiry which required contemplation of the breadth of the whole of Chapter 95 and comparison with other competing chapters would be unworkable and cannot have been intended on the natural and obvious meaning of the words in Note 3 as interpreted against the background of the provisions in GIR 1.

(5) Further and in any event, we cannot see that Note 3 would be of any real efficacy or assistance in the context of the classification exercise if it is merely stating that “parts and accessories” which are solely or principally classifiable with articles (general) in Chapter 95 should be classified with articles in that chapter. Such a reading of Note 3 would provide no guidance whatever as to how those “parts and accessories” are to be classified within the headings and subheadings of the chapter.

(6) Indeed, we agree with HMRC that if BAB’s approach were to be accepted, the effect of Note 3 would be to assemble a list of headings within Chapter 95 between which GIR 3 would then be required to arbitrate. In other words it would give rise to more ambiguity. Indeed BAB appears to acknowledge this in its Grounds of Appeal at paragraph 21(a) when it says that the language of Note 3 “favours the conclusion that a multitude of prima facie classifications is permissible”. This would appear, on the face of things, to be inconsistent with the approach that should be taken to examining the objective characteristics of a

product under GIR 1 and GIR 6, namely (as Lawrence Collins J held in *Vtech* at [107], where he was dealing with a challenge that the Tribunal had stopped at GIR 1 and not determined the dispute under GIR 3) "...to find the category in which it should be placed, and not to assemble a list of theoretically possible but increasingly implausible categories between which the provisions of rule 3 must be used to decide". On our reading of GIR 3, it is intended as a tie-break provision and not as a freestanding basis for classification whenever two or more classifications can be reasonably envisaged.

72. For all of these reasons, we reject the submission that Note 3 operates only to assist the classification of items as between headings in different chapters of the CN. It is a chapter note. The wording of GIR 1 and GIR 6 is clear: classification is to be undertaken according to the terms of the headings and subheadings and any relative section or chapter notes. We agree with the FTT (FTT [175]) that, where Note 3 applies, its purpose is to provide a definitive classification of the relevant part or accessory alongside articles in respect of which it is solely or principally suitable for use. Note 3 is relevant to the entire process of classification of the items to which it applies. There is nothing in the wording of Note 3 itself to suggest otherwise.

...

108. In the present case, it is accepted by the parties that the clothing items and wigs fall within heading 9503. HMRC say that this is because Note 3 applies to bring them within the heading. But, even without Note 3, in our view, the clothing items and wigs would fall within heading 9503; the HSEs in two separate places — first under the heading "General" in the notes to Chapter 95 and second under the heading "Parts and Accessories" — support the view that the headings in the chapter (including heading 9503) extend to parts and accessories which are suitable for use solely or principally with articles within the heading. At that level, the clothing items and wigs would fall within heading 9503 on the basis that the clothing and wigs are suitable for use solely or principally with articles within the heading, that is dolls and/or toys, both of which are referred to in the heading. They would not fall out of the heading, even applying the interpretation of "principally" to which we have referred to above, if they were suitable for use both with dolls and with toys but it was not possible to determine which was the predominant use. The strict hierarchical process would then require that we move on to classify all of the items that have fallen within that heading within a relevant subheading of heading 9503.

...

230. There is nothing in the wording of Note 3 to Chapter 95 or the headings or subheadings within Chapter 95 to suggest that a more restrictive view of the term "parts and accessories" should be adopted for the purposes of items falling within this subheading.

231. As regards the guidance in the HSEs, the list of examples of items which are to be regarded as parts and accessories of dolls is clearly not intended to be exhaustive, as the FTT notes at paragraph [242] of its decision. Leaving to one side the differences between the French and the English versions of the HSEs, the inclusion of dolls' houses and tea sets as items in the "other toys" heading is simply a reflection of the fact that they are regarded as items in their own right and should not be regarded as accessories of other articles such as dolls.

232. If the draftsman had intended there to be a separate principle that only items which can be worn by a doll can be treated as accessories of a doll, he or she would either have said so expressly in Note 3 or, at the very least, referred to such principle in the guidance in the HSEs. Absent any such reference, our conclusion is that there is no such principle. The correct test is that drawn from the case law to which we have referred above. The FTT sought to apply the correct test and the conclusion to which it came regarding the application of that test to the plastic and textile items cannot be impugned."

119. In *BaB CA*, Whipple LJ held that the UT was in error at [108] when it read the HSENs into the heading but similarly concluded that Note 3 did apply at heading level:

“Preliminary:

Issue (i) UT’s Approach to interpretation of Note 3

59. The UT noted the parties’ agreement that the items fell within heading 9503 and HMRC’s submission that this was because Note 3 applied at heading level. However, the UT relied on the HSENs to reach its conclusion, regardless of whether Note 3 applied or not. It said this (with emphasis added):

“108. In the present case, it is accepted by the parties that the clothing items and wigs fall within heading 9503. HMRC say that this is because Note 3 applies to bring them within the heading. But, *even without Note 3*, in our view, the clothing items and wigs would fall within heading 9503; *the HSENs in two separate places* – first under the heading “General” in the notes to Chapter 95 and second under the heading “Parts and Accessories” – *support the view that the headings in the chapter (including heading 9503) extend to parts and accessories which are suitable for use solely or principally with articles within the heading*. At that level, the clothing items and wigs would fall within heading 9503 on the basis that the clothing and wigs are suitable for use solely or principally with articles within the heading, that is dolls and/or toys, both of which are referred to in the heading. They would not fall out of the heading, even applying the interpretation of “principally” to which we have referred to above, if they were suitable for use both with dolls and with toys but it was not possible to determine which was the predominant use. The strict hierarchical process would then require that we move on to classify all of the items that have fallen within that heading within a relevant subheading of heading 9503.”

60. At [45] of its skeleton, BAB says that the UT was wrong to read the HSENs into the heading, citing *Hasbro* at [35] where the Court of Appeal held, in the context of GIR 3(a), that the focus should be on the words of rival headings and not on words of the HSENs which are not replicated in the actual headings. Further, BAB points out that the HSEN itself assumes that Note 3 applies to that heading. At [60] of their skeleton, HMRC agree with BAB’s position, citing *C-15/05 Kawasaki Motors Europe NV v Inspecteur van de Belastingdienst [2006] ECR I-3659 at [37]* for the proposition that explanatory notes to the CN and HS are an important aid to the interpretation of tariff headings but they do not have legally binding force, and that the content of those explanatory notes cannot therefore alter the meaning of those provisions in the CN; this is, in effect, to repeat the point I have already made at paragraph 15 above, quoting the UT at [16(7)]. Thus, neither party seeks to uphold the reasoning of the UT in this passage.

61. I accept the joint view of BAB and HMRC that the UT was in error to the extent that it read the HSENs into the heading in this way. Case law confirms that HSENs cannot be used in this way. Note 3 does apply at heading level, that is agreed, although the way Note 3 operates at that level is disputed and I shall consider that as issue (iii).

120. At [79], the CA stated that Note 3 requires, first, a factual enquiry about the uses for which the accessories are suitable for use solely or specifically with articles in Chapter 95 and then, secondly, to classify the accessories with those articles:

“Issue (iv) Application of Note 3 at subheading level

79. On its face, Note 3 requires, first, a factual enquiry about the uses for which particular parts and accessories are suitable, specifically whether the parts and accessories in question are suitable for use solely or principally with articles in the chapter. If suitability is established, the second aspect of Note 3 becomes relevant, which is to require those items to be classified with those articles. In that way, Note 3 determines classification.

80. The FTT has made findings about the suitability for use of the items in question. Those findings were upheld by the UT and are not under appeal.

...

94. Where a chapter or section note such as Note 3 applies, classification is determined according to that chapter or section note, and no further enquiry or comparison with any other subheading is required or permitted.

...

Summary

97. I would dismiss this appeal. I would do so on the basis that:

- a) By application of GIR 1 and 6, and as agreed, Note 3 applies both at heading and subheading level.
- b) At heading level, Note 3 applies generically. The effect is to import into heading 9503 those parts and accessories which are suitable for use solely or principally with articles in the heading, without at that stage necessarily identifying any one single article. This is a provisional classification. There is no one time use of Note 3.
- c) At subheading level, Note 3 applies unless the context otherwise requires, in which event the proviso to GIR 6 permits Note 3 to be disapplied.
- d) The context does require Note 3 to be disapplied from the Dolls Subheading. But the context does not require that Note 3 is disapplied from the Toys Subheading.
- e) There is no conflict or tension between the Dolls Subheading and the Toys Subheading interpreted in this way. There is no reason for any further disapplication of Note 3.
- f) GIR 3 is not relevant, because the items are not *prima facie* classifiable in more than one subheading.
- g) The items, including footwear, are classified within the Toys Subheading, on the basis of the FTT's findings of fact and by operation of Note 3."

121. In our judgment, it follows from the decisions in *BaB UT* and *BaB CA*, that a factual determination is required to determine whether items supplied with the principal figure are accessories for use solely or principally with the Non-human toy figure; independent use would be considered as a part of that factual determination as independent use would suggest that the items are not for use solely or principally with the main figure. In the event that we find that the items supplied with the principal figure are not accessories, consideration must then be given to the Sets criteria.

122. Whilst it is clear that Note 3 does not apply to the words "parts and accessories" in the Dolls subheading neither the UT nor CA were required to consider the point as it was not in issue in either appeal. In *BaB CA*, Whipple LJ agreed with the UT that:

"Note 3 does not apply to the words "parts and accessories" in the Dolls Subheading and that those words have a meaning independent of Note 3. Like the UT, I do not consider that there is any need to decide precisely what that meaning is, because it will not affect the outcome of this case (UT at [120]) ... It is therefore not necessary to discuss further whether "a" (as opposed to "the") main intended use of an item is sufficient (see *Honeywell Analytics* per Davis LJ at [112])."

123. We note the comments of both the UT and CA in respect of whether "a" as opposed to "the" main intended use of an item is sufficient in respect of "parts and accessories" in the Dolls Subheading. However, we have concluded that that point is similarly not in issue on the facts of this appeal. At Line 17 below, we considered the classification of a modular base packaged with a principal Doll figure. For the reasons set out below, we found as fact that the modular base had no independent play value as its objective characteristics were such that it was only suitable for use with the principal figure.

