



[2026] JMRC 02

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

REVENUE COURT

APPEAL NO. 2024 RV 00003

BETWEEN	HARDWARE & LUMBER LIMITED	APPELLANT
AND	THE COMMISSIONER OF CUSTOMS	RESPONDENT
(NO 2)		

IN OPEN COURT

Shadae Byfield, Attorney-at-law for the Appellant.

Lisa White and Nicola Richards instructed by the Director of State Proceedings, Attorney-at-law for the Respondent.

Heard: 8th and 9th July, and 22nd September 2026

Revenue Law - Customs Tariff (Revision) (Amendment) (Nos. 2 & 3) Resolution, 2013 - Classification of rodent bait stations, multi material rat traps and molluscicides

Tariff heading 38.08 - Tariff heading 39.26 - Tariff heading 73.26 - Tariff code 3808.91.10.00 - Tariff code 3808.99.19.90 - Tariff code 3808.99.91.10 - Tariff code 3808.99.99.00 - Tariff code 3808.99.99.10 - Tariff code 3808.99.99.90 - Tariff code 3926.90.90.00 - Tariff code 7326.20.00

Statutory Interpretation - Use of recitals in preamble in construing domestic law - Use of international convention in construing domestic law

Customs Tariff (CARIFORUM/EC Economic Partnership Agreement) Resolution 2013 - Whether proof of origin requirements under CARIFORUM/EC Economic Partnership Agreement incorporated into domestic law

CARIFORUM/EC Economic Partnership Agreement - Protocol I - Article 16 - Whether invoice declarations which are not compliant with proof of origin requirements of the Convention enable imported goods to benefit from the 0% treatment

Jurisdiction - Whether the Revenue Court has jurisdiction to restore classifications of goods and additional duties which are not the subject of appeal

C. BARNABY, J

INTRODUCTION

[1] The Appellant, Hardware & Lumber Limited imported certain goods into the island in connection with its resale and wholesale business. Following a Post Clearance Audit for the period 1st January 2016 to 31st May 2018, the Respondent raised an additional assessment of customs duty against the Appellant in the sum of **Sixty-Eight Million Four Hundred and Eighty-Six Thousand Twenty-Six Dollars and Thirteen Cents (\$68,486,026.13)**. This was reduced on objection to **Sixty-Eight Million Four Hundred Eighteen Thousand Nine Hundred and Eighty-Four Dollars and Twenty Cents (\$68,418,984.20)**. The Appellant appealed to the Revenue Appeals Division (hereinafter called “the RAD”).

[2] By decision of the Commissioner of the RAD dated 11th September 2024, the additional assessment was reduced to **Twenty-Seven Million Three Hundred and Fifty-Seven Thousand Five Hundred and One Dollars and Seventy-Three Cents (\$27,357,501.73)**. Aggrieved, the Appellant appeals to this court, seeking these substantive orders.

(i) *The appeal is allowed.*

(ii) *The decision of the Commissioner in respect of Deadline M-PS be set aside and the tariff code 3808.99.99.10 applied.*

(iii) *The decision of the Commissioner in respect of Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap and Claw*

Rat Snap Trap 622 be set aside and the tariff code 3808.99.19.90 applied.

(iv) The decision of the Commissioner in respect of the goods that originated from the European Union countries made on the 11th day of September 2024 set aside (sic) and the commercial documentation including invoice declarations accepted as sufficient evidence as to proof of origin...

[3] The Appellant grounds the appeal thus.

- a. The Commissioner ... [of the RAD] erred in reclassifying the apparatus (Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap and Claw Rat Snap Trap 622) based on the materials that make up the items as opposed to the terms of the headings as required by rule 1 of the General Rules for the Interpretation of the Harmonized System. If rule 1 was used, tariff code of 3808.99.19.90 would be applied with a custom duty rate of 5% and not 20%. Additionally, above mentioned apparatuses would separate the rodents from their food and water source inevitably leading to death which fits squarely within the definition of rodenticides.*
- b. The Commissioner erred in classifying Molluscicide - Deadline M-PS based on the authorized use on importation which is not supported by the Customs Tariff (Revision) Resolution ("Customs Tariff"). There is no provision in the Customs Tariff that indicates that the usage of molluscicide put up in forms or packaging of a net weight exceeding 6kg should be authorized for use in agriculture in order to be classified under tariff code 3808.99.99.10 for a 0% customs duty rate to apply.*
- c. The Commissioner erred in relying on the CARIFORUM-European Union Economic Partnership Agreement which was partially incorporated by an act of parliament to have effect in Jamaica and failed to rely on the local laws namely, Customs Tariff (CARIFORUM/EC Economic Partnership Agreement) Resolution, 2013.*

- d. *The Customs Tariff (CARIFORUM/EC Economic Partnership Agreement) Resolution, 2013 brought into effect, the customs duty-free status of the goods listed in the First Schedule but not the requirement to provide a Certificate of Origin to benefit from the 0% customs duty.*
- e. *The Commissioner erred in not accepting the invoice declaration provided by the Appellant which were in accordance with Article 16(b) of Protocol 1 of the CARIFORUM-European Union Economic Partnership Agreement and should benefit from the 0% customs duty.*

[4] The Appellant also challenges this detail of the decision of the RAD.

- 1. ... (c) *The duty rate of 5% assessed by the Respondents in respect of the subject Deadline M-PS is unchanged and tariff heading 3808.99.99.90 applied.*

[5] The Respondent's case in answer may be summarised as follows.

- a. Tariff code 3808.99.19.90 does not apply to Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap and Claw Rat Snap Trap 622 as absent some chemical component which leads to the death of rodents, they are not rodenticides within the meaning of tariff heading 38.08.
- b. Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap and Claw Rat Snap Trap 622 being made of plastic were correctly classified under tariff code 3926.90.90.00 to which a 20% duty rate applied, as confirmed by the RAD.
- c. Tariff code 3808.99.99.10 is specifically for agricultural articles and preparations in packings not exceeding 6kg. For a product to be classified under the code and benefit from the 0% customs duty rate, it must be intended for agricultural use - as determined by the Pesticides Control Authority - and meet the net weight requirement.

