[2017] UKUT 342 (TCC)

Appeal number: UT/2014/0040

CUSTOMS DUTY – dental lamps – whether FTT erred in interpretation of heading 9018 in Combined Nomenclature ("… appliances, used in dental sciences …") and explanatory notes – no – appeal dismissed

UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER

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

- and -

A-DEC DENTAL UK LIMITED **Respondent**

TRIBUNAL: JUDGE ROGER BERNER
JUDGE SWAMI RAGHAVAN

Sitting in public at The Royal Courts of Justice, Strand, London WC2 on 20 June 2017

Written submissions received from Appellants on 17 August, 5 and 13 September, and from the Respondent on 29 August and 9 September 2017

Jonathan Bremner, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Appellants

Thomas Chacko, instructed under the Public Access Scheme, for the Respondent

DECISION

1. The question in this appeal concerns the correct classification, for customs duty purposes, of what are described as "shadowless lamps", of the kind used by a dentist to see into the mouth. Are they, as HMRC submit, to be classified under code 940540 99 90 of the Combined Nomenclature ("CN"), broadly speaking as "Other electric lamps and lighting fittings … Other" or, as A-Dec Dental UK Limited ("A-Dec") says, under code 901849 90 00, again in broad terms as "… appliances, used in dental sciences … Other"?

2. Whereas if code 901849 90 00 applies the duty rate is 0%, the rate of duty under 940540 99 90 is 2.7%. A-Dec's appeal to the First-tier Tribunal ("FTT") was against a post-clearance demand issued on 12 October 2012 in the sum of what was said to be unpaid customs duty of £8,689.74 and import VAT of £1,446.52. The FTT (Judge Kevin Poole and Mrs Shameem Akhtar) decided that the lamps were appliances for the purpose of heading 9018 and that they were therefore excluded from heading 9405 and the associated sub-headings. A-Dec's appeal was accordingly allowed. It is from that decision that HMRC now appeal, with permission of Judge Sinfield in this Tribunal.

The facts

3. The facts can be stated very briefly. The FTT described the lamps as specialist lamps for use in dentistry, of a type attached to or used in conjunction with a dentist's chair and specifically designed for inspecting the oral cavity as part of dental diagnosis and treatment.

4. A-Dec imports a range of specialist dental equipment into the UK, including dental chairs and associated equipment. The dental operating lights that are the subject of this appeal were presented as separate items for customs clearance, and not as part of complete dental equipment or as an attachment to a dental chair. As imported, the lights are attached to a pivoting arm which, in turn, can be mounted either on a dental chair or on some other place, such as the wall or ceiling of the dental surgery.

5. The lights are produced in conformity with the relevant ISO (International Organisation for Standardization) standard (9680) for such lights and their construction makes them essentially unsuitable for any other use. The colour temperature, intensity, rendering index and pattern of light they produce is very specific to the illumination of the oral cavity during dentistry. The product is classified under the EU's Medical Devices Directive (93/42/EEC; 14 June 1993) ("The Medical Devices Directive") as a Class I device.

Legislative background

6. There was no dispute as to the legislative background which can again be described quite shortly. It has most recently been summarised judicially by Arden LJ

in *Amoena (UK) Limited v Revenue and Customs Commissioners* [2015] EWCA Civ 25, at [7] – [10] and endorsed by Lord Carnwath in the Supreme Court in that case [2016] 1 WLR 2904, at [6].

7. The EU is a party to the International Convention on the Harmonised Commodity Description and Coding System, generally known as "the Harmonised System" ("HS"). In the EU, customs classification is carried out under a system that is based on the HS and known as the Combined Nomenclature ("CN") under Council Regulation (EEC) no 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ("the CN Regulation"). The Tariff is the external tariff applied to products imported into the EU. Each year the Commission adopts a regulation reproducing a complete version of the CN and Common Customs Tariff duty rates, taking Council and Commission amendments into account.

8. The CN Regulation consists of:

(1) Basic rules. These include six general interpretative rules ("GIRs"). 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 sub-headings of the CN or by taking into account section or chapter notes. So far as material, the GIRs provide:

> "Classification of goods in the Common Nomenclature shall be governed by the following principles:
>
> 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.
>
> …
>
> 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;
>
> …
>
> (c) when goods cannot be classified by reference to 3(a) … , 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.
>
> . . .
>
> 6. For legal purposes, the classification of goods in the sub-headings 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 requires otherwise."

(2) An annually updated list of goods categories (with a code of up to eight digits, specifically adapted for the EU from the six-digit code of the HS, and a description).

9. It can be seen that, as was described by Henderson J in *Revenue and Customs Commissioners v Flir Systems AB* [2009] EWHC 82 (Ch), at [14], the GIRs provide a hierarchical set of principles, and if the correct classification can be ascertained at a given stage it is unnecessary to proceed any further.

10. Both the CN and the HS have explanatory notes (CNENs and HSENs respectively), which are prepared by experts. They are not legally binding, but are persuasive and an important aid to the interpretation of the various headings. The content of the HSENs must therefore be compatible with the provisions of the CN and may not alter the meaning of those provisions (*Intermodal Transports BV v Staatssecretaris van Financien* (Case C-495/03) [2005] ECR I-8151; [2015] All ER (D) 84 (Sep), at [48]).

The relevant headings of the CN

11. The FTT set out the relevant provisions of the CN in an Annex to its decision. For ease of reference we have done likewise (at Annex 1). The salient entries, in ascending order, are:

Commodity code 901849 90 00

9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments
	Other instruments and appliances, used in dental sciences:
	Other:
901849 90 00	Other

Commodity code 940540 99 00

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included, illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included
	Other electric lamps and lighting fittings:
	Other:
	Of other materials:
	Other
940540 99 00	Other

12. As HMRC's grounds in the appeal before us centred very much on the FTT's approach to interpreting the relevant HSENs it is helpful to set out the extracts of those here:

13. The HSENs on heading 9018 include:

> "This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g. by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc.
>
> ….
>
> The heading does not cover:
>
> ….
>
> (r) Medical or surgical furniture, including that for veterinary use (operating tables, examination tables, hospital beds), dentists' chairs not incorporating dental appliances of this heading, etc. (heading 94.02)."

14. The second paragraph following the above note states:

> "It should also be noted that a number of the instruments used in medicine or surgery (human or veterinary) are, in effect, tools (e.g. hammers, mallets, saws, chisels, gouges, forceps, pliers, spatulae, etc.), or articles of cutlery (scissors, knives, shears, etc.). Such articles are classified in this heading **only** when they are clearly identifiable as being for medical or surgical use by reason of their special shape… their better quality manufacture… [etc.]"

15. Included in the group under 9018 "(1) Instruments and appliances for human medicine or surgery" are:

> "(R) **Lamps** which are specially designed for diagnostic, probing, irradiation etc purposes. Torches, such as those in the shape of a pen are **excluded (heading 85.13)** as are other lamps which are not clearly identifiable as being for medical or surgical use (**heading 94.05**)."