Sets

124. HMRC submitted that the UT in *BaB UT* had specifically addressed the issue of Sets, that issue was determined in favour of HMRC and BaB was not granted permission to appeal that point to the CA. Accordingly, the relevant principles to be applied in respect of Sets is to be found in *BaB UT* at [190] to [216]. The Appellant's position is that, given the test in Note 3, and given that all the products at issue in this appeal are licensed products, the Tribunal can safely determine that none of them are Sets. We reject the Appellant's submission and agree with HMRC.

125. In *BaB UT* it was stated (insofar as relevant to this appeal):

“The classification of the clothing sets

202. As we have described above, the process of classification should be applied on a strict hierarchical basis taking each level of the CN in turn (see the opinion of Advocate General Kokott in *Uroplasty* at [43]).

203. In the present case, all of the items which are included in these sets clearly fall within Chapter 95 and within heading 9503. The question for us is the subheading into which the sets should fall.

204. This leads us to a consideration of the scope of the Sets Subheading (9503 00 70). The subheading itself simply refers to "Other toys put up in sets or outfits". Further guidance on the scope of the subheading is, however, found in the CNENs.

205. The guidance on the Sets Subheading in the CNENs states the following:

""Sets" of this subheading consist of two or more different types of articles (principally, for amusement), put up in the same packaging for retail sale without repacking.

Articles of the same subheading, except for items covered by subheadings 9503 00 95 or 9503 00 99 (since these subheadings may include miscellaneous articles of different types), are not to be considered different types of articles.

Apart from the articles forming a set, simple accessories or objects of minor importance intended to be used with the articles (for example, a plastic carrot or a plastic brush for a toy animal) can be present.

By virtue of note 4 to chapter 95, this subheading includes sets intended for the amusement of children, consisting of articles of heading 9503 combined with one or more items which, if presented separately, would be classified in other headings provided that the combinations have the essential character of toys. Examples are:

— sets consisting of toys in the form of injections moulds and moulds for modelling pastes, together with other items such as tubes or tablets of paint, modelling pastes, pencils and chalks,

— cosmetic sets for children, containing articles of heading 9503 combined with preparations of heading 3304.

However, cosmetic sets for children containing preparations of heading 3304 which do not contain any articles of heading 9503 are excluded (heading 3304).

"Outfits" of this subheading consist of two or more different articles put up in the same packing for retail sale, without repacking, and are specific to a particular type of recreation, work, person or profession, such as instructional and educational toys."

206. From that guidance, we take the following principles:

- (1) sets within the Sets Subheading must consist of two or more different articles put up in the same packing for retail sale;
- (2) as a general rule, a set must contain items which are of "different types" i.e. that would be classified under separate subheadings within heading 9503 or, in a case falling within Note 4 to Chapter 95 (see [209]-[211] below), comprise an item or items falling within a subheading or subheadings within heading 9503 and an item or items falling outside heading 9503;
- (3) the exception to this general rule is for combinations of items which all fall within subheading 9503 00 95 or subheading 9503 00 99, as explained in the CNENs;
- (4) in addition to the main articles which form the set, the set may include accessories which are intended to be used with those articles.

207. With the exception of combinations of items that fall within subheading 9503 00 95 or subheading 9503 00 99, from the guidance as set out in the CNENs, it follows that a combination of items, which are packaged together for sale, and which fall within the same subheading of heading 9503, does not fall within the Sets Subheading. Such combinations fall to be classified under the relevant subheading into which those items otherwise fall. So, for example, if we had taken the view that clothing with slits fell to be classified under subheading 9503 00 29 as parts and accessories of dolls, these clothing sets would also be classified under that subheading and not under the Sets Subheading.

208. The guidance set out in the CNENs does not have the force of law, but it is an important aid to the interpretation of the CN (*Van Landeghem* [23]-[25]). We cannot discern any reason to depart from the guidance in the CNENs in this case. So we intend to follow it and ensure that our conclusion is, so far as possible, consistent with it.

...

213. It follows that, in accordance with the principles that we have set out above, a set comprising one or more clothing items without a slit, which would otherwise be classified as "parts or accessories" of a doll (within subheading 9503 00 29), and one or more clothing items with slits, which would otherwise be classified as "parts or accessories" of a stuffed toy (within subheading 9503 00 41), can form a set within the Sets Subheading (9503 00 70).

214. Furthermore, applying GIR 1 and GIR 6, and classifying the clothing sets by reference to their objective characteristics and properties as defined in the terms of the relevant subheadings, the Sets Subheading is *prima facie* an appropriate subheading in which to classify the clothing sets. Indeed, in our view, it is the most appropriate subheading at that level as the other potentially relevant subheadings — 9503 00 29 and 9503 00 41 — fail to reflect the characteristics of at least one of the major items within the set. The choice is not finely balanced. It is therefore possible to classify the clothing sets within the Sets Subheading without the need to refer to GIR 3 as there is no need to resort to GIR 3 to arbitrate between the Sets Subheading and any competing subheadings.”

126. Therefore, to classify items within the Sets subheading, the items must consist of two or more different articles put up in the same packing for retail sale and, as a general rule, a Set must contain items which are “different types” (i.e. that would be classified

under separate subheadings within heading 9503). An exception is for combinations of items which all fall within subheading 9503 00 95 or subheading 9503 00 99. Where the combination of items all fall within the Dolls subheading 9503 00 21 90 or 9503 00 29 00, that combination cannot be a Set as the items do not fall within separate subheadings. In addition to the main articles which form the set, the set may include accessories which are intended to be used with those articles. GIR 3 is only considered after applying GIR 1 and 6 where “goods are prima facie classifiable under two or more headings (or subheadings by reference to GIR 6). That is the approach that we have followed in determining whether any of the disputed items fall to be classified as a Set.

Statuettes

127. HMRC’s position was that a figure that is incapable of movement and cannot be classified as a humanoid figurine under subheadings 9503 00 81 to 9503 00 99 as it is not “small, light and robustly made” under subheadings 9503 (and within the wording of CNENs) it may be classified by virtue of GIR 1 and 6 according to its constituent material (plastic) to the Statuettes subheading under 3926 40. The Appellant submitted that in order for a figure to be a statuette it must be ornamental (in the sense of being decorative) and its ornamental value must outweigh its recreational value. The fact that the figure is incapable of movement does not mean that the figure has no recreational value. MF’s evidence was that adults use the figures for amusement and entertainment by re-enacting their favourite film/television scenes, have playful conversations, take photographs of and with the figures and post them on social media. The concept of “play” and “recreation” has changed in the age of digital social media, HMRC’s concept of “play” and “recreation” are very old-fashioned. We note that this point was raised for the first time in MF’s oral evidence and no corroborating evidence was adduced. In any event, we do not accept that evidence is a relevant criterion for determining the recreational value of the item. We remind ourselves that in *Van Landeghem* the CJEU stated that: “*the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product’s objective characteristics and properties*”.

128. Similarly, in Case C-228/89 *Farfalla Fleming v Hauptzollamt München-West* [1990] ECR I-3387, the CJEU rejected the argument that glass paperweights could qualify for an exemption from customs duty as original works of art as they were executed by famous glassware artists and served no functional purpose as paperweights. The CJEU stated, at [20], that since the customs authorities can rely only on objective criteria relating to the external characteristics of goods, even where such goods are hand-made by artists, they must be regarded as goods of commercial character because they appear similar to comparable articles manufactured industrially or as works of craftsmanship:

“That conclusion is not invalidated by the fact that the paperweights in question are produced by hand in limited editions by well-known artists and are collected by collectors and displayed in museums without ever being used as paperweights. Just as an artistic value which an article may have is not a matter for assessment by the customs authorities, the method employed for producing the article and the actual use for which that article is intended cannot be adopted by those authorities as criteria for tariff classification, since they are factors which are not apparent from the external characteristics of the goods and cannot therefore be easily appraised by the customs authorities. For the same reasons, the price of the article in question is not an appropriate criterion for customs classification.”

129. We agree with HMRC that a figure that is incapable of movement and fixed on a base-plate or similar base which enables the figure to maintain its pose unsupported that cannot be classified as a humanoid figurine under subheadings 9503 00 81 to 9503 00 99 as it is not “small, light and robustly made” and its ornamental value outweighs its recreational function may be classified by virtue of GIR 1 and 6 according to its constituent material (plastic) to the Statuettes subheading under 3926 40. There was no disagreement between the parties that in order for an item to be classified under subheading 3926 40 00 – “Statuettes and other ornamental articles” the item must be ornamental. We agree with the Appellant that the ordinary dictionary definitions of “ornamental ” provide assistance when determining whether an item is a Statuette.

130. The Cambridge Dictionary defines “ornamental” as “beautiful rather than useful”; the Britannica Dictionary defines it as “used for decoration”; the MacMillan Dictionary as “designed to be used as a decoration”; the Merriam-Webster dictionary as “of, relating to or serving as ornament”; the Longman Dictionary as “designed to make something look attractive rather than to be used for a particular purpose” and the Oxford English Dictionary as “of the nature of an ornament; serving as an ornament or decoration ... decorative (as opposed to merely functional)”.

131. Accordingly, we have concluded that in order to classify an item to the Statuette subheading, the item must be capable of being assessed as not “small, light or robustly made” and, having considered the figure’s objective characteristics and properties, its decorative or ornamental value must outweigh its recreational function. No definition of Statuette is provided in the CN and we have relied upon the natural meaning of the word: a statue is usually life-size or larger, a statuette is by definition a “small statue”.

Blind bags

132. As stated at paragraph 82 above, blind bags are a popular way in the United States to sell toys, MF’s evidence was that they are rarely imported into the UK for sale. As the name suggests, the contents of the bag cannot be ascertained before purchasing the blind bag and the contents will be a surprise. The blind bags appeal to consumers who are trying to collect all the items in a particular blind bag series either by repeatedly purchasing blind bags until they have the full set or by swapping “duplicates” with other collectors. HMRC confirmed at the hearing that the “bag” part of the blind bags was accepted as packaging and would be classified with the contents by virtue of GIR 5(b). In the Review Conclusion Letter and CP’s evidence it was contended that the items be classified as Dolls or alternatively as Sets to reflect the items included with the figure. HMRC submitted that the Tribunal should approach the classification of the blind bags by applying a “balance of probabilities test” as, in this particular blind bag series, the blind bag would include as the principal item either a “zombie” or a “survivor” (together with other unseen items for use with the figure) and, on HMRC’s interpretation of Doll versus non-human, only three of the 17 items represented non-human creatures. The application of a “balance of probabilities test” would result in all blind bags being classified as comprising a principal item of a Doll.