- d. The Commissioner of the RAD properly relied on the **CARIFORUM-European Union Economic Partnership Agreement** (hereinafter called “the EPA”) in requiring the Appellant to establish the origin of the imported goods, in order to benefit from the zero duty rate treatment under the **Customs Tariff (CARIFORUM/EC Economic Partnership Agreement) Resolution, 2013** (hereinafter called “the Resolution”). This is on account that the latter gives domestic effect to the former by providing for preferential duty treatment for specified goods, conditional on compliance with rule of origin requirements under the EPA.
- e. During the audit period, Jamaica only accepted Movement Certificates EUR. 1 as proof of origin for preferential treatment under the EPA. The Appellant failed to submit any such certificate. The Appellant also failed to supply invoice declarations as prescribed Articles 17, 21 and 22 of the EPA, and Article 16 and Annex VI of Protocol I of the said EPA in proof of origin of the imported goods. Further, the invoice declarations supplied by the Appellant did not comply with the requirements of Article 16(b) of Protocol I. In consequence of these failures, the Commissioner of the RAD acted reasonably in rejecting the Appellant’s invoice declarations in proof of origin and in concluding that it could not benefit from the zero duty treatment prescribed by the Resolution in respect of the imported goods.

[6] Further, in asking this court to dismiss the Appellant’s appeal, restore its classifications and the additional assessment arising therefrom *in toto*, the Respondent also purports to join issue with the RAD’s classifications of pesticides, namely insecticides, rodenticides, molluscicides and herbicides.

[7] The appeal was heard over the course of two (2) days on 8th and 9th June 2026, and judgment reserved to today’s date.

ISSUES AND SUMMARY DETERMINATION

[8] On consideration of the case advanced by the parties, I regard these issues as being dispositive of the appeal.

- (i) Whether the imported *Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap, and Claw Rat Snap Trap 622* are “*rodenticides*” within the meaning of tariff head 3808 to enable their classification under tariff code 3808.99.19.90 to which a 5% duty rate applies.
- (ii) Whether the RAD erred in accepting that the imported *Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap, and Claw Rat Snap Trap 622* are properly classified under tariff code 3926.90.90.00.
- (iii) Whether the RAD erred in classifying *Molluscicide - Deadline M-PS* under tariff code 3808.99.99.90 to which a 5% duty rate applies, and if so, what is the proper classification?
- (iv) Whether the Resolution incorporated proof of origin requirements of the EPA.
- (v) Whether the Appellant's invoice declarations constitute proof of origin as contemplated by Article 16 of Protocol I of the EPA to enable the imported goods to benefit from the 0% treatment prescribed by the Resolution.
- (vi) Whether the court has jurisdiction to restore the Respondent's classification of goods and additional duties which are not the subject of the Appellant's appeal.

[9] For reasons set out subsequently, I find that the Appellant's appeal should be dismissed; and that the Respondent's entreaty to restore *in toto* its classifications

of the goods imported and the additional assessment raised against the Appellant should be refused. Before setting out the reasons for these conclusions, however, it is convenient to briefly address the burden of proof on this appeal and the system which exists for the classification of imported goods.

THE BURDEN OF PROOF

[10] Section 18(2) of the **Customs Act** (hereinafter called “the CA”) provides that “[t]he onus of proving that the assessment complained of is erroneous shall be on the objector”. As to the breadth of “erroneous”, I agree with the observation of Morrison JA (as he then was) in **D.R. Holdings Ltd. v the Commissioner of Taxpayer Appeals**¹ that “24. ... it is wide enough to embrace both a complaint that the assessment is wrong in principle and that it is excessive in amount.” The Appellant therefore bears the burden of proof, which is discharged on a balance of probabilities.

[11] Imposed on the Respondent is the burden to produce evidence of the information and material which was relied upon in concluding that the Appellant was underassessed, and in raising the additional assessment.²

SYSTEM FOR THE CLASSIFICATION OF GOODS

[12] The classification structures of the Schedule of Rates under the **Customs Tariff (Revision) (Amendment) (Nos. 2 & 3) Resolution, 2013** and the **Integrated**

¹ JMCA, 31 October 2008

² See for example **Chas E. Ramson Limited v the Commissioner of Customs** [2021] JMRC 2, [12] to [22].

Tariff (effective 13th April 2015)³ (hereinafter called “the Tariff”) are based on the **Harmonised Commodity Description and Coding System (5th Edn, 2012)** (hereinafter called “the HS”) and the Statistical Classification Numbers on the **Standard International Trade Classification (4th revision)** (hereinafter called “the SITC”).

- [13] Developed by the World Customs Organization (WCO), the HS has among its functions the harmonization of the description, classification and coding of goods for the purpose of international trade. Groups of related products are designated by four (4) digit Headings and five (5) to six (6) digit Subheadings which permit separate identification of products within a heading without moving products outside their group. Integral to the classification under the System are the **General Rules for the Interpretation of the Harmonised System** (hereinafter called “the GRIs”) which provide the principles on which classification is based. There are six (6) principles which are sequential and must be applied in consecutive order to arrive at the correct classification of goods in the nomenclature. I do not find it necessary to reproduce all the principles but will make references as applicable to the resolution of the issues in dispute.

ANALYSIS

(i)

Whether the imported *Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap, and Claw Rat Snap Trap 622* are “rodenticides” within the

³ The first six digits of the Tariff represent the HS coding established by the WCO and apply uniformly. As permitted, individual countries and trading blocs also add extra digits for further classification as local or regional policy needs dictate. These additional digits represent the Integrated Tariff.

meaning of tariff head 38.08 to enable their classification under tariff code 3808.99.19.90 to which a 5% duty rate applies.