16. The group of notes headed "Dental Instruments and Appliances" includes the following:

> "(i) **Dental drill engines** with swivel arm, whether on a separate base, for wall-mounting, or for fitting to the equipment described under (ii) below.
>
> (ii) **Complete dental equipment on its base** (stationary or mobile unit). The main usual features are a frame carrying a compressor, a transformer, a control panel and other electrical apparatus; the following are also often mounted on the unit: a swivel arm drill, spittoon and mouth rinser, electric heater, hot air insufflator, spary, cautery instrument tray, diffused lighting, shadowless lamp, fan, diathermic apparatus, X-ray apparatus, etc.
>
> Some types of this equipment are designed to operate by the use of abrasive materials (usually aluminium oxide) instead of with a drill; the abrasives are usually projected against the teeth by compressed gas (e.g. carbon dioxide).
>
> (iii) **Spittoon mouth rinsers** whether on a base, stand or on swivel arms. They are usually combined with warm water supply and warm water syringe.
>
> (iv) **Polymerisation devices** (light or heat), amalgamators, ultrasonic scalers, electrosurgery equipment, etc.
>
> (v) **Devices for dental treatment** which operate by the use of lasers.
>
> (vi) **Dentists' chairs incorporating dental equipment** or any other dental appliances classifiable in this heading.
>
> The heading **does not**, however, **include** dentists' chairs not incorporating dental appliances of this heading; these dentists' chairs fall in heading 94.02 whether or not fitted with equipment such as lighting fittings.
>
> It should, however, be noted that the heading **excludes** certain items of dental equipment mentioned in paragraph (ii) above, when they are presented separately; these are classified in their own respective headings, for example, compressors (heading **84.14**), X-ray, etc., apparatus (heading **90.22**). Heading **90.22** also covers X-ray, etc., apparatus designed for a separate stand, or for wall-mounting in dental surgeries. Separately presented diathermy apparatus is, however, classified with the electro-medical apparatus of this heading (see Part (IV) below)."

17. On 17 August 2017 Commission Implementing Regulation (EU) 2017/1476 was published. The Regulation, the text of which is set out in Annex 2, classifies under CN Code 9405 40 99:

> "A product (so-called 'LED dental light') made of different materials such as glass, plastic and various metals and including several light-emitting diodes (LED). It is presented attached to a pivoting arm. The pivoting arm can either be mounted on a dental chair or e.g. on the wall or ceiling of a dental surgery. It is designed to illuminate the oral cavity during dentistry treatment. The level, colour and pattern of the light produced is specifically for use by dentists."

18. HMRC submit that this Regulation (which was published after the hearing and on the same day the parties had been sent an embargoed draft of the tribunal's decision) conclusively resolves the appeal in their favour. The tribunal received written submissions from the parties on HMRC's application that the tribunal revise its decision. The parties disagree on the interpretative relevance of the Regulation to the period before it came into force (6 September 2017). We deal with their arguments and our conclusion on this issue at [58] onwards below.

Legal principles applicable to classification

19. The CJEU has consistently applied a number of principles:

> (1) In the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be found in their objective characteristics and properties as defined in the wording of the relevant heading of the CN and the wording of the notes to the sections or chapters (see, for example, *Intermodal*, at [47]).
>
> (2) The consideration of the objective characteristics and properties of products is generally to be carried out as at the time of their presentation for customs clearance (*Hans Dinter GmbH v Hauptzollamt Koln-Deutz* (Case 175/82) [1983] ECR 963, at [10]).
>
> (3) 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 (see, for example, *Intermodal*, at [55]; *Olicom A/S v Skatteministeriet* (Case C-142/06) [2007] ECR I-6675, at [18]).
>
> (4) As mentioned above at [10], the HSENs and CNENs are persuasive and an important aid to the interpretation of the scope of the various headings. The content of those notes must therefore be compatible with the provisions of the CN and may not alter the meaning of those provisions.

20. One of HMRC's challenges to the FTT's approach is that the test the FTT deployed in characterising the goods would not enable a customs officer assessing goods presented for customs clearance properly to distinguish between lamps under the competing headings. Given that, it is worth touching on the approach adopted by

the CJEU to the assessment of the objective characteristics and properties of goods on presentation for customs clearance and the level of enquiry that might be attributed to an officer in relation to classification of a product.

21. In *Dinter* the question was whether a meat product fell under the heading "… fresh chilled or frozen" or the heading "Other prepared or preserved meat …". The Court found that the term "prepared meat" included poultry-meat to which salt and pepper had been added even if the pepper could only be detected microscopically. The Court rejected the argument of the European Commission to the effect that only when the seasoning was "organoleptically perceptible" (that is, capable of being perceived by a sense organ) could it be regarded as "other prepared meat" on the basis that a taste test would be too subjective. As well as confirming that the decisive criterion for classification must, generally speaking, be sought in the objective characteristics and properties of products at the time of their presentation for customs clearance, it is clear that the Court envisaged that laboratory analysis might need to be carried out, and that the objective characteristics and properties of the products would include those ascertainable only on such analysis.

22. *Dinter* was referred to, along with a number of other decisions on when and how the objective characteristics were to be ascertained, in the case of *Ministero Delle Finanze v Foods Import SRL* (Case C-38/95) [1957] 1 CMLR 106. At [17], the Court noted:

> "… the requirement that the objective characteristics and properties of products must be ascertainable when customs clearance is obtained (Case C-233/88 *Van de Kolk* [1990] ECR I-265, paragraph 12) does not presuppose that differences between products are apparent. Certain characteristics of a product may be identifiable only microscopically (Case 175/82 *Dinter* [1983] ECR 969) or by means of sensory analysis (*Van de Kolk*, cited above). Indeed, a product's classification may depend on the process by which it is manufactured or the geographical origin of some of its constituents, those being characteristics which are not necessarily apparent (Case 40/88 *Weber* [1989] ECR 1395)".

23. While it follows from the above that questions of classification do not depend on what would simply be apparent to a notional customs officer (it is quite possible that further testing or analysis might be required), the cases have left open the issue how objective characteristics are to be ascertained where such characteristics include the intended use of the product. It is nonetheless clear that the objective characteristics are not confined to those apparent by physical inspection. Such an inspection is as subjective as the taste test disapproved in *Dinter*. The essential distinction is between what is apparent and what is ascertainable; it is the latter which is the material factor.

24. Objective characteristics which are capable of being ascertained will include manufacturing processes and geographical origin. The relevance of such factors illustrates that the objective characteristics to be observed can include matters that can be ascertained by investigation and by the provision of information relating to the product. That information must be provided by the importer, but it can include

information with respect to intended use, where such intended use is inherent in the product.