133. In the alternative, HMRC submitted that, as it was not disputed that all the items contained in the blind bag were made of plastic, regardless of whether the principal item represented a Doll or non-human, the Tribunal may prefer to classify the blind bags under 9503 00 95 90: “other – of plastic”.

134. MF’s evidence was that when the blind bags are imported the Appellant receives a box containing an agreed number of blind bags and would be told how many survivors and zombies were in the box but would not know which characters they were. We accept

that evidence. Following our conclusions at paragraph 126 above, we do not consider that the blind bags are classifiable as Sets as the items included in the blind bags with the character are small simple accessories of a proportionate size for use with the 2” figure. We do not consider a “balance of probabilities test” appropriate as the basis for classification and, in any event, the probability cannot be stated with any certainty until such time as the blind bag is opened and the character’s objective characteristics identified. In our judgment, the blind bags should be classified to 9503 00 95 90: “Other – of plastic” applying the hierarchical approach to classification. The application of GIR 1 and 6 and classifying the blind bags by their objective characteristic and properties as defined in the appropriate subheadings leads to the conclusion that the most appropriate subheading is 9503 00 95 90 as the other subheadings will not reflect the objective characteristics of the primary item in the blind bag. No reference to GIR 3 is required as the choice between subheadings is not finely balance.

Provisional classification

135. It was suggested by HMRC that the Tribunal determine first the classification of the main article as either Doll or Non-human toy and that any further issue of classification as a Set could be remitted back to the Tribunal if the parties could not reach agreement between themselves. Having considered all of the evidence and the parties’ submissions we are satisfied that we are able to determine the classification of all but one of the disputed items.

First C18 Demand

Line 1: Walking Dead: figures in blind bags 1

Description: “Blind bags” Series 3 containing five to seven moveable body parts to assemble a 2” plastic figure with accessories of either a survivor or a zombie from the Walking Dead zombie television series. All the accessories are small, simple items made of plastic that are proportionate in size to the 2” figure and can be held by or attached to the figure. All the figures have a “U” shaped plastic attachment to the rear of either their left or right shoe allowing the figure to be used with and attached to Walking Dead construction sets. Blind bags are a common way in the United States to sell toys. As they are primarily aimed at the United States market they are rarely imported into the UK for sale. The contents of the bag cannot be seen when purchasing the blind bag and appeal to consumers who are trying to collect all the items in a blind bag series either by purchasing blind bags or swapping “duplicates” with other collectors.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings or Other toys put up in sets or outfits 9503 00 70 00. 4.7% duty rate. HMRC accept that the bag is packaging, GIR 5 applied.

Appellant’s Classification: Zombies do not represent human beings because there are no human features visible and no human being is capable of walking around when dead, with missing skin and missing limbs. One of the survivor figures is fully masked and cannot be identified as humanoid. The four remaining survivor figures all carry a pathogen which will turn them into zombies when they die. This is not a characteristic representative of human beings. The figures represent non-human creatures. 9503 00 49 90 non-human and not a set. 0% rate of duty.

Tribunal Classification: For the reasons set out at paragraphs 132 to 134 above, the blind bags are classifiable to 9503 00 95 90 “Other- of plastic”. 4.7% duty rate.

Line 3: The Walking Dead: figures in blind bags 2

Description: “Blind bags” Series 2 containing five to seven moveable body parts to assemble a 2” plastic figure of either a survivor or a zombie from the Walking Dead zombie television series. All the accessories are small, simple items made of plastic that are proportionate in size to the 2” figure and can be held by or attached to the figure. All the figures have a “U” shaped plastic attachment to the rear of either their left or right shoe allowing the figure to be used with and attached to Walking Dead construction sets.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings or Other toys put up in sets or outfits 9503 00 70 00. 4.7% duty rate. HMRC accept that the bag is packaging.

Appellant’s Classification: As per Appellant’s classification for Line 1 above. 9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: For the reasons set out at paragraphs 132 to 134 above, the blind bags are classifiable to 9503 00 95 90 “Other- of plastics”. 4.7% duty rate.

Line 5: Coraline

Description: A rag doll of the character “Coraline” from the horror film of the same name: “Coraline”. The figure is approximately 9” tall and is stuffed with a soft fabric that can be depressed and cannot stand-up unaided. The figure is wearing a removeable yellow raincoat with hood and non-removeable yellow boots, striped tights, skirt and short-sleeved top. The figure has blue and black soft cord for hair with the blue fabric predominating. The figure only has three “fingers” (denoted by stitching as opposed to three digits) on each hand, has non-removeable large black buttons with four holes instead of eyes and what appears to be surgical stitches in a continuous line from the bottom of the left ear to the mouth, across the mouth, and to the bottom of the right ear.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings. 4.7% duty rate.

Appellant's Classification: In the horror film “Coraline”, a little girl called Coraline is given a ragdoll and it is a toy of this ragdoll that has been imported and not a toy depiction of the little girl. The figure is a toy of a doll (a non-human creature) and not a doll of a human being and therefore represents a non-human creature and not a human being. It has non-human features – only three fingers and buttons instead of eyes. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: We have taken no account of the backstory. We consider the large non-removeable buttons in the place of eyes are clearly defined non-human features, such features warrant classification to 9503 00 41 stuffed Non-human toy. 4.7% duty rate.

Line 6: Captain America

Description: 8” solid plastic figure from the Marvel comic-books and films affixed to a non-removeable plastic base plate emblazoned with the letters “C” and “A” with non-moveable body parts and with a “bobblehead”. The “bobblehead” is oversized compared to the body of the figure and instead of a solid connection the head is connected to the body by a spring or hook in such a way that a light touch to the head will cause the head to move around or “bobble”. The figure is part of the headknocker range. The head is covered by a blue helmet with a mask-like attachment over the eyes. The figure’s eyes can clearly be seen through the mask part of the helmet. Affixed to the figure’s left arm is a round shield with red and silver concentric circles emblazoned with a silver star in the centre.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings. 4.7% duty rate.

Appellant's Classification: Captain America has physical abilities significantly beyond the capabilities of normal human beings by virtue of having been injected with a "super-serum" and turned into a "super-soldier". He does not, therefore, depict or portray a human-being. The figure represents a non-human creature. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure has clearly defined human features and is recognisable as only representing a human being. The figure has non-moveable body parts with a "bobblehead" that is capable of movement and affixed to non-removeable base plate. We consider that the presence of the non-removeable base-plate takes the figure out of the Dolls subheading. We have considered whether the figure should be classified as a Statuette but have concluded that the "bobblehead" and the robust quality of the figure prevents the figure being a Statuette. In addition, we do not consider that the figure can be considered ornamental (in the sense of being decorative) and its ornamental value is not outweighed by its recreational value. We have concluded that figure should be classified to 9503 00 95 90 "Other- of plastics". 4.7% duty rate.

Line 7: Thor

Description: 9" solid plastic figure of Thor, Norse God of Thunder, from the Marvel comic-books and films. The figure is affixed to a non-removeable base plate with non-moveable body parts and a "bobblehead". The "bobblehead" is oversized compared to the body of the figure and instead of a solid connection the head is connected to the body by a spring or hook in such a way that a light touch to the head will cause the head to move around or "bobble". The figure is part of the headknocker range. The figure is clothed in non-removeable clothing, knee length boots, body and wrist armour and a red cloak. In the figure's left hand is held a large non-removeable hammer. The figure's head is not covered and the figure is clearly identifiable as a human being.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings. 4.7% duty rate.

Appellant's Classification: Thor is not a human being. He is the Norse God of Thunder from the realm of Asgard. Asgard is one of the Nine Worlds surrounding the tree Yggdrasil. Norse mythology portrays Asgard as a fortified home to the Æsir tribe of gods, located in the sky. Thor has physical abilities significantly beyond the capabilities of human beings, with super-human strength, the ability to wield thunderbolts and the ability to fly. The figure represents a non-human creature. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure has clearly defined human features with an uncovered face and is recognisable as only representing a human being. The figure has non-moveable body parts with a "bobblehead" that is capable of movement and affixed to non-removeable base plate. We consider that the presence of the non-removeable base-plate takes the figure out of the Dolls subheading. We have considered whether the figure should be classified as a Statuette but have concluded that the "bobblehead" and the robust quality of the figure prevents the figure being a Statuette. In addition, we do not consider that the figure can be considered ornamental (in the sense of being decorative) and its ornamental value is not outweighed by its recreational value. We have concluded that figure should be classified to 9503 00 95 90 "Other- of plastics". 4.7% duty rate.

Line 8: The Hulk

Description: 9” plastic figure of the green coloured mutant monster from the Marvel comic-books and films. The figure is affixed to a non-removeable base plate with non-moveable parts with a “bobblehead”. The “bobblehead” is oversized compared to the body of the figure and instead of a solid connection the head is connected to the body by a spring or hook in such a way that a light touch to the head will cause the head to move around or “bobble”. The figure is part of the headknocker range. that wobbles on a fixed base plate (part of the headknocker range). The figure is clothed with non-removeable purple knee-length trousers. The figure has well defined and exaggerated muscle definition and its facial features are not covered. Despite the green skin, the figure is clearly recognisable as a human being.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings. 4.7% duty rate.

Appellant's Classification: The Hulk is a mutant monster of over eight feet tall and is far stronger than any human being. He has green skin which human beings do not. The figure depicts or portrays a non-human creature. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: Despite the green skin colour the figure has clearly defined human features with uncovered face and is clearly recognisable as representing only a human being. The figure has non-moveable body parts with a “bobblehead” that is capable of movement and affixed to non-removeable base plate. We consider that the presence of the non-removeable base-plate takes the figure out of the Dolls subheading. We have considered whether the figure should be classified as a Statuette but have concluded that the “bobblehead” and the robust quality of the figure prevents the figure being a Statuette. In addition, we do not consider that the figure can be considered ornamental (in the sense of being decorative) and its ornamental value is not outweighed by its recreational value. We have concluded that figure should be classified to 9503 00 95 90 “Other- of plastics”. 4.7% duty rate.