[14] The Appellant submits that the Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap, and Claw Rat Snap Trap 622 should have been classified under tariff code 3808.99.19.90 on account that they are “rodenticides”.

[15] Consistent with the requirement for sequential application of the GRIs, the enquiry must begin with GRI 1. So far as relevant, that rule states:

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 ... provisions [of Rules 2, 3, 4 and 5]:*

2. ...

[16] Chapter 38 of the Tariff is titled “*Miscellaneous Chemical Products*” and is provided for ease of reference only. The goods to which heading 38.08 in the Tariff applies are:

Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulphur-treated bands, wicks and candles, and fly-papers).

[17] It is now well settled that revenue statutes are to be purposively interpreted. That is accomplished by having regard to the purpose of an enactment and interpreting its language in a way which best gives effect to that purpose, so far as is possible. Accordingly, clear words in a statute are permitted to be considered within the context, scheme as well as purpose of the legislation to arrive at their meaning.

- [18] The Appellant seeks to rely on definitions of the noun “*rodenticide*” said to have been extracted from the *Collins English Dictionary* and the *Merriam-Webster Dictionary* being “*a substance used for killing rats, mice and other rodents*”, “*a substance or preparation for killing rodents*”, “*a poison used for killing rodents, esp. rats and mice*”; and “*an agent that kills, repels or controls rodents*” respectively. The extracts appear to have been taken from the worldwide web but do not include a URL or date of access. These results were nevertheless accessed on 10th August 2026 at the following URLs and are permitted to be relied upon: <https://www.collinsdictionary.com/sentences/english/rodenticide> and <https://www.merriam-webster.com/dictionary/rodenticide>.
- [19] Outside of demonstrating the purpose of rodenticides, there are a number of nouns appearing in the definitions supplied, which assists the court in delimiting the characteristics of a rodenticide. They are “*substance*” which is defined by the Concise Oxford English Dictionary, 11th Edn. Revised as “*a type of solid, liquid or gas that has particular qualities; the real physical matter of which a ... thing consists*”; “*preparation*” which references “*a substance prepared for use as a medicine, cosmetic, etc.*”; “*poison*” which is “*a substance that causes death or injury to a ... animal that swallows and absorbs it*”; and “*agent*”, being “*a ... thing that takes an active role or produces a particular effect.*” When these nouns are considered, it appears to me that in order to qualify as a rodenticide, the imported goods must have a component which causes injury or death to rodents. The Respondent submits that the relevant component should be “chemical”.
- [20] On consideration of the purpose of rodenticides and the important context supplied by the below Note to Chapter 38, I am inclined to the view that in order to be classified as “*rodenticides*” under 38.08 the imported goods must be chemical products which kill, repel or control rodents. The relevant Chapter Note reads:

1. *This Chapter does not cover: (a) **Separate chemically defined elements or compounds with the exception of** ... (2) insecticides,*

rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up as described in heading 38.08.

[Emphasis added]

- [21] It is my view that that the characteristics of, and by extension the true meaning of the goods in the Note - which are those appearing in Heading 38.08 - are to be found by the words which precede them. They are “*separate chemically defined elements or compounds*” which enable them to be covered by Chapter 38 as an exception to the exclusionary chapeau at Chapter Note 1.
- [22] The Appellant has provided no evidence that the Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap, and Claw Rat Snap Trap 622 are separate chemically defined elements or compounds, or chemical products which kill, repel or control rodents. In fact, the Appellant says that the goods, which they aptly label “*apparatuses*” separate rodents from food and water sources which inevitably leads to death. On the Appellant’s own case the killing, repelling and control of rodents is the result of the biological processes of starvation and dehydration which follow confinement of the rodents by the imported goods. This is insufficient to enable their classification as “*rodenticides*” within the meaning of HS 38.08 and I accordingly find that rejection of a classification under that head by both the Respondent and the RAD was appropriate.

(ii)

Whether the RAD erred in accepting that the imported *Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap, and Claw Rat Snap Trap 622* are properly classified under tariff code 3926.90.90.00.

- [23] Having rejected the Appellant's classification, the Respondent classified the Rodent Baiters Rat BLK, EZ Klean Rat Bait Station Black RBS, Rat Snap Trap, and Claw Rat Snap Trap 622 under tariff code 3926.90.90.00 on the basis of their constituent material pursuant to GRI 1 and 6. The RAD confirmed the reclassification and the associated 20% duty rate.
- [24] Chapter 39 of the Nomenclature treats with classification of plastics and articles of plastic. There are two broad descriptions of goods, the first being those in "*Primary Forms*" which comprise tariff headings 39.01 to 39.14 and the second, "*Waste, Parings and Scrap; Semi-Manufactures; Articles*" comprised of tariff headings 39.15 to 39.25. Tariff head 39.26 under which the Respondent classified the goods covers "*Other articles of plastics and articles of other materials of headings 39.01 to 39.14*".
- [25] GRI 1, which was earlier reproduced, provides that in the first instance, classification is to be determined according to the terms of the Headings and any relative Section or Chapter Notes. GRI 6 provides for the classification of goods in the subheadings of Headings in this way.

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.

- [26] The Appellant does not provide any evidence as to the composition of the products. Nevertheless, the Respondent procured descriptions of the goods during the audit stage, which are contained in the compilation of documents giving rise to the appeal. They, like the descriptions of the goods set out in the decision of the RAD were not disputed.