25. That analysis finds support in the more recent case of *'Oliver Medical' SIA v Valsts ieņēmumu dienests* (Case C-547/13) ECLI:EU:C:2015:139, in a judgment given by the CJEU on 4 March 2015, after the FTT issued its decision. In that case, the Court considered the ascertainment of intended use in the particular context of medical use, and also made observations on the scope of heading 9018:

> "With regard to heading 9018 of the CN, it is apparent from an examination of that heading that it covers, in particular, medical instruments or appliances. The wording of that heading does not give any more details on the characteristics of those instruments or appliances. Included in the list of goods covered by that heading is ultraviolet or infrared irradiation equipment.
>
> 49 In that regard, it is necessary to note that, in accordance with the explanatory note to the HS concerning heading 9018, that heading covers a very wide range of instruments and appliances the normal use of which, in the vast majority of cases, requires the intervention of a practitioner, such as a doctor, surgeon, dentist, veterinary surgeon or midwife, to make a diagnosis, to prevent or treat an illness or to operate.
>
> 50 It follows therefrom, firstly, that those appliances and instruments are, in most cases, used by a healthcare practitioner, without the intervention of such a practitioner being required in every case, and, secondly, that those appliances and instruments are intended for medical use.
>
> 51 In order to establish whether a product is intended for medical use, it is appropriate to take account of all the relevant factors in the case, as set out in the order for reference, to the extent that they are characteristics and objective properties inherent to that product. It is for the importer, at the time of import, to prove that that product is intended for medical use.
>
> 52 Among the relevant factors, it is necessary to assess the use for which the product is intended by the manufacturer and the methods and place of its use. Thus, the fact that the product is intended to treat one or more different pathologies and that that treatment must be carried out in a medical centre and under the supervision of a practitioner are indications capable of establishing that that product is intended for medical use. Inversely, the fact that a product mainly brings about aesthetic improvement, that it may be operated outside a medical environment, for example in a beauty parlour, and without the intervention of a practitioner are indications that that product is not intended for medical use.
>
> 53 The fact that a product bears a CE mark certifying the conformity of a medical device with the provisions of Directive 93/42 [*Medical Devices Directive*] constitutes one factor among others to be taken into consideration in that regard. None the less, since Directive 93/42 pursues objectives different from those of the CN and in order to

> maintain the coherence between the interpretation of the CN and that of the HS, which is established by an international convention to which the European Union is a contracting party, the fact that a product bears a CE mark cannot be decisive as regards an assessment of whether it is intended for medical use within the meaning of heading 9018 of the CN."

26. It is thus clear that relevant information concerning the intended use of a product is to be taken into account. That information will include the methods of use of the product, its place of use and any specialist characteristics of any person intended to use the product or supervise its use, to the extent that such factors are inherent to the product itself. Those inherent characteristics must point towards the particular use, and away from more general, and non-specialised, use. Information as to conformity with the Medical Services Directive is relevant, but not decisive. It was common ground in this case that the fact that the lamps in question are classified under that Directive cannot be conclusive. It is nonetheless a relevant factor. Equally relevant, but not decisive, is the fact of conformity with the ISO standard.

The FTT's Decision

27. The facts found (set out at [3] to [5] above) and the FTT's statement of the legal principles of interpretation to be applied are not in contention in this appeal. HMRC's grounds of appeal rest on the FTT's interpretation of the relevant headings and explanatory notes.

28. Having set out the relevant facts, and made reference to the competing classifications and extracts from the relevant HSENs for 9018 and 9405, the FTT reminded itself, at [33], that the HSENs could only have effect to the extent they were compatible with the provisions of the CN.

29. It was common ground that the product being a "specialised lamp" was classifiable in heading 9405 unless heading 9018 applied. This was made clear by the HSENs to heading 9405. Extracts of these explained that:

> (1) This Chapter [i.e. Chapter 94] covers, **subject** to the exclusions listed in the Explanatory Notes to this Chapter: […] (3) Lamps and lighting fittings and parts thereof, not elsewhere specified or included".
>
> (2) Heading 94.05 (Lamps and lighting fittings not elsewhere specified or included) "covers in particular: […] (3) **Specialised lamps**, e.g. darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (**other than those of heading 85.12**) […]". (emphasis in original)
>
> (3) Heading 94.05 "also **excludes** […] (l) Medical diagnostic, probing, irradiation, etc, lamps (**heading 90.18**)."

30. At [34], the FTT identified that it was "obvious that the goods in question [were] used in dental science"; and that the only question was whether the goods were "instruments" or "appliances". In the FTT's view the goods could not be considered as an "instrument". As to the question of whether the goods were an "appliance" the

FTT noted, at [35], that it felt some uncertainty on the basis of the normal usage of the word alone in deciding "whether it would encompass a specialised lamp which is simply used as a source of illumination, however sophisticated". Turning to the HSENs, the FTT noted they referred to "lamps which are specially designed for diagnostic, probing, irradiation, etc. purposes" (note (R) at [15] above) as being included within "Instruments and Appliances for Human Medicine or Surgery". In reasoning, which HMRC in this appeal take particular objection to, the FTT drew from the note that:

> "…certain specialised lamps can be regarded as "appliances", and for this purpose we see no distinction between lamps which are "designed for diagnostic, probing, irradiation, etc. purposes" and lamps which are designed to provide a particular type of illumination which is necessary to assist in diagnosis and treatment."

31. At [36], the FTT made further findings of fact (to those which we have already set out at [3] to [5] above) in relation to the products by reference to the HSENs to Chapter 90 and heading 9018. They found it was clear that the goods:

> "…were certainly "characterised by their high finish and high precision" …in addition they will almost invariably be used in professional practice by dentists …".

32. Contrary to HMRC's submissions before it, the FTT was not persuaded that the HSENs were clear that the goods should not fall under heading 9018 on the basis of the relevant notes when read as a whole. The FTT rejected HMRC's argument that the wording following note (vi) (that certain items of dental equipment referred to in note (ii) were excluded from the heading when presented separately) applied to the product when presented separately rather than as "complete dental equipment on its base":

> "[40]…The note [*(ii)*] referred specifically to the possibility of "diffused lighting" and a "shadowless lamp" forming part of a complete set of "dental equipment on its base", but that does not imply that a specialist lamp which is not part of such a set should necessarily be excluded from being considered as a "dental appliance" in its own right; indeed, the note went on to specify certain items which would, if presented separately rather than as part of a set of "complete dental equipment on its base", be differently categorised – but without referring to "diffused lighting" or "shadowless lamp" as receiving such different categorisation, even though they had been specifically mentioned in the list of items that might form part of "complete dental equipment on its base". This omission gives rise to an implication that the draftsman of the notes wished at the very least to leave that point open.
>
> 41. It is fair to acknowledge that where the note refers to dentists' chairs "not incorporating dental appliances of this heading" as falling into the "furniture" heading in the CN, the statement that this is so "whether or not [the chair is] fitted with equipment such as lighting fittings" does carry with it a suggestion that such lighting fittings are insufficiently specialist to make them "appliances used in dental science". We do not however consider this to be a strong enough

> suggestion to override the contrary implication referred to at [40] above."