Line 12: Living Dead Dolls

Description: Six 10” plastic figures from the Living Dead themed doll collection “Lost in Oz”. All the figures are wearing removeable clothing which when removed reveals that an identical plastic doll’s body is used for each character. The dolls have joints in the arms and legs that permit movement. The boxes containing the Living Dead Dolls all stated: “Not a toy for children intended for adult collectors only” and “for spooky kids ages 15 and up”. The themed collection was comprised of: Dorothy (with fabric flat dog accessory, “Toto”) with vehicle tyre marks imprinted on the dog and an attached lead); Tin Man (with large blood spattered felling axe with notch that allows the axe to be held by the figure); Lion; Scarecrow; Wicked Witch of the West (“Witch”) (with traditional tall, pointed conical black witch’s hat), and Wizard with velvet looking drawstring bag containing two small metal ball bearings, plastic heart and plastic brain. The Dorothy figure is wearing silver shoes, a green short-sleeved top with a green and white gingham pinafore, has long black hair and wearing removeable green lensed glasses which concealed a black sclera with a green coloured dot as the pupil. The Tin Man figure was wearing removeable green lensed glasses which concealed Philips screw heads in place of eyes. The Wizard figure was wearing green lensed removeable goggles which concealed yellow sclera and yellow pupil. The Witch figure was wearing removeable green lensed glasses concealing

green sclera and green pupil. The Lion figure was wearing removeable green lensed glasses concealing human eyes.

HMRC Classification: 9503 00 21 90 Dolls representing human beings or 9503 00 70 00 Other toys put up in sets or outfits 4.7% duty rate. Dorothy and Wizard (although the heart is an accessory, the brain and the bag containing two balls bearings would be classified to a different heading) classified as Sets. Tin Man (the axe is considered an accessory), the Witch (the separately packaged hat is considered an accessory) and Lion classified as representing only human beings. It was accepted that the Scarecrow is “non-human” and re-classified as “non-human” under 9503 00 49 90.

Appellant’s Classification: Dorothy is not a set and the fabric flat dog, Toto, is clearly connected to Dorothy and it does not, in its own right, have any use or function and is purely to be used with the Dorothy figure. In the Wizard of Oz the Tin Man was not human. He was robotic and did not have a heart. This figure does not therefore depict or portray a human being but is a robot. The Wicked Witch of the West depicts or portrays a witch, not a human being. The Wicked Witch of the North had magic powers which human beings do not have and could fly. The skin colour of the figure is green which is not the colour of a human being. The figure represents a non-human creature. The Wizard has green coloured skin which is not the skin colour of a human being. The Wizard is not a set as, like the heart, the brain and the bag are directly connected to the main figure and do not in their own right have any use of function and are all to be used with the Wizard figure. The Wizard represents a non-human creature.

All are 9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification:

Dorothy

The figure has clearly identifiable human features and represents only a human being and is clearly classifiable as a Doll. The flattened fabric dog is attached to a lead that has a loop at the end through which the figure’s hand can be inserted. We have concluded that the fabric dog accessory is a simple accessory as it enhances the way in which the figure can be used for amusement or play and has no independent play value. The Dorothy figure and accessory should be classified to 9503 00 21 90 Dolls with a duty rate of 4.7%

Tin Man

Whilst the figure had predominantly human features, removal of the green lensed glasses revealed non-human features: Crosshead screw heads (“Phillips”) in place of eyes. The felling axe is large in proportion to the figure but we have concluded that the presence of the notch that allows the axe to be held by the figure enhances the way in which the figure can be used for amusement or play and it is suitable for use solely or principally with the Tin Man figure. The Tin Man figure and accessory should be classified to 9503 00 49 90 Non-Human toys with a duty rate of 0%

Lion

The Lion figure was wearing a removeable one-piece green fabric outfit with a hood, attached to the hood are green strands of fabric intended to replicate a lion’s mane. The figure was wearing removeable green lensed glasses concealing human eyes. Despite the green outfit, the figure is clearly recognisable as a doll representing only a human being. We have classified the Lion figure to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Scarecrow

HMRC accepted that the Scarecrow figure is a Non-human toy and had re-classified it as a Non-human toy under 9503 00 49 90. We do not disagree with that conclusion.

Wicked Witch of the West

The Witch figure had green tinged skin and was wearing a green skirt cloak with black crochet style top and a removeable green lenses glasses. Removal of the glasses revealed human eyes with green sclera and green pupils. It was accepted by HMRC that the traditional tall, pointed conical black witch's hat packaged with the figure was a simple accessory. We agree with that conclusion. Despite the green tinged skin, we consider that the figure is clearly recognisable as a doll representing only a human being. We have classified the Witch figure to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Wizard

The Wizard has green coloured skin and was wearing a blood-spattered white laboratory coat over a black suit with a bow tie together with brown boots and gaiters. The figure was wearing brown goggles with green lenses and had vivid orange hair. Painted just below both sides of the mouth were small purple fangs. Packaged with the figure was a velvet looking fabric bag (containing two small metal ball bearings), plastic heart and plastic brain. The Wizard figure had a notch on its right hand to enable the plastic heart to be attached to the figure. The two ball bearings and plastic brain could not be attached or held by the Wizard figure. We consider that despite the green skin and painted/drawn on small purple fangs the figure is clearly recognisable as a doll representing only a human figure. We agree with HMRC that the plastic heart is simple accessory. We do not accept that, based on their objective characteristics, that the two small metal ball bearings and plastic brain provide some additional functionality or enhance the performance or play value of the Wizard figure and are classifiable in their right. We have concluded that the correct classification for the Wizard figure and included items is to 9503 00 70 00 Sets with a duty rate of 4.7%.

Line 14: Kitana

Description: 6" solid plastic female figure from the Mortal Kombat computer game with moveable body parts and two weapons which can be held by the figure. The figure is wearing a non-removable mask covering the mouth and neck but human eyes, nose and ears can be clearly seen. The figure is wearing thigh length boots with knee protectors and wearing body armour that only covers the figures groin area, breasts, sternum and shoulders.

HMRC Classification: 9503 00 21 90 Dolls representing human beings or a 9503 00 70 00 set if the simple objects packaged with the figure are not "intended to be used with the doll" and are not "considered an accessory to the doll". 4.7% duty rate.

Appellant's Classification: The figure is not a set because the two weapons do not in their own right have any use or function and are purely to be used with the main figure. The character Kitana is 10,000 years old and an alien from the fictional planet Edenia and represents a non-human creature.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure is clearly recognisable as representing only a female human being. We consider that the two weapons packaged with the figure and that can be held by the figure are simple accessories of minor

importance that are intended to be used with the figure and enhances the way in which the figure can be used for amusement or play and has no independent play value. We have concluded that the correct classification of the Kitana figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 15: Raven

Description 9" solid plastic female figure from the DC comic-book team "The Titans" with moveable body parts. The figure is wearing a blue leotard with blue thigh length boots, a gold-coloured belt and a long blue hooded cloak. The cloak is attached to the figure by gold coloured fastening just below the neck and the figures full facial features can be seen under the hood.

HMRC Classification: On review, 3926 40 00 00 Statuettes or other ornamental articles, 6.5% duty rate, in witness statement 9503 00 21 90 Dolls representing human beings 4.7% duty rate.

Appellant's contentions: The Raven character is half-demon and has telekinetic powers and her soul can act as her eyes and ears when physically distanced from her body. These are non-human attributes and the figure represents a non-human creature.

9503 00 49 90 "non-human" 0% duty rate.

Tribunal Classification: The figure is clearly recognisable as representing only a female human being. We do not accept that the figure can be properly classified as a Statuette as it is capable of movement and is robustly made, we have concluded that its recreational function outweighs its ornamental value. We have concluded that the correct classification of the Raven figure is to 9503 0021 90 Dolls with a duty rate of 4.7%.

Line 16: Emma Frost

Description: 8" solid plastic female figure from the "X-men" comic-books with moveable body parts on a removeable base. The figure is wearing black thigh length boots and a black body suit (with cutaway to expose the area from midriff to sternum) with attached black cloak. The figure's head is uncovered and female human facial features can clearly be seen.

HMRC Classification: 9503 00 21 90 Dolls representing human beings or 9503 00 70 00. 4.7% duty rate.

Appellant's Classification: The character is a mutant with telepathic powers who can also transform her body into a solid diamond. These are non-human attributes and the figure represents a non-human creature.

9503 00 49 90 "non-human" 0% duty rate.

Tribunal Classification: The figure is clearly recognisable as representing only a female human being. We have concluded that the correct classification of the Raven figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 17: Batman

Description: 10" solid plastic figure of the DC comic-book superhero with no moveable parts with a non-removeable mask packaged with a modular base comprised of 80 unassembled pieces (with assembly instructions). The unassembled modular base pieces each have numerous holes for the Batman figure to be inserted in various poses via a peg attached to the character's left hand. Both the figure and modular base are 1/10 scale. The packaging states "This product incorporates the new BUILD-UP DIORAMA BASE system. Using different combinations of base and joint pieces, a variety of environments can be produced: A ruined factory, dimly lit corridors, and

broken windows or smashed-in ceilings can all be created quickly and easily with the new snap-fit assembly system.”

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings. 4.7% duty rate. In witness statement, HMRC classified it as a Set as the modular base would be classified to a different heading as it had independent play value: 9503 00 30 “Electric trains, including tracks, signals and other accessories therefor; reduced-size (scale) model assembly kits”. 4.7% duty rate. HMRC agree that if not a Set, it is a Non-human toy because of the non-removable mask.

Appellant’s Classification: Not a set as the modular base is intended to be used with the figure and the figure designed to be attachable to the modular base. The mask is non-removeable which is not a characteristic of a human, the character represents a non-human. 9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The Batman figure has no moveable parts and is in a fixed “flying kick” pose and is incapable of standing unsupported. It was accepted by the Appellant during the hearing that the Batman figure is a figure representing only a human being. We agree. Despite the mask concealing part of the figure’s face, the figure has clearly identifiable human physical facial features and is recognisable as representing only a human being. Having examined the figure, it is our view that it is suitable for playing with on its own merits. We did not consider that the modular base had any independent play value as the preponderance of the holes in each piece of the modular base meant that it was only suitable for use with the Batman figure. We concluded that, based on the objective characteristics of the modular base, it is classifiable as “parts and accessories” under the Dolls subheading. In our judgment, the Batman Doll is the component which gives the packaged items their essential character and, applying GIR3(2) we have concluded that, based on the objective characteristics of the packaged items that the correct classification of the packaged items is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 18: Batman figure – The Arkham Knight

Description: 10” solid plastic figure of the DC comic-book super-villain character, The Arkham Knight, with no moveable parts with a non-removeable mask and modular base comprised of 80 unassembled pieces (with assembly instructions). The unassembled modular base pieces each have numerous holes for the figure to be inserted in various poses via a peg attached to the left heel of the character. The assembled modular base has numerous holes for the figure to be inserted in various poses via a peg attached to the character’s left hand. Both the figure and modular base are 1/10 scale. The packaging states “A first for the ARTFX+ series: the Arkham Knight come with a new modular base system that lets you customise your display with a wide range of options: you can have the villain rushing over rooftops, breaking through a wall, or tackling the hero! Even better, you can really craft your own unique display”.