- [27] The material before the court shows that the *Rodent Baiters Rat BLK* is a bait station which holds dry and liquid bait and tracking powder, fits flush against the wall allowing easy entry for rodents and have automatic lock back and nylon lock tie for the front. The product is made of black polystyrene, a plastic. “*Polymers of styrene, in primary forms*” falls to be classified under tariff head 39.03 but the *Rodent Baiter Rat BLK* having been made into a product it cannot be said to be plastic in primary form to be classified under that head, or indeed any of the tariff headings 39.01 to 39.14. It also does not fall within any of the terms of the headings broadly grouped as “*Waste, Parings and Scrap; Semi-Manufactures; Articles*”. It must therefore be classified under tariff heading 39.26 pursuant to GRI 1. While a number of goods are described at tariff codes 3920.10 to 3920.69, the bait station cannot be classified under any of them. The good is NESOI⁴ and is properly classified under tariff code 3926.90.90.00 with the applicable duty rate of 20%. I arrive at a like conclusion in respect of the other bait station.
- [28] The *EZ Klean Rat Bait Station Black RBS* also holds bait which is accessed by rodents entering the station where they remain trapped, and is said to be made of 100% recycled heavy-duty plastic. There being no evidence that it is not an article of plastic and it being incapable of being classified under the headings of goods broadly described as “*Primary Forms*” or “*Waste, Parings and Scrap; Semi-Manufactures; Articles*” or tariff codes 3920.10 to 3920.69, it too must be regarded as NESOI and properly classified under tariff code 3926.90.90.00 which commands a duty rate of 20%.
- [29] The *Claw Rat Snap Trap 622* is made of plastic, and “*metal hardware for longevity and strength and gripping teeth for dynamic holding power*”; and the *Rat Snap Trap* is constructed of recycled plywood and metal springs - “*Double Tension Springs [which] Provide powerful, reliable triggering.*” As earlier indicated, plastics and articles of plastics are treated with at Chapter 39 of the

⁴ Not Elsewhere Specified or Indicated

Nomenclature; and wood and articles of wood by Chapter 44, with plywood expressly classified under heading 44.12 *“Plywood, veneered panels and similar laminated wood”*. Section XV of the Nomenclature makes provision for base metals and articles of base metals from Chapters 72 to 83. In addition to the fact that plywood and metal are not plastics, it is clear that both the *Claw Rat Snap Trap* 622 and the *Rat Snap Trap* comprise of a combination of materials and components.

[30] So far as is relevant to the instant enquiry, GRI 2 provides that

(a) ...

(b) *Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. **The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.***

[Emphasis added]

[31] GRI 3 bears repetition in full.

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, insofar as this criterion is applicable.*

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

[Emphasis added]

[32] On consideration of the Nomenclature, it is evident that at least two Chapters and by extension different headings would be engaged when the material and component parts of the *Claw Rat Snap Trap 622* and the *Rat Snap Trap* are considered; and that each head would refer only to a part of the materials which comprise the goods to make classification under GRI 3(a) impossible. To the extent that it is applicable, GRI 3(b) is next in priority in classifying the goods. It is my judgment that it is. The Rule expressly permits composite goods of different materials to be classified “as if they consisted of the material or component **which gives them their essential character**”. From the description of the products, it is evident that the metal hardware and springs are the component of the rat traps which give them their essential character as traps, and not their plywood and plastic bases.

[33] Metals can take many forms and there is no evidence of the particular metal used on the *Claw Rat Snap Trap 622* and the *Rat Snap Trap*. This notwithstanding, I find assistance in the Explanatory Notes on the HS issued by the WCO which provides the official interpretation of the Harmonized System at the international level. An extract of those Explanatory Notes in respect of tariff heading 73.26 was

supplied wherein it is expressed that *“the heading includes ... (2) articles of wire, such as snares, traps, mouse-traps, eelpots and the like...”* Articles of iron or steel wire are classified under tariff code 7326.20.00 and attract a duty rate of 20%.

- [34] In all the forgoing premises I find that the RAD was correct in confirming the classification of *Rodent Baiters Rat BLK* and *EZ Klean Rat Bait Station Black RBS* under tariff code 3926.90.90.00 to which a 20% duty rate applies but erred in confirming the classification of the *Rat Snap Trap* and *Claw Rat Snap Trap* 622 under that head. That error in classification notwithstanding, I find that a duty rate of 20% nevertheless applies to those goods which are properly classified under tariff code 7326.20.00.

(iii)

Whether the RAD erred in classifying *Molluscicide - Deadline M-PS* under tariff code 3808.99.99.90 to which a 5% duty rate applies, and if so, what is the proper classification?

(a) Whether the good is an insecticide for classification under tariff code 3808.91.10.00

- [35] The Appellant applied tariff code 3808.91.10.00 which is specifically applicable to the classification of *“Insecticides” “For use in agriculture as approved by the Competent Authority, whether or not put up in forms or packing for retail sale.”* A *“Free”* duty rate is prescribed for this code by the Tariff. The RAD determined that the classification was erroneous on the basis that the Competent Authority, the Pest Control Authority (the PCA), approved the goods for importation into the island *“for re-sale”*.

- [36] It was not disputed on the appeal here that *Molluscicide - Deadline M-PS* is a molluscicide, a specialized pesticide for controlling slugs and snails which are in the mollusk scientific group, which is distinct from insects which insecticides are used to kill or control. It is clear that the good is not an insecticide to enable its classification under tariff code 3808.91.10.00. Neither the Respondent nor the RAD erred in rejecting the classification under this head.