33. As will be seen, in this appeal HMRC argue that the FTT was wrong in its interpretation of the notes, and in its analysis of "contrary implication".

34. The FTT also rejected HMRC's submission that note (R) drew a distinction between lamps "for medical or surgical use" on the one hand and dental lamps on the other, finding that:

> (1) that interpretation would render the HSENs inconsistent with terms of the CN itself (at [42]),
>
> (2) the context to the words "medical and surgical use" in the rest of the notes indicated that an overlap between "instruments and appliances for human medicine and surgery" and "Dental instruments and appliances" was envisaged (at [43]); and that
>
> (3) the general approach of the "Dental" Group of notes was to pick out expressly those items which were specific to dentistry, whilst reading across the "Medicine/surgery" notes to cover items common to both areas of activity (at [44]).

35. At [45], the FTT summarised its reasons for allowing the appeal as follows:

> "(1) The objective characteristics and properties of the relevant goods in this case are such as to bring them within heading 9018 and the appropriate sub-headings down to 901849 90 00. The degree of finish, precision and specialisation inherent in them points strongly to this conclusion and the HSENs make it clear that a sufficiently specialised lamp can amount to an "appliance" for the purposes of heading 9018 (and, therefore, the sub-headings beneath it).
>
> (2) When considered in detail, the HSENs do not conflict with this conclusion.
>
> (3) Any potential such conflict would be incompatible with the terms of the heading and sub-headings themselves.
>
> (4) As these goods were, in our view, included within sub-heading 901849 90 00, they are expressly excluded from heading 9405 (and any sub-heading beneath it)."

HMRC's appeal

36. HMRC's primary contention on this appeal is that the FTT erred by expanding the concept in the HSENs that lamps "which are specially designed for diagnostic … purposes" to "lamps which are designed to provide a particular kind of illumination which is necessary to assist in diagnosis and treatment". Furthermore, they submit that, even if that expansion was correct, there was no finding by the FTT or in any case no evidence before the FTT to make a finding that the illumination created by the product was "necessary" to assist in diagnosis and treatment. It is also argued that the FTT erred in its analysis of the HSENs which made clear that dental lamps, such as

the product, were not to be classified as "appliances used in … dental sciences" within Chapter 90.

Discussion

37. Before we consider HMRC's grounds of appeal it is first necessary for us to address A-Dec's submission that the meaning of the term "appliance" is an issue of fact because the term is an ordinary English word which is not used in any unusual sense and does not have a special legal meaning. The consequence, it is submitted, is that the FTT's finding on the meaning of the word would only be susceptible to challenge on *"Edwards v Bairstow"* type grounds, namely if the decision "... was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision." A-Dec's submission on the distinction and the consequences which follow rests on an explanation in Lord Reid's speech in the House of Lords' decision in *Brutus v Cozens* [1973] AC 854 (where the court was considering the meaning of the word "insulting" as used in the Public Order Act 1936 (as amended)). Lord Reid said, (at p 861)

> "The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is…It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved."

38. Mr Chacko developed his argument further by reference to CJEU case law on customs classification. He submitted that, in its consideration of Heading 9018, the CJEU in *Oliver Medical* did not suggest that "appliance" had a special meaning in that context, and that in *Uroplasty BV v Inspecteur van de Belastingdienst - Douane district Rotterdam (C-514/04)* [2006] ECR I-6721, [2006] All ER (D) 184 (Jul), a case concerning the meaning of "appliance" in the context of "orthopaedic appliance", Advocate General Kokott's opinion referred to the English definition of "appliance". Mr Chacko also referred us to *Hasbro European Trading BV v Revenue and Customs Commissioners* [2016] UKUT 408 (TCC), where this Tribunal, having regard to the passage from Lord Reid's judgment referred to above, had treated the term "spinning top" in the CN as an ordinary language term (at [71] to [72] of the Tribunal's decision).

39. We reject Mr Chacko's submission in this respect. We entertain no doubt that the relevant question that the FTT had to, and did, engage with, was not whether the product was an appliance simply as a matter of ordinary language, but whether it fell within that term as used in the legislation. The interpretation of the word "appliance" involves an exercise of statutory construction and as such clearly raises issues of law. Mr Bremner highlighted paragraph [35] of the FTT's decision from which it can be seen that the FTT was construing the word "appliance" in the particular statutory context in which it appears and was not simply applying its ordinary usage. HMRC do not seek to challenge the approach of the FTT of considering the word in its statutory

context; rather their case seeks to point out what are submitted to be flaws in the way in which the FTT approached that task. We cannot therefore accept A-Dec's submission that HMRC have to show the FTT's decision was unreasonable in the sense described above. We shall turn therefore to the particular criticisms made by HMRC of the FTT's approach to construing the relevant legislation and explanatory notes.

HMRC's criticisms of the FTT's interpretation.

40. Mr Bremner submits that the FTT erred in interpreting the term "appliances" in heading 9018. In particular, he criticises the manner in which the FTT made use of the HSENs, submitting that it took a selective approach and that it undertook an unwarranted expansion of the concept of lamps "which are specially designed for diagnostic, probing, irradiation etc. purposes" to "lamps which are designed to provide a particular type of illumination which is necessary to assist in diagnosis and treatment". HMRC's case is that there is nothing in the product itself that enables a dentist to make a diagnosis. The contrast, they say, is between a lamp which assists in a passive way by shining light which better enables the professional to carry out his or her role, and a light used actively for diagnostic purposes, for example by seeing how a lesion reacts when light is shone on it. HMRC emphasise that there is nothing that shows, without explanation going beyond objective characteristics, that the light is for medical or surgical use, and in particular that it is designed for diagnostic purposes.

41. Mr Bremner submits that note (R) (set out at [15] above) does not expressly extend to lamps specially designed for dental use and that while Part II of the HSENs to Chapter 90 (Dental Instruments and Appliances) refer to items "common to this and other previous group", the HSENs then go on to make clear that dental lamps such as the product are not to be classified as "appliances used in … dental sciences". Note (vi), through its reference to "… whether or not fitted with equipment such as lighting fittings" implies that "lighting fittings" are not dental appliances. While the FTT acknowledged this interpretation, it wrongly reasoned that it was overridden by a "contrary implication" in note (ii).

42. Dental lamps, in HMRC's submission, are only caught when they are imported as complete dental equipment. Note (vi) makes it clear that a lamp on its own does not count as a dental appliance. (Mr Bremner argues that the Tribunal should reject Mr Chacko's argument that the exclusion in the text following note (vi) applies only to lighting fittings - a fitting into which a light is placed - which are distinct from lamps.) The FTT, submits Mr Bremner, did not read the HSENs as a whole and that when that is done the HSENs make it clear the dental lamp is not to be characterised as a dental appliance for the purposes of heading 9018.

43. As regards the omission of a reference to lighting in the list of excluded items in the second paragraph which follows note (vi), Mr Bremner points out that it is not surprising that the list of specified items, such as compressors and x-rays, does not deal with lamps because the paragraph in which the list appears follows shortly after a paragraph which deals specifically with lighting fittings.