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings. 4.7% duty rate. In witness statement, 9503 00 70 00 set because of the modular base. 4.7% duty rate. HMRC agree that if not a set, non-human because of the non-removable mask.

Appellant’s Classification: Not a set as the modular base is intended to be used with the figure and the figure designed to be attachable to the modular base.

The mask is non-removeable which is not a characteristic of a human, the character represents a non-human.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The Arkham Knight figure has no moveable parts and is in a fixed “running” pose and is incapable of standing unsupported. HMRC accepted that if the packaged items were not classified as a Set, it was agreed that the figure was a non-human toy as figure’s helmet was non-removeable and no facial features could be seen. We agree that the figure is a Non-human toy. Having examined the figure, it is our view that it is suitable for playing with on its own merits. We did not consider that the modular base had any independent play value as the preponderance of the holes in each piece of the modular base meant that it was only suitable for use with the Arkham Knight figure. We concluded that, based on the objective characteristics of the modular base, it is classifiable as an accessory which is suitable for use solely with the Arkham Knight figure. Note 3 requires that accessories which are suitable for use solely with articles of Chapter 95 are to be classified with those articles and we have concluded that the correct classification of the packaged items is to 9503 00 49 90 Non-human toys with a duty rate of 0%.

Second C18 Demand

Line 2: Jason Vorhees

Description: 7” solid plastic figure from the Friday 13th film franchise with moveable body parts packaged with a removeable right hand, removeable ice hockey mask, two knives that fit in the scabbards attached to figure, fence post (in two parts) that can be held by replacement right hand. When the ice hockey mask is removed, exposed sinew and bones can be seen instead of facial skin.

HMRC Classification: 9503 00 70 00 other toys put up in sets or outfits. Fence post and two knives are accessories to figure, tombstone is not accessory. 4.7% duty rate. Agree that the figure is a Non-human toy.

Appellant’s Classification:

The character is a non-human creature as the character’s face has exposed sinew and bones and was reanimated after death when lightning struck the metal fence post that impaled the character’s corpse in a buried coffin. The character is not a set as the tombstone has “Jason Voorhees” engraved upon it and is intended to be used with the main figure and it does not, in its own right, have any use or function.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure, whilst having predominantly human features, is clearly a Non-human toy as it has exposed sinew and bones where a face would be. We consider that the removeable right hand, removeable ice hockey mask, two knives and fencepost are accessories to the figure as they are to be used solely or principally with the figure and enhance the play and amusement value. We do not accept that the plastic tombstone performs a particular function in relation to the figure by adding to or enhancing the way in which the figure can be used for amusement or play and is classifiable to 9503 0095 00 Other of plastic. As the items are packaged together for retail sale, we have concluded that the figure and items should be classified to 9503 00 70 00 Sets with 4.7% duty rate.

Line 3: Jason Vorhees (different figure to Line 2).

Description: 7” solid plastic figure Friday 13th film franchise with moveable body parts packaged with non-removeable ice hockey mask and two weapons that are designed to fit the figure’s hand and be held .

HMRC Classification: 9503 00 70 00 other toys put up in sets or outfits as contains two weapons. 4.7% duty rate. Agree that “non-human” as mask non-removeable.

Appellant’s Classification:

Not a set as the two weapons packaged with the figure do not, in their own right, have any use or function and are designed to be used with the figure. Figure is non-human as mask cannot be removed.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure’s ice hockey mask is non-removeable and it cannot be seen if the figure has human or non-human facial features. We agree with the parties that the figure is properly classifiable as a Non-human toy. We consider the two weapons to be small simple accessories that are of minor importance designed and intended to be used with the figure. Accordingly, we have concluded that the figure and two weapons should be classified to 9503 00 49 90 Non-human toy other with 0% duty rate.

Line 6: Red Hood

Description: 8” solid plastic figure of a character of a superhero/villain from the DC Batman comic-books and films. The figure has no moveable parts and has a non-removeable metallic red helmet, is wearing non-removable clothing and has two holsters for the two non-removeable handguns that the figure holding in each hand. Supplied with the figure is a square magnetic base. The figure has metal incorporated into the soles of the figure’s footwear enabling the figure to be stand unaided in a fixed pose on the magnetic base.

HMRC Classification: On review, 9503 00 70 00 Other toys put up in sets or outfits. 4.7% duty rate. In witness statement, 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette. HMRC has classified the figure as a Statuette as it was considered insufficiently robust to be considered a toy as the gun holsters are somewhat fragile.

Appellant’s Classification: The figure would be purchased from a toy shop for its representation of a character from comic-books, television and films rather than its aesthetic value. The figure promotes recreational conversation and play based around the character. It is not a decorative statuette to display, its recreational value substantially exceeds its ornamental value.

9503 00 49 90 “non-human”. 0% duty rate.

Tribunal Classification: The figure does not have discernible facial features such as a mouth and ears and it cannot be seen whether the features beneath the non-removeable mask are human or non-human features. We consider that the absence of a mouth and ears the figure is clearly a non-human creature. We have examined the figure and the gun holsters attached to the figure. In our view the figure is robustly made and, whilst the gun holsters may appear to be physically fragile, our physical examination confirmed that they are robust to withstand the figure being played with by a child or adult. For those reasons we have concluded that its recreational function outweighs its ornamental value and it cannot properly be classified as a Statuette. We have concluded that the figure should be classified to 9503 00 49 90 Non-human toy other with a duty rate of 0%

Line 7: Magneto

Description: 8” solid plastic figure from the “X-Men” comic-books and films with non-moveable parts on a removable base of a mutant super-villain. The figure is clothed in non-removeable clothing with a fixed, billowing cloak, wearing boots, elbow length gauntlets and a non-removeable helmet. Despite the non-removable helmet, the facial features of the figure can clearly be seen to be that of a human being.

HMRC Classification: 9503 00 21 90 Dolls representing human beings 4.7% duty rate.

Appellant's Classification: The character is a powerful mutant who is able to control magnetism through which he manipulates metal objects. This is a superpower which human beings do not have. The figure represents a non-human creature.

9504 00 49 90 “non-human”. 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being. We considered whether the figure should be classified as a Statuette but concluded that it should not as it is robustly made and its recreational value clearly outweighs its ornamental value. We have concluded it should be classified to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 8: The Flash

Description: 12” solid plastic figure of a superhero from the DC comic-books and films. The figure has no moveable parts and is wearing a non-removeable red bodysuit with yellow boots and a non-removeable mask. A removeable base is packaged with the figure. The non-removable mask covers the area around the figure’s eyes but it can be clearly seen that the figure has recognisable human facial features.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings 4.7% duty rate. In witness statement 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette.

Appellant’s Classification: The figure would be purchased from a toy shop for its representation of a character from comic-books, television and films rather than its aesthetic value. The figure promotes recreational conversation and play based around the character. It is not a decorative statuette to display, its recreational value substantially exceeds its ornamental value. The figure is non-human as it has the power of super-speed which enables it to create lightning and travel in time.

Not a statuette. 9504 00 49 90 “non-human”. 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being. We considered whether the figure should be classified as a Statuette but concluded that it should not as it is robustly made and its recreational value clearly outweighs its ornamental value. We have concluded it should be classified to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 9: Poison

Description: 10” solid plastic figure is a character from the computer game, “Street Fighter”. The figure clearly represents a female human being and is wearing high-heeled red shoes, cutoff micro denim shorts, a cropped white tank top and a keystone pin down hat with metal chain above the brim. Packaged with the figure is a riding crop, a pair of handcuffs and a removeable

base. The riding crop and handcuffs are designed to be held and used by the figure.

HMRC Classification: 9503 00 70 00 Other toys put up in sets or outfits because of the inclusion of the riding crop and handcuffs.

Appellant's Classification: Not a set as the package contains a set of handcuffs and a whip which do not, in their own right, have any use or function and are purely to be used with the figure. 9504 00 49 90 "non-human". 0% duty rate.

Tribunal Classification: The figure clearly represents only a female human being. We considered whether the figure should be classified as a Statuette but concluded that it should not as it is robustly made and its recreational value clearly outweighs its ornamental value. The riding crop and handcuffs are simple accessories of minor importance intended to be used with the figure. We have concluded it should be classified to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 10: Game of Thrones - Jon Snow

Description: 8" solid plastic non-moveable figure of character from the Game of Thrones television series on a fixed base. The figure's facial characteristics are fully visible and it is clear that the figure represents only a male human being. The detailed figure is wearing non-removable black boots, black gloves, black clothes and a black cloak. The figure is holding a sword in both hands, the sword is non-removable.

HMRC Classification: On review 9503 00 95 90 other of plastic. 4.7% duty rate. In witness statement 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette.

Appellant's Classification: The figure is not a statuette, the figure would be purchased from a toy shop for its representation of a character from comic-books, television and films rather than its aesthetic value. The figure promotes recreational conversation and play based around the character. It is not a decorative statuette to display, its recreational value substantially exceeds its ornamental value. The figure does not represent only human beings as the character was brought back to life by magic after having been assassinated. He is a "Warg", also known as "skinchanger", which gives him the power to project his mind into his "direwolf", Ghost, and see what Ghost sees. Human beings do not have Jon Snow's special abilities. Further, the story is set in a mythical world which is not our Earth. In its world there are dragons, zombies and ice creatures which have never existed on Earth. The characters in that world are not indigenous to Earth and are not, therefore, human beings. They are akin to aliens.

Not a statuette. 9504 00 49 90 "non-human". 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being but we considered it was not classifiable as a Doll as it is affixed to a non-removeable base. The 8" inch figure is very detailed and we have concluded that its ornamental value outweighs its recreational value and it should be classified according to its constituent parts (plastic) to 3926 40 Statuette with a duty rate of 6.5%

Line 11: Game of Thrones – White Walker

Description: 8" solid plastic non-moveable figure of a character from the Game of Thrones television series mounted on a fixed base. The figure is detailed and its facial characteristics are fully visible and it is clear that the figure represents only a male human being. The figure is wearing non-

removable brown lower leg coverings, a brown leather type skirt of individual strips, brown leather type wrist protectors and is holding with both hands a non-removable spear.