(b) Whether the RAD erred in finding that in order for goods to be classified under tariff code 3808.99.99.10 the goods must be authorised for use in agriculture

- [37] The decision of the RAD shows that the Appellant submitted that the correct classification for *Molluscicide - Deadline M-PS* is under tariff code 3808.99.99.10 which applies to goods described as “*Other articles and preparations put up in forms of packing of net weight exceeding 6 kg for use in agriculture*” and falls under the tariff subheading “*Other - 3808.99.99.00*”.
- [38] The Commissioner of the RAD agreed with the submission of the Appellant that the goods should be classified under 3808.99.99.00 but found that the proper tariff code was 3808.99.99.90 to which a 5% duty rate applied. That conclusion is said to have been reached on consideration of the product description for *Molluscicide - Deadline M-PS* relative to its control of slugs and snails, the authorised use for importation purposes, the weight of the goods and was guided by GRI 3. The finding notwithstanding, the RAD concluded that the 5% duty rate assessed by the Respondent for the molluscicide was unchanged, it being applicable to goods classified under the broader subheading 3808.99.99.00.
- [39] The Appellant grounds its challenge to the classification by RAD on the basis that the tribunal rejected classification of the goods in tariff code 3808.99.99.10 based on the consideration of its authorised use on importation, which is not supported by the Tariff. It is the Appellant’s contention that there is no provision which

indicates that molluscicides put up in forms or packings of a net weight exceeding 6 kg should be authorised for use in agriculture in order to be classified under tariff code 3808.99.99.10 for a 0% duty rate to apply. The complaints are unmeritorious.

[40] In the first instance, there can be no genuine dispute that a duty rate of 5% applies to goods classified under 3808.99.99 as the rate is expressly prescribed in the Tariff and is not adjusted by the Integrated Tariff. On classification under tariff code 3808.99.99.10, the prescribed duty rate is 5% and not 0% as stated by the Appellant in its ground of appeal.

[41] There is also no real dispute in my view, that in order for goods to be properly classified under tariff code 3808.99.99.10, they must fit the description of the goods which qualify for classification thereunder. That is, the goods must be “*put up in forms or packing of a net weight exceeding 6 kg **for use in agriculture***”. [Emphasis added]

[42] “*For use in*” is an oft used English phrase which denotes intention, suitability or designation for application within a specified context. In order to be classified under tariff code 3808.99.99.10 the imported *Molluscicide - Deadline M-PS* must have been put up as prescribed; for use in the context prescribed, that is, in agriculture as found by the RAD.

(c) Whether the RAD erred in concluding that tariff code 3808.99.99.90 applied to the goods

[43] The following challenge is included at paragraph 1(c) of the Notice of Appeal, which states that in addition to the duty rate of 5% being unchanged, a detail of the decision of the RAD which is appealed to this court is that “... *tariff heading 3808.99.99.90 applied*” to the molluscicide. While there is no ground of appeal which is specifically directed to this particular challenge, it was not withdrawn by

the Appellant. This effectively opened the door for the Respondent to argue the point, of which full advantage was taken. The Respondent concurs with the Appellant that the Commissioner of the RAD erred and submits that tariff code 3808.99.91.10 should have been applied to the molluscicides but for the error made by the Commissioner of the RAD in determining the question of “*net weight*”.

- [44] I agree with both the Appellant and the Respondent that the RAD erred in classifying the molluscicides under tariff code 3808.99.99.90. The error is best illustrated by reference to the RAD’s rejection of the Respondent’s classification of the goods in tariff code 3808.99.91.10, which I consider to be the appropriate classification.
- [45] The rationale for the classification by the Respondent were GRIs 1 and 6. The Respondent cited WCO opinions 6 and 53 respectively, which are contained in the **Compendium of Classification, Harmonized System Committee [48th Session]** and **[41st Session]**.
- [46] The first opinion concerns the classification of an antiparasite lotion presented for “retail sale” in 125 ml plastic bottles which were further packaged in cardboard boxes. It was cited to demonstrate that goods presented for retail sale weighing less than 6kg was classified under tariff subheading 3808.91 on the application of GRIs 1 and 6.
- [47] The second opinion is concerned with the classification of the goods ivermectine INN which was presented in bulk and not in packings for retail sale. While the opinion shows that tariff headings 29.32, 38.08 and 38.24 were under consideration and the Committee agreed to classify the goods in heading 29.32 and subheading 2932.29, its utility here is not apparent. The compendium only shows that a different tariff code from a different chapter of the HS was applied and does not provide any rationale for the classification of the goods. In the circumstances I do not find that the opinion assists the Respondent in

demonstrating, by comparison, why the goods presented in both opinions were treated as they were.

- [48] The starting point for classification is GRI 1. Under that rule classification is to be done according to the terms of the Headings and any relative Section or Chapter Notes. Where it is proposed to classify goods under a subheading, GRI 6 also applies. That rule generally provides that classification under subheadings is to be determined according to the terms of the subheadings and any related Subheading Notes, and with the necessary changes made, to GRIs 1 to 5.
- [49] Subheading 3808.99.91.00 under which tariff head 3808.99.91.10 falls applies to goods not specifically identified in tariff heading 3808, *“put up in forms or packings of a net weight not exceeding 6kg or as articles”*. A 20% duty rate applies to goods classified under the subheading.
- [50] There was no dispute, and rightly so, that the goods fell to be classified within the subheading *“Other”* under tariff code 3808.99. This is on account that while molluscicides are similar to the other chemical products identified in tariff heading 38.08 - which was earlier reproduced - to which distinct subheadings apply, molluscicides have not been so treated.

Put up in forms or packings for retail sale

- [51] Both tariff heading 38.08 and subheading 3808.99.91.00 require goods to be *“put up in forms or packings”*. The enquiry accordingly turns to whether the molluscicides were so put up.
- [52] Various documents from the PCA show that the imported goods were presented with *“Quantity and package size”* of imports being: 768000 gram (80 x 16 sachets x 600.00 gram); 908 kilograms (200 x 1 Plastic Bags x 4.54 kilograms); 2270 kilograms (500 x 1 Lined Paper Bags x 4.54 kilograms). The unchallenged evidence of the Respondent is that the Deadline M-PS Mini Pellets imported by the Appellant during the audit were in bags of 4.45 kg and sachets of 600 gram.