44. In our judgment, none of the criticisms over the way the FTT interpreted the HSENs and the headings are justified. The FTT carefully considered the drafting of the relevant heading and the various implications of the drafting of the explanatory notes in terms of what they stated and what they omitted and used the notes appropriately as an aid to interpreting the heading.

45. Regarding the criticism that the FTT did not consider the HSENs as a whole, we consider such criticism to be unfounded. As Mr Chacko rightly observed, no indication has been given of what it was, outside of the particular notes (ii), (vi) and (R) which featured in the FTT's decision, that the FTT failed to consider and how that would have made a difference.

46. Although Mr Bremner sought to characterise what the FTT stated at [35] as an expansion, such a characterisation does not, in our view, fairly reflect the FTT's approach. We agree with Mr Chacko when he submitted that the FTT did not extend the concept of what is an "appliance"; it decided, having quite properly interpreted the CN with the assistance of the explanatory notes, that the product fell within the heading. That was not extending the meaning of "appliances"; it was construing that term and as a result concluding that lamps which were intended for use in assisting diagnosis fell within the meaning of that term as so construed.

47. As to the contrary interpretation which HMRC submit is correct, there is in our judgment nothing in the terms of the heading "Instruments and appliances for human medicine and surgery" or "Dental Instruments and Appliances" or Note (R) (which clearly, contrary to HMRC's submission, and for the reasons set out by the FTT, assists with interpreting the meaning of dental appliances), that supports the kind of active vs. passive distinction HMRC sought to draw. Mr Bremner argued that if it were correct that products which assisted with diagnosis were captured then that would mean that a dentist's chair, which was clearly not a dental appliance on its own, would fall within the definition on the basis that it too assisted with diagnosis. We do not agree. The analogy is a false one. It would remain necessary for the individual product to be found, by reference to its own objective characteristics, including intended use, to assist diagnosis. It does not follow that a dentist's chair (without dental equipment affixed to it) would meet such a test. Nor, in any event, could such a dentist's chair on its own fall within heading 9018; it would be specifically excluded from doing so by the paragraph following note (vi).

48. In our judgment, the term "appliances", in its context in heading 9018, is of wide enough import to include a lamp the intended use of which, objectively ascertained, is to assist the dentist's diagnostic process. We do not consider that this imports any additional test of necessity. No evidence of such necessity was required, and there is accordingly no need for us to address HMRC's submission as to there being insufficient evidence to demonstrate such necessity or the points A-Dec made in response by reference to the documents which were before the FTT.

49. The interpretation of the term "appliances" which results in certain lamps being capable of being dental appliances is also consistent with what the HSENs say elsewhere. Mr Chacko took us in particular to the note excerpted at [14] above which

refers to various tools such as hammers and mallets etc. which would not be surgical unless identifiable as being for medical or surgical use. As he points out, the product is an example of a device which, if not clearly identifiable for medical (here dental) use, would be an example of a more general item, but which, due to the special shape and quality of manufacture, is clearly identifiable as being for such use. We agree. It is not simply the intended use that is material, but the fact that such use is inherent in the nature of the lamps themselves, and that is something which can objectively be ascertained.

50. HMRC also criticise the FTT's view that note (ii) is a "contrary implication". Mr Bremner points to the second paragraph following note (vi), which provides that certain items of dental equipment which would be included within heading 9018 if part of "complete dental equipment on its base" are, when presented separately, to be classified under their respective headings. Taking that paragraph with note (ii), the argument is that it is clear the product is to be classified under its own heading, that is 9405, and not as a dental appliance under 9018.

51. We take this argument in two stages. The first is to consider whether the inclusion of a "shadowless lamp" in note (ii) as one of the typical items mounted on a unit of complete dental equipment on its base is of itself indicative that such an item is excluded from heading 9018 when presented as an individual item. We are clear that it does not. The explanatory notes make specific reference to exclusions from heading 9018 of items which may, if they are part of a complete dental unit, fall within that heading. The second paragraph following note (vi) refers specifically to certain items such as compressors and x-ray etc. apparatus, which if presented separately are classified under other headings. Such exclusions as are appropriate are therefore made specifically, and there can be no inference of exclusion as a separate item from the inclusion of an item in complete dental equipment in note (ii).

52. Secondly, with respect to HMRC's submissions on the effect of the paragraph immediately following note (vi), we agree, as did the FTT, that the words "… whether or not fitted with equipment such as lighting fittings" carry the implication that there will be lighting fittings which are not regarded as dental appliances. That, it seems to us, is an obvious proposition; if the objective characteristics of a lighting fitting are not such as to constitute it a dental appliance, it will not be such an appliance. But, as we explained above, we do not agree that the paragraph means that all lighting fittings are excluded from being dental appliances when considered in their own right. That paragraph says nothing about the classification of lighting fittings individually. It refers to the classification of dentist's chairs as stand-alone items. Such dentist's chairs are separately classified under heading 9402. The purpose of the reference to lighting fittings in that connection is not to exclude all lighting fittings from heading 9018 if presented separately, but to make clear that lighting fittings attached to a dentist's chair, which does not incorporate dental appliances, cannot of themselves take the chair outside of 9402. The implication of that does not point to exclusion of such lighting fittings from heading 9018 to the extent that they are dental appliances in their own right. The question whether a particular lamp or lighting fitting is or is not a dental appliance is not determined by note (ii) or note (vi) or its succeeding

paragraph. That question depends on the objective characteristics and properties of the individual items.

53. The FTT, at [40] to [41], considered what interpretative assistance could be provided by the HSENs in respect of heading 9018. It balanced the inclusion of shadowless lamps and diffused lighting as part of complete dental equipment in note (ii) against the implication it drew from the paragraph following note (vi) that lighting fittings were insufficiently specialist to make them dental appliances. It referred, in this context to note (ii) as a contrary implication. In our judgment, no special importance can be attached to that formulation by the FTT of its reasoning. It took the view that, having regard to the HSENs as a whole, and considering its constituent parts, there was nothing to exclude a specialised lamp, when presented individually, from being a dental appliance. For the reasons we have given, we agree, and there is nothing in the way the FTT expressed its own reasoning that can amount to an error of law.

54. We should just mention, although for the reasons we have given it is not material to our conclusion on the effect of notes (ii) and (vi) on the interpretation of heading 9018, that we do not agree with A-Dec's submission that "lighting fittings" refer only to the fixtures which hold light bulbs as distinct from lamps. Although elsewhere in the CN (heading 9405) lamps are referred to separately, there are several sub-headings where lamps and lighting fittings are referred to together and where the text does not seek to draw any further distinction, thus indicating a certain degree of overlap between the terms. There is nothing in the way the term "lighting fitting" is used in the paragraph following note (vi) which suggests that it refers to a lighting socket without a bulb. But for the reasons we have given, that paragraph does not lead to the conclusion that the lamps at issue in this appeal are excluded from classification under heading 9018. The classification of those lamps falls to be made by reference to their own objective characteristics and properties.