HMRC Classification: On review, 9503 00 95 90 other of plastic. 4.7% duty rate. In witness statement, 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette.

Appellant's Classification: The figure is not a statuette, the figure would be purchased from a toy shop for its representation of a character from comic-books, television and films rather than its aesthetic value. The figure promotes recreational conversation and play based around the character. It is not a decorative statuette to display, its recreational value substantially exceeds its ornamental value. The character is non-human as it is an undead ice creature with skin of colour and texture that does not exist in human beings. The story is set in a mythical world which is not our Earth. In its world there are dragons, zombies and ice creatures which have never existed on Earth. The characters in that world are not indigenous to Earth and are not, therefore, human beings. They are akin to aliens.

Not a statuette. 9504 00 49 90 "non-human". 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being but we considered it was not classifiable as a Doll as it is affixed to a non-removeable base. The 8" inch figure is very detailed and we have concluded that its ornamental value outweighs its recreational value and it should be classified according to its constituent parts (plastic) to 3926 40 Statuette with a duty rate of 6.5%

Line 12: Game of Thrones – Daenerys Targaryen

Description: 8" solid plastic non-moveable figure of a character from the Game of Thrones television series. The figure is detailed and its facial characteristics are fully visible and it is clear that the figure represents only a female human being. The figure is holding a dragon egg on a fixed base to which is affixed a removeable open plastic "treasure chest" with closeable lid containing dragon eggs. The figure is wearing a floor length non-removable grey dress with two attached floor length scarfs.

HMRC Classification: On review, 9503 00 95 90 other of plastic. 4.7% duty rate. In witness statement, 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette.

Appellant's Classification: The figure is not a statuette, the figure would be purchased from a toy shop for its representation of a character from comic-books, television and films rather than its aesthetic value. The figure promotes recreational conversation and play based around the character. It is not a decorative statuette to display, its recreational value substantially exceeds its ornamental value. The package includes a removeable chest with an opening lid, which contains three dragon eggs each of which can be placed into the figure's hands. This is not a feature which would be expected of an ornamental statuette and confirms the recreational value of the product.

The figure is non-human as the Targaryen family, deriving from an ancient line of sorcerers, Daenerys Targaryen inherited dragon genes which give her extreme heat tolerance, immunity from fire and the ability to communicate with, and control her three dragons. These are not powers which human beings have. Further, the story is set in a mythical world which is not our Earth. In its world there are dragons, zombies and ice creatures which have never existed

on Earth. The characters in that world are not indigenous to Earth and are not, therefore, human beings. They are akin to aliens.

Not a statuette. 9504 00 49 90 “non-human”. 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being but we considered it was not classifiable as a Doll as it is affixed to a non-removeable base. The 8” inch figure, chest and dragon’s eggs are all very detailed and ornate and we have concluded that its ornamental value outweighs its recreational value. We consider that the item should be classified according to its constituent parts (plastic) to 3926 40 Statuette with a duty rate of 6.5%

Line 13: The Walking Dead – Rick Grimes

Description: 10” solid plastic figure of a character from the television zombie series, The Walking Dead. The figure has moveable parts and packaged with the figure are a machete, dagger and a chain which can all be held by the figure. The figure’s facial features are not concealed and clearly only represents a male human being.

HMRC Classification: 9503 00 70 00 other toys put up in sets or outfits because of the three weapons. 4.7% duty rate. If not a set, a human doll

Appellant's Classification: Not a set as the package contains a machete, a dagger and a chain which do not, in their own right, have any use or function and are all purely designed to be used with the figure. The character, a survivor, carries a pathogen which will turn him into a zombie when he dies. This is not a characteristic representative of human beings.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure is clearly recognisable as only representing a male human being. We consider that the two weapons and the chain packaged with the figure that can be held by and attached to the figure are simple accessories of minor importance that are intended to be used with the figure. We have concluded that the correct classification of the Rick Grimes figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 14: Chucky

Description: 15” plastic figure of the toy doll character from the Child’s Play horror film franchise. The figure has moveable parts with scar marks criss-crossing the figure’s face and exposed flesh around the right eye. The figure can “talk” when the button to the rear of the figure is pressed, the figure repeats well known phrases from the Child’s Play film. The figure is wearing a non-removeable multi-coloured striped long-sleeved top, non-removeable denim dungarees and a pair of red shoes with white piping. Packaged with the figure is a plastic knife with a serrated blade which can be held in the figure’s right hand. The knife is large by comparison to the figure.

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings. 4.7% duty rate. In witness statement, 9503 00 70 00 other toys put up in sets or outfits with a duty rate of too big to be a simple accessory. 4.7% duty rate.

Appellant's Classification: Not a set as the package contains a knife which fits into the figure’s hand and does not, in its own right, have any use or function as it purely to be used with the main figure. The size of the accessory is irrelevant. The character does not represent only human beings because the figure is a toy figure of a doll which is brought to life when a dying serial killer transfers his soul into it and is not a toy figure of a human being.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: Despite the facial scarring, the figure is clearly recognisable as representing only a male human being. We examined the figure and the knife accessory. The knife is a 6" long and is a kitchen style knife with a serrated blade which, despite being made of plastic, feels sharp. The knife does not have a notch or any similar means of attaching it to the character, whilst the figure's left hand can be prised open such that forefinger and thumb to prevent the knife from falling out of the hand no other part of the hand is in contact with the knife. We consider that the knife is too large to be a simple accessory and is not designed to be used solely and principally by the figure. We consider that the knife has independent play value (e.g. a child cutting vegetables in a kitchen role play etc.) and if presented separately would be classified to 9503 00 95 Other of plastic. We have concluded that the correct classification of the packaged items is to 9503 00 70 00 other toys put up in sets or outfits with a duty rate of 4.7%.

Line 15: Judge Dredd

Description: 6" solid plastic figure of a comic-book character in a series set in a post-apocalyptic future world. The figure has moveable parts and is wearing non-removeable clothing and body armour covering the shoulders and from the knee down. The figure is holding a removeable gun and is wearing a helmet. Despite the helmet the figures facial features can be clearly seen as those of a male human being. Other weapons are packaged with the figure.

HMRC Classification: 9503 00 70 00 Other toys put up in sets or outfits. 4.7% duty rate. If not a set, a human doll.

Appellant's Classification: Not a set as the package contains weapons which do not, in their own right, have any use or function and are all purely to be used with the main figure.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and is clearly recognisable as representing only a male human being. We consider that the weapons packaged with the figure, which can be held by and attached to the figure, are simple accessories of minor importance that are intended to be used with the figure. We have concluded that the correct classification of the Judge Dredd figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 16: Scorpion

Description: 6" solid plastic figure of a character in the computer game, Mortal Kombat. The figure has moveable parts and is wearing non-removeable black moulded plastic clothing with a yellow tunic and yellow mask covering the face below the eyes. The remainder of the figures head is covered by a hood and only the figure's eyes can be seen. The figure is holding a sword in its left hand.

HMRC Classification: 9503 00 70 00 Other toys put up in sets or outfits. 4.7% duty rate. If not a set, a human doll.

Appellant's Classification: Not a set as the package contains weapons which do not, in their own right, have any use or function and are all purely to be used with the main figure. The character is non-human as it is a dead ninja warrior, a hell spawned revenant resurrected for the purpose of revenge.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figures facial features cannot be seen, we concluded that it should be classified as a Non-human toy. We consider that the weapons packaged with the figure, which can be held by and attached to the figure, are simple accessories of minor importance that are intended to be used with the figure. We have concluded that the correct classification of the Scorpion figure is to 9503 00 49 90 Non-human toy with a duty rate of 0%.

Line 18: Scorpion

Description: 12” solid plastic figure of a character in the computer game, Mortal Kombat. The figure has moveable parts and is wearing non-removeable black moulded plastic clothing with a yellow tunic and yellow mask covering the face below the eyes. The figures upper arms are not covered by the clothing. The remainder of the figures head is covered by a hood and only the figure’s eyes can be seen. The figure is holding a sword in each hand.

HMRC Classification: 9503 00 70 00 Other toys put up in sets or outfits as comes with weapons which would be classified to different sub-heading if presented separately. 4.7% duty rate. If not a set, a human doll.

Appellant's Classification: Not a set as the package contains weapons which do not, in their own right, have any use or function and are all purely to be used with the main figure. The character is non-human as it is a dead ninja warrior, a hell spawned revenant resurrected for the purpose of revenge.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figures facial features cannot be seen and we concluded it should be classified as a Non-human toy. We consider that the weapons packaged with the figure, which can be held by and attached to the figure, are simple accessories of minor importance that are intended to be used with the figure. We have concluded that the correct classification of the Scorpion figure is to 9503 00 49 90 Non-human toy with a duty rate of 0%.

Line 19: Sub-Zero

Description: 12” solid plastic figure of a character in the computer game, Mortal Kombat. The figure has moveable parts and is wearing non-removeable black moulded plastic clothing with a blue tunic and a mask covering the face below the eyes. The figures upper arms are not covered by the clothing. The figure is wearing a non-removeable helmet and is packaged with an additional pair of hands to which can be attached an ice sword, ice hammer and ball of ice.

HMRC Classification: 9503 00 70 00 Other toys put up in sets or outfits. 4.7% duty rate. If not a set, a human doll.

Appellant's Classification: Not a set as the package contains weapons which do not, in their own right, have any use or function and are all purely to be used with the main figure. The character is non-human as it has the power to control ice and the ability to control it in many forms including flash-freezing people. turn 9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figures facial features cannot be seen and we concluded it should be classified as a Non-human toy. We consider that the additional pair of hands to which can be attached an ice sword, ice hammer and ball of ice are simple accessories of minor importance that are intended to be used with the figure. We have concluded that the correct classification of the Sub-zero figure is to 9503 00 49 90 Non-human toy with a duty rate of 0%.

Line 20: Chucky

Description: 6” plastic figure of the toy doll character from the Child’s Play horror film franchise. The figure has moveable parts and is wearing a non-removeable multi-coloured striped long-sleeved top, non-removeable denim dungarees and a pair of red shoes with white piping. Packaged with the figure is a plastic knife which can be held in the figure’s right hand.

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings. 4.7% duty rate. In witness statement, 9503 00 70 00 other toys put up in sets or outfits. 4.7% duty rate. In cross-examination accepted could be an accessory.