[53] The phrase "*put up in forms*" under the HS denotes that a product has been manufactured, shaped, or processed into an identifiable physical presentation such as blocks and bars, and not as raw, loose bulk material. Although the molluscicides were in the form of mini pellets, the evidence is that they were presented in sachets, plastic bags and lined paper bags on importation. The concern is therefore whether the molluscicide presented in these materials cause them to be qualify as being "*put up in packings*".

[54] In determining whether the goods as described were so put up, I find the definition of "*packings*" in the WCO's **Glossary of International Customs Terms**, June 2024 (the Glossary) supplied by the Appellant useful. The source of the definition recommends its utility. The word is defined as

[a]ll articles and materials used, or to be used, in the state in which they are imported, to pack, protect, stow or separate goods, excluding packing materials such as straw, paper, glasswool, shavings, etc., when imported in bulk. Containers and pallets are also excluded.

[55] I am also attracted to the definition for what I regard as its compatibility with the concept of packing materials and containers in GRI 5, being the objects presented with the goods held by them. The rules states:

5. In addition to [GRIs 1 to 5], the following Rules shall apply in respect of the goods referred to therein :

(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This Rule does not, however, apply to containers which give the whole its essential character;

(b) Subject to the provisions of Rule 5 (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

[56] The WCO's **HS Classification Handbook**, November 2013, at Chapter 2, para, 2. (a) sets out the scope of the rule in a brief but effective way thus. *"Rule 5(a) governs the classification of cases, boxes and similar containers presented with the articles for which they are intended, while Rule 5(b) applies more generally to **packing containers presented with the goods they hold...**"* [Emphasis added]

[57] The Respondent relies on **Chem-Tec B.H. Naujoks v Hauptzollamt Koblenz** Case No. 278/80, a judgment of the Court of Justice of the European Economic Community delivered 11th February 1982. The case concerns a referral from a federal finance court for a preliminary ruling on two questions - only the second of which is of relevance to the enquiry. The first was whether tariff heading 35.06 of the Common Customs Tariff which read *"prepared glues not elsewhere specified or included; products suitable for use as glues put up for sale by retail as glues in packages not exceeding a net weight of 1 kg"* should be interpreted to apply to product described as

"adhesive paper strip" or as "strip, of unvulcanized synthetic rubber" wound on to a spool and consisting of a double-sided adhesive strip and a strip of paper (treated with silicone) separating the adhesive strips which have been rolled up and which is used in such a way that the paper strip is peeled off and therefore does not adhere when the double-sided adhesive strip is applied.

[58] That question was answered in the affirmative which then required consideration of the second, which comprised of two parts, only one of which is relevant here.

It is whether “*the strip of paper wound together with the adhesive layer, on to a cardboard spool may be considered as a product put up in a package*” within the meaning of subheading 35.06 B, or whether the subheading’s application presupposes that the rolls are placed in special packages. The court opined that the expression “*put up for sale by retail... in packages not exceeding a net weight of 1 kg*” in the subheading is to be interpreted as meaning that the paper strip may be regarded as a package, but that the classification of the rolls under the subheading presupposes that the rolls are suitable for sale by retail without any additional packaging; and that the net weight of the adhesive layer which is the essential component of the product, does not exceed 1 kg.

[59] A number of principles can be gleaned from the reasons given by the court for the above conclusion.

- (i) Goods are to be regarded as being “*put up for sale by retail*” if given the form in which they are presented, they are objectively suitable for sale to consumers directly without any further packaging after being put into free circulation⁵;
- (ii) The concept of “*package*” must be widely interpreted if from every point of view the product is suitable for retail sale to the consumer without further packaging.
- (iii) While the typical function of a “*package*” is to ensure the preservation and protection of goods, the trend of technical developments is towards endowing packages with several functions. The existence of additional functions did not deprive the strip of paper of its character as a package.

⁵ Customs status of goods from outside a specific trade area after clearing customs, passing safety checks, and paying all import duties and taxes required.

(iv) Paper strip treated with silicone which is rolled unto an adhesive layer which constitutes the essential component of the product and thereby serves to protect it can be described as a “*package*” in principle.

(v) The net weight of goods is the essential component of the goods, without its packaging.

[60] Although the Appellant seeks to draw a distinction between “*packings*” used in the tariff heading 3808 here and “*packages*” in the tariff subheading considered in the **Chem-Tec case**, I can see no fundamental difference between the functions served by material properly classified as either word.

[61] In any event, it is beyond dispute that the individual sachets, plastic bags and lined paper bags separated and held the various quantities of the mini pellets. The conclusion that they were put up in packings, within the meaning of the term in the Glossary, is inescapable in my view.

[62] Further, whether it is the word “*packings*” or “*packagings*” which is used, I am inclined to the view taken in the **Chem-Tec case** that the critical consideration is whether from every point of view the product as presented or put up, is suitable for retail sale to the consumer without further packing when put into free circulation. When the weight of the pellets in each sachet, plastic bag and lined paper bag is considered, it appears that they were in fact put up retail ready. I am aided in this conclusion by the Appellant’s own effort to have the molluscicides classified under tariff heading 3808 which requires goods to be put up for such sale in order to be classified under the heading.

[63] In the foregoing premises I find that the molluscicides were put up in packings for retail sale.