55. In our judgment, there is no difficulty, as HMRC suggest, for a customs officer in distinguishing 9405 lamps and 9018 lamps. As a matter of law, classification does not depend on what is apparent to a customs officer, but on the ascertainable objective characteristics of the products in question. In the case of the lamps at issue in this appeal, those objective characteristics include the intended use of the lamps for the illumination of the oral cavity in the course of dental examination and treatment. That intended use is inherent to the product, as it is characterised by the particular nature of the light it produces, in terms of colour temperature, intensity, rendering index and pattern of light. It is accordingly an objective criterion for classification. On the basis of that intended use, and on the facts found by the FTT, the lamps are, in our judgment, and for the reasons we have explained, appliances used in dentistry. There is nothing in the HSENs to exclude them from being such appliances. They accordingly fall under heading 9018 and not under heading 9405.

56. For the sake of completeness, although it has not formed part of our reasoning, we ought also to record our view that, contrary to HMRC's submissions, our own conclusion that the lamps in question in this appeal fall under heading 9018 is supported by *Trumpf Systems, Inc v United States*, 753 F Supp 2d 1297 (2010), where

the American Court of International Trade ruled that a surgical lamp was properly to be classified in Heading 9018. In relation to the HSENs on that heading, the court rejected US Customs' argument that illumination provided by the surgical lamp did not constitute a diagnostic purpose. Mr Bremner highlighted the fact that the United States customs rules of interpretation are different to those applicable in the European context, referring in particular to the Additional US Rule of Interpretation 1 which states that:

> "In the absence of special language or context which otherwise requires – (a) A tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use …".

57. Mr Bremner contrasted the US interpretative rule with the CN where the decisive criterion for classification is in general to be found in the objective characteristics and properties of the goods in question and submitted that if the *Trumpf* case were to have been determined under EU principles then it would have been differently decided. We do not agree that the US interpretative rule provides a proper ground of distinction. There was nothing in the court's reasoning on the meaning of "diagnostic" in the HSENs to heading 9018 which relied on the use of the product in the United States. The consideration of use (which followed from the heading itself) was not inconsistent with the requirement that the use is ascertainable from the objective characteristics inherent in the product.

HMRC's application to revise decision given subsequent Commission Implementing Regulation (EU) 2017/1476 which came into force on 6 September 2017

58. In their application of 17 August 2017, HMRC invited the tribunal to revise the tribunal's draft decision on the basis of Commission Implementing Regulation (EU) 2017/1476, which was published after the hearing and which came into force on 6 September 2017. Although the revision HMRC seek clearly falls outside the realm of minor corrections and amendments envisaged when the tribunal, in accordance with its normal practice, sends a draft to the parties in advance of the decision's publication, it is clear the tribunal's decision, when still in draft, is capable of being reconsidered and revised. As pointed out by Nugee J, as he then was, in *R (Veolia ES Landfill Ltd & another) v Revenue and Customs Commissioners* [2016] EWHC 1880 (Admin) at [223] and the Court of Appeal authorities he referred to there, a draft judgment circulated before it is formally handed down is a draft and not a final judgment and "for precisely that reason the Court retains the ability to reconsider and revise the judgment, whether invited to do so by the parties, or on the judge's own initiative if, on re-reading the draft he or she thinks it appropriate to do so". The fact that the tribunal is able to reconsider and revise its draft should not however be seen as presenting the parties with a further opportunity to make submissions. The circumstances which arise here are, however, exceptional. Draft legislation which HMRC had alluded to in its earlier submissions as potentially relevant to the appeal, but which was only at that point a draft proposal, was then adopted and published

shortly before our embargoed draft decision had been sent out for corrections. It is quite proper, given this turn of events, for HMRC to raise the question of whether the draft decision should be revised.

59. Turning then to the substance of the dispute, it is worth noting the narrow scope of the issue raised by HMRC's application. The appeal before us concerns the FTT's decision in relation to the customs duty classification of goods which were imported prior to the coming into force date (6 September 2017) of the Commission Regulation on classification. There is no suggestion on HMRC's part, rightly given the clear principle set out in the relevant European Court authorities (Case 158/78 *Biegi* [1979] ECR 1103), that the Regulation is conclusive of the issue in the appeal because it has retroactive effect, in other words that it applies, as a legislative measure, to periods prior to its coming into force. This appeal does not concern the question of classification of imports after 6 September 2017. There is therefore no need to comment on the arguments A-Dec makes on the validity of the Regulation in respect of periods after the Regulation came into effect, and on HMRC's arguments on the proper forum for such disputes.

60. The particular issue raised by HMRC's application is the interpretative effect of the Commission Regulation on classification as regards the periods prior to the Regulation coming into force. HMRC's submission is that the Regulation is clarificatory in nature; the classification under the Regulation was determined by the general rules of interpretation and by the wording of the relevant headings and subheadings (as interpreted in the light of the HSENs) that were in place at the relevant time. The Regulation, it is submitted, confirms HMRC's analysis of the correct classification of the product.

61. HMRC derive support for this view from the views expressed by Advocate General Jacobs in the case of *Siemens Nixdorf v Hauptzollamt Augsburg* [1994] (Case C-11/93) ECR I-01945 which he repeated in his opinion in *Deutsche Nichimen GmbH v Hauptzollamt Düsseldorf* (Case C-201/99) [2001] ECR I-02701 at [42].

> "Further support [for the classification] may be derived from the subsequent classification under that heading by the Commission in Regulation No 884/94. Whilst a regulation classifying goods under a particular tariff heading or subheading, being of a legislative nature, cannot have retroactive effect, I pointed out in my Opinion in *Siemens* [Case C-11/93] that the form of such regulations, which generally state (as is the case with Regulation No 884/94) that classification is determined by the provisions of the general rules for the interpretation of the nomenclature and by the wording of the relevant headings and subheadings, suggests that the legislature takes the view that the classification enacted in fact follows from the legislation already in force."

62. A-Dec say that AG Jacobs' view is not however reflected in the jurisprudence of the European Court's decisions in those cases or in subsequent cases. It relies on *CBA Computer v Hauptzollampt Aachen* (Case C-479/99) [2001] ECR I-04391 and *Skoma Lux v Celní ředitelství Olomouc* [2010] ECR I-13251, cases which considered the impact of a Commission Regulation on classification disputes arising in periods prior

to the coming into force date of the relevant classification regulation, to submit that such regulations are simply not relevant at all as regards the periods before the regulation comes into force.

63. As regards *CBA* however, we agree with HMRC that the case does not assist. The dispute in that case was over whether computer sound cards should be classified within heading 8471 (automatic data processing machines) or 8543 (Electrical machines and apparatus). Following the material time under appeal a Commission Regulation (2086/97) was issued which explicitly excluded sounds cards from heading 8543. Although the court considered the Regulation was "not germane" (as it put it at [31] of its decision) to the proceedings, in that case, as HMRC correctly highlight, the Regulation in question amended the terms of the sub-heading which applied at the time of the relevant importation. It can readily be seen therefore why the court drew no assistance from the regulation, as to do so would amount to applying a sub-heading that was different from that which applied at the relevant time.