Appellant's Classification: Not a set as the package contains a knife which fits into the figure’s hand and does not, in its own right, have any use or function as it purely to be used with the main figure. The character does not represent only human beings because the figure is a toy figure of a doll which is brought to life when a dying serial killer transfers his soul into it and is not a toy figure of a human being.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure is clearly recognisable as representing only a male human being. The kitchen style knife is in proportion to the figure and can be held in either of the figure’s hands. We consider that the knife is a simple accessory of minor importance that is intended to be used with the figure. We have concluded that the correct classification of the Chucky figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 24: Lady Deadpool

Description: 9.5” solid plastic figure of the superhero character from the Marvel comic-books. The figure is wearing a non-removeable one-piece bodysuit with head covering. The figure appears to represent a female human being but no facial features can be seen. Packaged with the figure is an alternate head. No sample or photographs were provided of the alternative head.

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings. 4.7% duty rate. In witness statement, 9503 00 70 00 other toys put up in sets or outfits if alternative head is human, 4.7% duty rate, or a non-human toy if alternative head is not human, 0% duty rate.

Appellant's Classification: Not a set. Even if the alternate head has some human features, it does not, in its own right, have any use or function and is purely to be used with the main non-human figure. Further, an alternate head is part of the figure and is not a separate article and, in any event, it does not attract a different sub-heading. Its presence cannot therefore transform a figure into a set. Even if the alternate head has some human features, Lady Deadpool has the super-human power of regeneration, meaning that she cannot be killed, and super-human strength, stamina, agility and reflexes. She is also immune to disease and to the various Marvel psychics and telepaths. These are all attributes which are not found in human beings.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure’s facial features cannot be seen and we have concluded that it should be classified as a Non-human toy. In the absence of any additional information regarding the alternate head we have been unable to provide a definitive classification of the item. As suggested by HMRC, we have determined the Dolls versus Non-human toy issue on the basis of the available information and evidence to enable the parties to agree the classification. In the event that the parties are unable to agree the

appropriate classification of the item, the matter should be remitted to the Tribunal together with relevant information and/or evidence in respect of the additional head.

Line 26: Magik

Description: 8" solid plastic figure with moveable parts of the character Magik from the Marvel X-Men comic-books and films. The figure is wearing non-removeable moulded plastic clothing of black leg-length boots, bikini-style bottoms with belt, gauntlets and shoulder armour. Packaged with the figure is a large plastic sword held by the figure. The figures' face is fully exposed and is clearly recognisable as an adult female with shoulder length blond hair.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings. 4.7% duty rate.

Appellant's Classification: Magik has the mutant power of teleportation between dimensions and is a powerful sorceress, particularly by use of a magic sword. These are powers not possessed by human beings.

9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and is clearly recognisable as representing only a female human being. We consider that as sword packaged with the figure can be held by the figure it is a simple accessory of minor importance that is intended to be used with the figure. We agree with HMRC that the correct classification of the Magik figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 27: Kratos

Description: 7" solid plastic figure with moveable parts of the character from the computer game, God of War. The figure is wearing non-removeable moulded plastic boots and waist covering, gloves and armour covering the lower left arm and covering all of the right arm. The figure is holding in each hand two small weapons. Packaged with the figure are alternate heads to be used with the figure, two small swords and two gauntlets. The figures' face, upper torso, knees and thighs are exposed, the figure is clearly recognisable as an adult male.

HMRC Classification: On review 9503 00 70 00 other toys put up in sets or outfits as has two swords and two gauntlets. 4.7% duty rate.

Appellant's Classification: Not a set as the swords and gauntlets are plainly for use with the main figure and do not, in their own right, have any use or function other than with the figure. The figure does not represent human beings because Kratos is a minor God from Greek mythology, being one of the sons of Pallas and Styx, and not a human being.

9503 00 49 90 non-human and not a set. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and the figure is clearly recognisable as representing only a male human being. We consider that the two small swords, two gauntlets and alternate heads are simple accessories that are intended to be used by the figure and do not have independent play value. We have concluded that the correct classification of the Kratos figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 28: Game of Thrones - Ygritte

Description: 8" solid plastic figure with non-moveable parts of the character from the Game of Thrones television series. The figure is wearing non-removeable clothing and is holding in a fixed position a bow with an arrow

drawn back and has a quiver attached to the back of the figure with protruding arrow flights. The figures' facial features are clearly visible and is recognisable as a female human being. The figures features are very detailed.

HMRC Classification: On review, 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette as human figure but no moveable parts.

Appellant's Classification: The figure is not a statuette. A purchaser would purchase such a figure from a toy shop for its representation of a character from the TV series of Game of Thrones, rather than for its aesthetic value. The figure provides amusement and entertainment by promoting recreational conversation and play based around the character. It is not a decorative statuette to display on a mantelpiece, its recreational value substantially exceeds its ornamental value. The figure does not represent only human beings because the story is set in a mythical world which is not our Earth. In that world there are dragons, zombies and ice creatures which have never existed on Earth. The characters in that world are not indigenous to Earth and are not, therefore, human beings. They are akin to aliens.

9503 00 49 90 non-human. 0% duty rate

Tribunal Classification: The figure clearly represents only a human being but we considered it was not classifiable as a Doll as it is affixed to a non-removeable base. The 8" inch figure is very detailed and we have concluded that its ornamental value outweighs its recreational value and it should be classified according to its constituent parts (plastic) to 3926 40 Statuette with a duty rate of 6.5%

Line 29: Game of Thrones – Margaery Tyrrell

Description: 8" solid plastic figure of the character from the Game of Thrones television series. The figure has no moveable parts and is affixed to a plastic base plate. The figure is wearing moulded plastic clothes and its facial features are clearly visible and the figure is recognisable as a female human being. The figures facial features, clothes and body are very detailed.

HMRC Classification: On review 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette as human figure but no moveable parts.

Appellant's Classification: The figure is not a statuette. A purchaser would purchase such a figure from a toy shop for its representation of a character from the TV series of Game of Thrones, rather than for its aesthetic value. The figure provides amusement and entertainment by promoting recreational conversation and play based around the character. It is not a decorative statuette to display on a mantelpiece, its recreational value substantially exceeds its ornamental value. The figure does not represent only human beings because the story is set in a mythical world which is not our Earth. In that world there are dragons, zombies and ice creatures which have never existed on Earth. The characters in that world are not indigenous to Earth and are not, therefore, human beings. They are akin to aliens.

9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being but we considered it was not classifiable as a Doll as it is affixed to a non-removeable base. The 8" inch figure is very detailed and we have concluded that its ornamental value outweighs its recreational value and it should be classified according to its constituent parts (plastic) to 3926 40 Statuette with a duty rate of 6.5%

Line 30: Game of Thrones – Grey Worm

Description: 8” solid plastic figure of the character from the Game of Thrones television series affixed to a plastic base. The figure has no moveable parts and is affixed to a plastic base plate. The figure is wearing moulded plastic clothes and is holding a full-face helmet under the right arm and tall spear and shield in its left hand. The figures facial features are clearly visible and the figure is recognisable as a male human being. The figures facial features, clothes, helmet, spear and shield are all very detailed.

HMRC Classification: On review 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette as human figure but no moveable parts.

Appellant's Classification: The figure is not a statuette. A purchaser would purchase such a figure from a toy shop for its representation of a character from the TV series of Game of Thrones, rather than for its aesthetic value. The figure provides amusement and entertainment by promoting recreational conversation and play based around the character. It is not a decorative statuette to display on a mantelpiece, its recreational value substantially exceeds its ornamental value. The figure does not represent only human beings because the story is set in a mythical world which is not our Earth. In that world there are dragons, zombies and ice creatures which have never existed on Earth. The characters in that world are not indigenous to Earth and are not, therefore, human beings. They are akin to aliens.

9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being but we considered it was not classifiable as a Doll as it is affixed to a non-removeable base. The 8” inch figure is very detailed and we have concluded that its ornamental value outweighs its recreational value and it should be classified according to its constituent parts (plastic) to 3926 40 Statuette with a duty rate of 6.5%

Line 31: Game of Thrones – Oberon Martell

Description: 8” plastic figure of the character Oberon Martell from the Game of Thrones television series. The figure has no moveable parts and is affixed to a plastic base plate. The figure is clothed in a moulded plastic yellow robe with brown belt and brow boots. The figures facial features are clearly visible and the figure is recognisable as a male human being. The figures facial features, robe, belt, boots and other physical features are all very detailed.

HMRC Classification: On review 3926 40 00 00 Statuettes or other ornamental articles 6.5% duty rate. Other of plastic to code 9503 00 95 90 if not a statuette as human figure but no moveable parts.

Appellant's Classification: The figure is not a statuette. A purchaser would purchase such a figure from a toy shop for its representation of a character from the TV series of Game of Thrones, rather than for its aesthetic value. The figure provides amusement and entertainment by promoting recreational conversation and play based around the character. It is not a decorative statuette to display on a mantelpiece, its recreational value substantially exceeds its ornamental value. The figure does not represent only human beings because the story is set in a mythical world which is not our Earth. In that world there are dragons, zombies and ice creatures which have never existed on Earth. The characters in that world are not indigenous to Earth and are not, therefore, human beings. They are akin to aliens.

9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure clearly represents only a human being but we considered it was not classifiable as a Doll as it is affixed to a non-removeable base. The 8" inch figure is very detailed and we have concluded that its ornamental value outweighs its recreational value and it should be classified according to its constituent parts (plastic) to 3926 40 Statuette with a duty rate of 6.5%

Line 33: Thor

Description: 8" solid plastic figure on a removeable base of the character Thor, Norse God of Thunder, from the Marvel comic-books and films. The figure is wearing moulded plastic clothing, boots, helmet with winged decorations and a cloak. In its right hand the character is holding a hammer. The figure's facial features are not obscured by the helmet and the figure is recognisable as a male human being.

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings. 4.7% duty rate. In witness statement, 9503 00 70 00 other toys put up in sets or outfits, 4.7% duty rate or if non-moveable parts other of plastic, 4.7% duty rate.

Appellant's Classification: Not a set as the package contains Thor's hammer, Mjölnir, which can only be wielded by Thor. It does not, in its own right, have any use or function and is purely to be used with the figure. The figure does not represent only human beings as Thor is not a human being. He is the Norse God of Thunder from the realm of Asgard. Asgard is one of the Nine Worlds surrounding the tree Yggdrasil. Norse mythology portrays Asgard as a fortified home to the Æsir tribe of gods, located in the sky. Thor has physical abilities significantly beyond the capabilities of human beings, with super-human strength, the ability to wield thunder bolts and the ability to fly.