Net weight not exceeding 6kg

[64] The RAD observed that neither the GRIs nor the Tariff define the term “*net weight*” and referenced numerous sources in concluding that the Respondent

*... erred in stating that it had to classify each individual item, as the **WCO's HS Classification Handbook** indicates that a classification system must associate each individual product with a single heading and not each individual item... and that the Appellant was correct in submitting that net weight for Customs purposes refers to the weight of the goods themselves without any packing.*

- [65] In submissions the Appellant relies on the RAD's finding as to the net weight of the imported molluscicide in urging that it ought properly to be classified under 3808.99.99.10 and not 3808.99.91.10. The Appellant references the fact that the Commissioner of the RAD agreed the definition of "*net weight*" contained in the **WCO's Glossary of International Customs Terms, Data Set Version 3** (the Second Glossary) which was attached to written submissions filed in these proceedings. The Appellant also relies on the fact that the RAD accepted the calculation of "*net weight*" outlined in the United Nations **International Merchandise Trade Statistics: Compilers Manual, Revision 1 (IMTS 2010-CM), Box XV. 3** (the IMTS). Box XV. 3 is titled "*Definition of 'net weight' (mass) used in the European Union*". [Emphasis added]
- [66] The Respondent submits that the Glossary definition of "*net weight*" in the context of classification of the goods is incorrect and that the RAD also fell into error in applying dictionary definitions rather than the GRIs. I will address each aspect of the submission in turn.
- [67] Firstly, I observe that the term referenced and defined in the Second Glossary is not "*net weight*", but "*Net net weight*" which is defined as the "*weight (mass) of the goods themselves without any packing*." I also observe that Box XV. 3 in the IMTS does not provide any illustration on the calculation of "*net weight*" as submitted by the Appellant and accepted by the RAD but is referable to the calculation of the "**net mass**" weight of goods as seen in its title, and its terms which I now reproduce.

*In the European Union, completion of information on **net mass** is, in general, obligatory for all customs procedures. The **net mass** is the mass of the goods without any packaging.*

“Packaging” means materials and components used in any packaging operation to wrap, contain and protect articles or substances during transportation. The term “package” includes all articles used and, in particular, holders used as external or internal coverings for goods, boulders on which goods are rolled, wound or attached, containers (other than those defined in international conventions) and receptacles. The term excludes means of transport and articles of transport equipment such as palettes and freight containers.

*Example: A company imports 1,000 bottles of wine. Each bottle of wine weighs 1.25 kg and wine in each bottle weighs 0.75 kg. **The figure 750 must be entered in box 38 (not the unit value).***

[Emphasis added]

- [68] “Net weight” and “Net net weight” are two distinct measures. Reliance on the definition of the latter in the Second Glossary and illustrated in Box XV. 3 of the IMTS in defining “net weight” and determining the net weight of the imported molluscicides was therefore erroneous.
- [69] When I consider that the main purpose of the WCO’s HS is to provide a globally standardised method for classifying traded goods, which facilitates easy and consistent identification of goods and the taxes payable, I regard the use of definitions of terms by the WCO in its glossaries to be entirely appropriate, subject of course to the GRIs. It does not appear that any definition of “net weight” from WCO glossaries was presented to the RAD, however. I was not directed to such a definition.
- [70] The RAD referred to the definition of the term in **Black’s Law Dictionary** as “the total weight of a thing, after deducting its container, its wrapping and any other

extraneous matter.” There is nothing offensive in the definition and I believe it to be fundamentally similar to the meaning of the term articulated in the **Chem-Tec case**. In the circumstances, I find that the error of the RAD was not in the engagement of the dictionary definition of the term but the adoption and application of a definition and illustration for calculating the altogether different measure of “*Net net weight*”.

- [71] The definition in the **Chem-Tec case** - which I accept as being correct - is that the net weight of goods is the weight of the essential component of the goods without its packings.
- [72] Having earlier found that the *Deadline M-PS Mini Pellets* were put up in packings for resale and the evidence being that those packings contained quantities of 600 grams which is equivalent to 0.6 kg and 4.54 kg as appropriate - none of which exceeded a net weight of 6kg - I find that the weight requirement at subheading 3808.99.91 was in fact met.

Molluscicides for use in agriculture

- [73] Molluscicides are expressly referenced under tariff code 3808.99.91.10 as one part of goods described as “*nematicides and molluscicides for use in agriculture*”. The goods are molluscicides and the Respondent concedes, as disclosed on documentation from the PCA, that they were in fact imported for such use.
- [74] In all the foregoing circumstances I find that there is merit in the Appellant’s challenge, with which the respondent concurred, that the RAD erred in concluding that tariff code 3808.99.99.90 applied to *Molluscicide - Deadline M-PS*. The goods are properly classified under tariff code 3808.99.91.10 on the application of GRIs 1 and 6. While a duty rate of 20% is levied on goods so classified, the Respondent concedes that an Additional National Code (ANC) applies to reduce the duty to 5%. That latter rate is the rate determined by the RAD, albeit on the application of the incorrect tariff code. In consequence,

notwithstanding the classification error by the RAD, the duty rate of 5% on *Deadline M-PS Mini Pellets* is confirmed.

(iv)

Whether the Resolution incorporated proof of origin requirements of the EPA.

- [75] It is the Appellant's submission that in the absence of express incorporation, the proof of origin requirements of the EPA were not wholly incorporated into domestic law. The Appellant contends that as a result, there is no requirement for the presentation of certificates of origin or invoice declarations contemplated by the EPA in order to claim 0% customs duties on goods imported from countries in the European Union. There is no merit in these contentions.
- [76] There is no dispute that the EPA constitutes treaty law and that since Jamaica is a dualist state it does not automatically become a part of domestic law. In order for its rules to apply, parliament must pass new legislation or amend existing laws to give effect to the treaty domestically.
- [77] The preamble to the Resolution shows that it was made pursuant to the power given to the House of Representatives by section 5 of the CA to impose, revoke, reduce, or alter import duties and provide for the importation of goods without the payment of customs duties; and further amends the First Schedule of the **Customs Tariff (Revision) Resolution, 1972** (the Principal Resolution).
- [78] While it does not expressly reference proof of origin requirements under the EPA, the Resolution provides thus, as relevant to the enquiry.