64. By contrast that difficulty does not arise in relation to the case of *Skoma Lux.* There, as A-Dec points out, the relevant competing headings 2204 (wine of fresh grapes…) or 2206 (other fermented beverages...) remained materially the same.

65. Nevertheless HMRC argue that, in rejecting the applicability of the subsequent regulation to prior periods, all the CJEU in *Skoma-Lux* was doing was reiterating the long-standing proposition that a regulation specifying the conditions for classification in a tariff heading or sub-heading is of a legislative nature and cannot have retroactive effect.

66. It is certainly true that the court, at [25] to [29] of its decision, found that the Commission Regulation (600/2006) (which classified the product under heading 2206) did not have retroactive effect so as to be applicable to the period prior to the coming into force of the Regulation. But we agree with A-Dec that *Skoma-Lux* is authority for the irrelevance of a subsequent classification regulation to prior periods, even where the regulation is expressed to be clarificatory of the existing legal classfications. What is notable is that despite the fact the court reached exactly the same conclusion on classification as the Regulation did, and furthermore that the Regulation set out in detail the reasons for the conclusion on classification (by reference to the tariff headings and explanatory notes), the court made no reference at all to either the Regulation or the reasons expressed in the Regulation by way of support for the court's conclusion. While HMRC seek to contrast the drafting of the Regulation in that case (Regulation 600/2006) with that in this case (Regulation 2017/1476), we find that they are materially the same; they both adopt a common format of columns under which first the product is described, then the classification specified, and then the reasons for the classification are set out by reference to the existing headings and explanatory notes. There is no material distinction.

67. As regards the views expressed by AG Jacobs in *Siemens* and *Deutsche Nichimen*, we consider that HMRC's reliance on them is misplaced. As A-Dec submits, the view that subsequent classification regulations may have clarificatory effect in respect of prior periods was not endorsed by the court in those cases, and there has been no

subsequent judgment in which that approach has been adopted. In both *Siemens* and *Deutsche Nichimen* the court, having construed the relevant headings and explanatory notes as applied at the relevant time, reached the same conclusion on classification as that reached in the subsequent classification regulation but in neither was any reference or recourse made to either the result or reasons expressed within the classification regulation. The court in *Siemens* made no reference in its decision to the Advocate General's opinion and while the court in *Deutsche Nichimen* expressly endorsed certain paragraphs of the Advocate General's opinion it did not endorse those paragraphs which contained the expression of opinion on which HMRC seek to rely. Nor does there appear to be any other court decision, or certainly none we were referred to, where the court took heed of the Advocate General's view and derived interpretative assistance from the subsequent classification regulation.

68. HMRC's submission that the Regulation is clarificatory and conclusive of the issue in this appeal is accordingly not borne out by the approach of the court in these cases. A fundamental flaw in the submission is that if it were correct it would not have been necessary for the court in *Siemens, Deutsche Nichimen* or *Skoma Lux* to embark on the analysis that it did without reference to the relevant later classification regulation. Although the court in each of those cases in fact reached the same conclusion as that set out in the later Regulation it did so by recourse to its own interpretation of the relevant headings and notes. The fact that the similar result was reached was co-incidental. The court did not feel in any way influenced or constrained by the result or reasoning of the regulation and it is clear it would have been open in each of the cases for the court to have reached a different conclusion to that reached in the subsequent classification regulation. That a court or tribunal may reach a different view to the classification regulation is entirely consistent with the established proposition that the regulation does not have retroactive effect. That is so even if the regulation purports to be clarificatory.

69. In any case it is clear from the approach adopted by Advocate General Jacobs that he did not consider the subsequent regulation to be conclusive or even instrumental in construing the classifications applicable in prior periods. The terms of the extract from his opinion in *Deutsche Nichimen* (at [61] above) show that he had already reached the view of the correct classification independent of the regulation. He had concluded at [41] of his opinion that the objective characteristics of the product fell within a certain heading having considered and rejected the applicant's arguments to the contrary. In the paragraphs which followed it is clear the Regulation merely served to provide "further support" for the view he had reached, and did not represent any part of the basis for his opinion.

70. In conclusion, according to the legal principles applied by the European Court, the new Regulation does not carry any interpretative significance in relation to periods such as those in issue in this appeal which arose prior to the coming into force of the Regulation. The task of a court or tribunal is to construe the relevant headings in the way we have already explained (at [8] to [10] above) according to the law as it stood at the time. The fact the Regulation has classified the lamps differently to the conclusion we reached under our draft decision is of no relevance and we therefore reject HMRC's application that our draft decision should be revised in their favour.

With the exception of paragraphs of this decision which explain why we have rejected HMRC's application to revise, and taking account of the minor clarifications and amendments helpfully suggested by both parties the decision which the tribunal sent in draft to the parties remains the same.

Decision

71. For the reasons we have given, we conclude there was no error of law in the FTT's interpretation or application of the relevant CN heading. HMRC's appeal is dismissed.

Costs

72. Any application for costs must be made according to the Tribunal's Rules within one month from the date of release of this decision.

Roger Berner
Judge of the Upper Tribunal

Swami Raghavan
Judge of the Upper Tribunal

Release date: 10 July 2017

ANNEX 1

Extracts from Combined Nomenclature

9018 INSTRUMENTS AND APPLIANCES USED IN MEDICAL, SURGICAL, DENTAL OR VETERINARY SCIENCES, INCLUDING SCINTIGRAPHIC APPARATUS, OTHER ELECTRO-MEDICAL APPARATUS AND SIGHT-TESTING INSTRUMENTS.

Electro-diagnostic apparatus (including apparatus for functional exploratory examination or for checking physiological parameters):	
- Electro-cardiographs	901811 00 00
- Ultrasonic scanning apparatus	901812 00 00
- Magnetic resonance imaging apparatus	901813 00 00
- Scintigraphic apparatus	901814 00 00
- Other:	
-- Monitoring apparatus for simultaneous monitoring of two or more parameters	901819 10 00
-- Other	901819 90 00
Ultra-violet or infra-red ray apparatus	901820 00 00
Syringes, needles, catheters, cannulae and the like:	
- Syringes, with or without needles:	
-- Of plastics	901831 10 00
-- Other	901831 90 00
- Tubular metal needles and needles for sutures:	
-- Tubular metal needles	901832 10 00
-- Needles for sutures	901832 90 00
- Other	901839 00 00
Other instruments and appliances, used in dental sciences:	
- Dental drill engines, whether or not combined on a single base with other dental equipment	901841 00 00
- Other:	
-- Burrs, discs, drills and brushes, for use in dental drills	901849 10 00
-- Other	901849 90 00
Other ophthalmic instruments and appliances:	
- Non-optical	901850 10 00
- Optical	901850 90 00
Other instruments and appliances:	
- Instruments and appliances for measuring blood-pressure	901890 10 00
- Endoscopes	901890 20 00
- Renal dialysis equipment (artificial kidneys, kidney machines and dialysers)	901890 30 00
- Diathermic apparatus	901890 40 00
- Transfusion apparatus	901890 50 00
- Anaesthetic apparatus and instruments	901890 60 00
- Apparatus for nerve stimulation	901890 75 00
- Other	901890 84 00