9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and the figure is recognisable as representing only a male human being. The figure can be removed from the base. We consider that the hammer is a simple accessory that is intended to be used by the figure (it fits in the figure's hand) and does not have independent play value. We have concluded that the correct classification of the Thor figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 34: Shazam

Description: 8" solid plastic figure with a removeable base of the character from the DC comic-books and films. The figure is wearing a moulded red plastic clothing, gold-coloured boots, gold coloured belt and a cloak. The figure's facial features can clearly be seen and the figure is recognisable as a male human being.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings. 4.7% duty rate.

Appellant's Classification: The figure represents a non-human creature as the character has super-human strength and speed, can fly and is invulnerable as well as having other super-human abilities. His powers are almost identical to Superman's, and he was originally created by a rival publisher to DC comics to compete directly against Superman. These are all super-powers which human beings do not have.

9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and the figure is recognisable as representing only a male human being. The figure can be removed from the base. We agree with HMRC that the correct classification of the Shazam figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 35: The Hulk

Description: 8" solid plastic figure of a green skinned character from the Marvel comic-books and films with moveable parts. The figure is wearing moulded plastic shorts and the remaining visible body has clearly defined and exaggerated muscle definition. The figure's facial features can clearly be seen and, despite the green skin, the figure is recognisable as a male human being.

HMRC Classification: On review 9503 00 21 90 Dolls representing human beings. 4.7% duty rate.

Appellant's Classification: The figure represents a non-human creature as the character is over eight feet tall, far bigger than a human being and is far stronger than a human being. He is green, which human beings are not.

9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and, despite the green skin and exaggerated muscle definition, the figure is recognisable as representing only a male human being. We agree with HMRC that the correct classification of the Hulk figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 36: Red Robin

Description: 8" solid plastic figure on a removable base of the superhero character (a later incarnation of Robin in the Batman franchise) from the DC comic-books and films. The figure is wearing moulded plastic clothing and a red cloak. The figure is holding a staff in its right hand. The figure is wearing a mask covering only the area around the eyes and the space between them, the eyes remain visible. Despite the mask, the figure's facial characteristics remain visible and the figure is recognisable as a male human being.

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings. 4.7% duty rate. In witness statement, 9503 00 70 00 other toys put up in sets or outfits, 4.7% duty rate or if non-moveable parts other of plastic, 4.7% duty rate.

Appellant's Classification: Not a set as the package includes a staff which does not, in its own right, have any use or function and is purely to be used with the main figure. If not a set, accept classification as doll representing human beings.

Tribunal Classification: Despite the mask around the figure's eyes, the figure's facial features can clearly be seen and the figure is recognisable as representing only a male human being. The figure can be removed from the base. We consider that the staff is a simple accessory that is intended to be used by the figure (it fits in the figure's hand) and does not have independent play value. We have concluded that the correct classification of the Red Robin figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 37: The Walking Dead – Daryl Dixon

Description: 6” solid plastic figure with moveable parts from the Walking Dead zombie television series. Packaged with the figure is plastic shovel and a burial marker cross. The spade can be held by the figure and the cross has a small round base representing a mound of earth that enables it to stand unsupported. The figure has moulded plastic clothes and the lower part of the figure’s face is concealed by a bandana mask. Despite the bandana mask the figure’s facial characteristics remain sufficiently visible such that the figure is recognisable as only representing a male human being.

HMRC Classification: On review, 9503 00 70 00 other toys put up in sets or outfits, 4.7% duty rate. If not a set, 9503 00 21 90 Dolls representing human beings, 4.7% duty rate, or if non-moveable parts other of plastic, 4.7% duty rate.

Appellant's Classification: The figure is not a set as the package includes a shovel and cross which do not, in their own right, have any use or function and are, in the context of the story, purely to be used with the main figure. The figure does not represent only human beings as the character, a survivor, carries a pathogen which will turn him into a zombie when he dies. This is not a characteristic representative of human beings. Not a set and 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: Despite the bandana, the figure’s facial features can clearly be seen and the figure is recognisable as representing only a male human being. The spade packaged with the figure can be held in either hand by the figure and we consider this to be a simple accessory that is intended to be used by the figure (it fits in the figure’s hand) and does not have independent play value. We do not consider the burial marker cross to be a simple accessory as it does not perform a particular function in relation to the figure by adding to or enhancing the way in which the figure can be used for amusement of play and is classifiable to 9503 00 95 00 Other of plastic. As the items are packaged together for retail sale, we have concluded that the figure and items should be classified to 9503 00 70 00 Sets with 4.7% duty rate.

Line 38: The Walking Dead - Beth Greene

Description: 6” solid plastic figure with moveable parts of a character from the Walking Dead zombie television series. Packaged with the figure are three small items: a rifle, a pistol and a knife. The three items can be held by the figure. The figure has moulded plastic clothes and boots and the figure’s face is visible. The figure’s facial characteristics and body are such that the figure is recognisable as representing only a female a male human being.

HMRC Classification: On review, 9503 00 70 00 other toys put up in sets or outfits, 4.7% duty rate. If not a set, 9503 00 21 90 Dolls representing human beings, 4.7% duty rate, or if non-moveable parts other of plastic, 4.7% duty rate.

Appellant's Classification: The figure does not represent only human beings as the character, a survivor, carries a pathogen which will turn her into a zombie when she dies. This is not a characteristic representative of human beings. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure’s facial features can clearly be seen and the figure is recognisable as representing only a female human being. We consider that the weapons are simple accessories that are intended to be used by the figure (they fit in the figure’s hand) and do not have independent play value. We have concluded that the correct classification of the Beth Greene figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 39: The Walking Dead - T-Dog

Description: 6" solid plastic figure with moveable parts of a character from the Walking Dead zombie television series. Packaged with the figure are three small items: a pistol, bolt cutters and fireside poker. The three can be held by the figure. The figure has moulded plastic clothes and boots the figure's face is visible. The figure's facial characteristics and body are such that the figure is recognisable as representing only a male human being.

HMRC Classification: On review, 9503 00 70 00 other toys put up in sets or outfits, 4.7% duty rate. If not a set, 9503 00 21 90 Dolls representing human beings, 4.7% duty rate, or if non-moveable parts other of plastic, 4.7% duty rate.

Appellant's Classification: The figure does not represent only human beings as the character, a survivor, carries a pathogen which will turn him into a zombie when he dies. This is not a characteristic representative of human beings. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and the figure is recognisable as representing only a male human being. We consider that the three small items packaged with the figure are simple accessories that are intended to be used by the figure (they fit in the figure's hand) and do not have independent play value. We have concluded that the correct classification of the T-Dog figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 40: The Walking Dead - Water Walker

Description: 6" solid plastic figure with moveable parts of a character from the Walking Dead zombie television series. The figure has exposed sinews, ligaments, organs etc. on upper body and head and there is a left knee-bone protruding from the moulded plastic trousers. The figure has hole in base of left heel to attach to a peg on the circular base plate, the left leg articulates to allow the figure to be placed in different poses. Packaged with the figure are three small food cans and a jar. The food cans and jar cannot be held or attached to the figure. The figure is recognisable as representing a non-human being.

HMRC Classification: On review 9503 00 70 00 other toys put up in sets or outfits, 4.7% duty rate. If not a set, accept non-human.

Appellant's Classification: The figure does not represent only human beings as the character, a survivor, carries a pathogen which will turn him into a zombie when he dies. This is not a characteristic representative of human beings. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure, whilst having predominantly human features, is clearly a Non-human toy as it has exposed sinew and bones on its upper body and head. We do not accept that the three cans and jar perform a particular function in relation to the figure by adding to or enhancing the way in which the figure can be used for amusement of play and are classifiable to 9503 00 95 00 Other of plastic. As the items are packaged together for retail sale, we have concluded that the figure and four items should be classified to 9503 00 70 00 Sets with 4.7% duty rate.

Line 41: The Walking Dead - Michonne

Description: 6" solid plastic figure with moveable parts of a character from the Walking Dead zombie television series. Packaged with the figure are two small items: a pistol and a sword. The pistol and sword can be held by the

figure. The figure has moulded plastic clothes and boots; the figure's face is fully visible. The figure's facial characteristics and body are such that the figure is recognisable as representing only a female human being.

HMRC Classification: On review, 9503 00 21 90 Dolls representing human beings, 4.7% duty rate.

Appellant's Classification: The figure does not represent only human beings as the character, a survivor, carries a pathogen which will turn her into a zombie when she dies. This is not a characteristic representative of human beings. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and the figure is recognisable as representing only a female human being. We consider that the two small items packaged with the figure are simple accessories that are intended to be used by the figure (they fit in the figure's hand) and do not have independent play value. We agree with HMRC that the correct classification of the Michonne figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

Line 42: The Walking Dead – Dale Horwarth

Description: 6" solid plastic figure with moveable parts depicting a character from the Walking Dead zombie television series. Packaged with the figure are a rifle, binoculars and a hat. The rifle and binoculars can be held in the figure's hands and the hat worn on the figure's head. The figure has moulded plastic clothes with exposed intestines that are partially spilled out from the stomach cavity. The figure is recognisable as representing only a human being.

HMRC Classification: On review 9503 00 70 00 other toys put up in sets or outfits, 4.7% duty rate. If not a set, HMRC accept 9503 00 21 90 Dolls representing human beings, 4.7% duty rate.

Appellant's Classification: Not a set as the package includes a rifle, binoculars and a hat which do not, in their own right, have any use or function and are, in the context of the story, purely to be used with the main figure. The figure does not represent only human beings as, in common with all the other survivors, the character carries a pathogen which will turn him into a zombie when he dies. This is not a characteristic representative of human beings. Not a set. 9503 00 49 90 non-human. 0% duty rate.

Tribunal Classification: The figure's facial features can clearly be seen and, despite the exposed and protruding intestines, the figure is recognisable as representing only a male human being. We consider that the three small items packaged with the figure are simple accessories that are intended to be used by the figure (the rifle and binoculars fit in the figure's hand) and do not have independent play value. We consider that the correct classification of the Dale Horwarth figure is to 9503 00 21 90 Dolls with a duty rate of 4.7%.

DECISION

136. For all the reasons set out above, the appeal is allowed in part and refused in part to the extent set out above.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

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

accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**GERAINT WILLIAMS
TRIBUNAL JUDGE**

Release date: 22nd DECEMBER 2023