9405 LAMPS AND LIGHTING FITTINGS INCLUDING SEARCHLIGHTS AND SPOTLIGHTS AND PARTS THEREOF, NOT ELSEWHERE SPECIFIED OR INCLUDED, ILLUMINATED SIGNS, ILLUNINATED NAMEPLATES AND THE LIKE, HAVING A PERMANENTLY FIXED LIGHT SOURCE, AND PARTS THEREOF NOT ELSEWHERE SPECIFIED OR INCLUDED:

Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:	
- Of plastics or of ceramic materials:	
-- Of plastics of a kind used with filament lamps	
--- for use in civil aircraft	940510 21 10
--- Other	940510 21 90
-- Other	
--- Of plastics for use in civil aircraft	940510 40 10
--- Other	940510 40 90
- Of glass	940510 50 00
- Of other materials:	
-- Of a kind used with filament lamps	
--- Hand-made	940510 91 10
--- Of base metal, for use in civil aircraft	940510 91 20
--- Other	940510 91 90
-- Other	
---- Of base metal, for use in civil aircraft	940510 98 10
---- Hand-made	940510 98 20
---- Other	940510 98 90
Electric table, desk, bedside or floor-standing lamps:	
- Of plastics or of ceramic materials:	
-- Of plastics, of a kind used with filament lamps	940520 11 00
-- Other	940520 40 00
- Of glass	940520 50 00
- Of other materials:	
-- Of a kind used with filament lamps	940520 91 00
-- Other	
---- Hand-made	940520 99 10
--- Other	940520 99 90
Lighting sets of a kind used for Christmas trees	940530 00 00
Other electric lamps and lighting fittings:	
- Searchlights and spotlights	940540 10 00
- Other:	
-- Of plastics:	
--- Of a kind used with filament lamps	940540 31 00
--- Of a kind used with tubular fluorescent lamps	
---- Electric light assembly of synthetic material containing 3 fluorescent tubes…	940540 35 10
---- Other	940540 35 90
--- Other	
---- Ambient light module with a length of 300mm or more…..	940540 39 10

---- LED array of white silicone…..	940540 39 20
---- Electric light assembly, containing….	940540 39 30
---- Other	940540 39 90
-- Of other materials:	
--- Of a kind used with filament lamps	940540 91 00
--- Of a kind used with tubular fluorescent lamps	940540 95 00
--- Other	
---- Hand-made	940540 99 10
---- Other	940540 99 90
Non-electrical lamps and lighting fittings	
- Hand-made	940550 00 10
- Other	940550 00 90
Illuminated signs, illuminated nameplates and the like:	
- Of plastics	
-- illuminated signs, illuminated name-plates and the like, for use in civil aircraft	940560 20 10
-- Hand-made	940560 20 90
- Of other materials	
-- illuminated signs, illuminated name-plates and the like, of base metal for use in civil aircraft	940560 80 10
-- Hand-made	940560 80 20
-- Other	940560 80 90
Parts:	
- Of glass:	
-- Articles for electrical lighting fittings (excluding searchlights and spotlights)	940591 10 00
-- Other	940591 90 00
- Of plastics	
-- Parts of the articles of subheading No. 9405.10 or 9405.60, for use in civil aircraft	940592 00 10
-- Other	940592 00 90
- Other	
-- Parts of the articles of subheading No. 9405.10 or 9405.60, of base metal for use in civil aircraft	940599 00 10
-- Hand-made	940599 00 20
-- Other	940599 00 90

Annex 2

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1476 of 11 August 2017 concerning the classification of certain goods in the Combined Nomenclature

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (1), and in particular Article 57(4) and Article 58(2) thereof,

Whereas:

(1) In order to ensure uniform application of the Combined Nomenclature annexed to Council Regulation (EEC) No 2658/87 (2), it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.

(2) Regulation (EEC) No 2658/87 has laid down the general rules for the interpretation of the Combined Nomenclature. Those rules apply also to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific provisions of the Union, with a view to the application of tariff and other measures relating to trade in goods.

(3) Pursuant to those general rules, the goods described in column (1) of the table set out in the Annex should be classified under the CN code indicated in column (2), by virtue of the reasons set out in column (3) of that table.

(4) It is appropriate to provide that binding tariff information issued in respect of the goods concerned by this Regulation which does not conform to this Regulation may, for a certain period, continue to be invoked by the holder in accordance with Article 34(9) of Regulation (EU) No 952/2013. That period should be set at 3 months.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column (1) of the table set out in the Annex shall be classified within the Combined Nomenclature under the CN code indicated in column (2) of that table.

Article 2

Binding tariff information which does not conform to this Regulation may continue to be invoked in accordance with Article 34(9) of Regulation (EU) No 952/2013 for a period of 3 months from the date of entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 11 August 2017.

For the Commission,
On behalf of the President,
Stephen QUEST
Director-General
Directorate-General for Taxation and Customs Union

(1) OJ L 269, 10.10.2013, p. 1.
(2) Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

ANNEX

[*The annex to the Regulation contains columns 1) to 3) as follows*]: (1) Description of the goods (2) Classification (CN code) (3) Reasons

(1) A product (so-called 'LED dental light') made of different materials such as glass, plastic and various metals and including several light-emittingdiodes (LED). It is presented attached to a pivoting arm. The pivoting arm can either be mounted on a dental chair or e.g. on the wall or ceiling of a dental surgery. It is designed to illuminate the oral cavity during dentistry treatment. The level, colour and pattern of the light produced is specifically for use by dentists.
See image (*) [*not included*]

(2) 9405 40 99

(3) Classification is determined by general rules 1, 3 (c) and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 9405, 9405 40 and 9405 40 99. Classification under heading 9018 as a medicalinstrument or appliance is excluded as the heading excludes certain items of complete dental equipment (such as shadowless lamps) when they are presented separately; those items are to be classified in their own respective headings (see also Harmonised System Explanatory Notes (HSEN) to heading 9018, part (II), (ii) and exclusion under part (II)). The product has the characteristics and design of an electric lamp/lighting fitting of heading 9405 which covers electric specialised lamps and lighting fittings that can be constituted of any materials and use any source of light (see also the HSEN to heading 9405, part (I). The product, which consists of different materials, none of them giving it its essential character, is therefore to be classified under CN code 9405 40 99 as other electric lamps and lighting fittings of other materials than plastics.

(*) The image is purely for information.