... WHEREAS it is desirable to give effect to the CARIFORUM/EC Economic Partnership Agreement (hereinafter referred to as "The Agreement"... which, among other things, provides for the introduction of a programmed admission into Jamaica and other CARIFORUM states,

Without the payment of customs duty, of all goods in relation to which those states had made commitments under the Agreement;

AND WHEREAS it is desirable that the CARICOM/CARIFORUM Secretary General and the Secretary General of the Council of the European Union Are you notified that the relevant internal measures to give effect to the Agreement are in place;

AND WHERAS it is desirable, with a view to implementing the Agreement, to make provision to allow import duty-free access on entry into Jamaica, on a one off basis or on a phased reduction of duty basis, in relation to all goods in respect of which Jamaica had made commitments under the Agreement;

AND WHEREAS the First Scheule to the [principal] Resolution has been amended from time to time and it is now desirable to further amend the First Schedule in the manner hereinafter appearing:

NOW, THEREFORE, BE IT RESOLVED by the House of Representatives as follows:

- (i) [Citation for the Resolution which is to be read and construed as one with the Principal Resolution and all amendments thereto.]*
- (ii) The goods specified in the First Schedule to this Resolution shall be free from import duty imposed under the First Schedule to the principal Resolution, with effect from [December 18, 2013] the date of publication of this Resolution in the Gazette;*
- (iii) The goods specified in the Second Schedule to this Resolution shall be free from import duty over a phased basis in the manner specified in that Schedule:*

- [79] The First Schedule, an extract of which was supplied, shows that the 0% duty rates reflect “*Treatment as per EPA %*” and apply to goods described in the tariff headings specified in the said schedule.
- [80] The Respondent relies on the recitals and the schedule in submitting that “parliament” intended to give effect to the EPA based on commitments made, and that the schedule to the Resolution must be read in the context of Jamaica’s obligations thereunder and cannot itself confer the benefit of a 0% duty rate. Reference was also made in the Respondent’s written submissions to these words said to appear in the First Schedule: “*Goods Originating in the European Community (EC) and Eligible for Total Exemption from Customs Duty*”. That page of the schedule was not supplied however, and I therefore decline to remark on it. That notwithstanding, there are a number of uncontroversial principles of interpretation, distilled in a number of cases of which I am aware, that are relevant to the dispute, two of which I will reference.
- [81] The first is **Attorney General v Prince Ernest Augustus of Hanover** [1957] AC 436 which is factually distinguishable from the instant case but is nevertheless useful in demonstrating that preambles and recitals therein can be used in interpreting legislative instruments. Viscount Simond, Lord Normand and Lord Sommerville respectively, put the matter in these ways.

... For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use "context" in its widest sense, which I have already indicated as including not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy. P. 461 ...

When there is a preamble it is generally in its recitals that the mischief to be remedied and the scope of the Act are described. It is therefore clearly

permissible to have recourse to it as an aid to construing the enacting provisions. The preamble is not, however, of the same weight as an aid to construction of a section of the Act as are other relevant enacting words to be found elsewhere in the Act or even in related Acts. There may be no exact correspondence between preamble and enactment, and the enactment may go beyond, or it may fall short of the indications that may be gathered from the preamble. Again, the preamble cannot be of much or any assistance in construing provisions which embody qualifications or exceptions from the operation of the general purpose of the Act. It is only when it conveys a clear and definite meaning in comparison with relatively obscure or indefinite enacting words that the preamble may legitimately prevail. P. 476 ...

A court will, of course, always bear in mind that a preamble is not an enacting provision, but I think it must have such weight as it can support in all contests as to construction. Pp. 474-475

[82] On consideration of the recitals contained in the preamble to the Resolution, I do not believe there should be any serious doubt that requirements for EPA treatment of imported goods, including proof of origin requirements as articulated in the Agreement, would need to be satisfied in order to qualify for the treatment. Further still, the First Schedule of the Resolution expressly states that the 0% duty rate which applies to the goods described under the relevant tariff headings is “*Treatment as per EPA %*”.

[83] The second authority which I wish to reference is **Salomon v Commissioners of Customs and Excise** [1967] 2 QB 116 where domestic legislation was enacted to give effect to the Convention on Valuation of Goods for Customs Purposes, 1950 to which the United Kingdom was a party, without reference to the convention. On a challenge to the valuation of goods under the legislation, it was held *per curiam*, that if aid was required to construe legislation obviously intended to carry out its terms, even though that intention was not expressly stated, the court is obliged, on grounds of international comity, to take judicial

notice of the convention; all the more so when both the convention and domestic legislation deal specifically and exclusively with a narrow topic.

- [84] On a reading of the EPA, it is evident that it is a trade and development pact which creates a free trade area between CARIFORUM and European Union countries. It applies to the trade of goods “*originating*” in parties or states within each regional block. Article 10 of the EPA expressly states that “*“originating” means qualifying under the rules of origin set out in Protocol I.*” The recitals clearly demonstrate that the intention of the House of Representatives in making the Resolution, was to give effect to the EPA. Absent compliance with the rules of origin, the objectives of the EPA and Jamaica’s obligations thereunder could scarcely be met. In these circumstances I find that the Resolution incorporates the proof of origin requirements of the EPA into domestic law.

(v)

Whether the Appellant’s invoice declarations constitute proof of origin as contemplated by Article 16 of Protocol I of the EPA to enable the imported goods to benefit from the 0% treatment prescribed by the Resolution.

- [85] The Appellant further submits that the invoice declarations submitted by it satisfied the requirements of Article 16(b) of Protocol I of the EPA as the goods were described in sufficient detail to enable their identification and to demonstrate European Union origin, and that the RAD erred in rejecting them. In response, the Respondent submits that the RAD was correct in rejecting the invoice declarations in proof of origin as they were not compliant with Articles 16, 21 and 22, and Annex IV of Protocol I of the EPA.
- [86] Article 16 of Protocol I of the EPA makes provision for general requirements of proof of origin and states, so far as is relevant that:

1. *Products originating in a CARIFORUM State shall, on importation into the EC Party and products originating in the EC Party shall, on importation into a CARIFORUM State, benefit from the provisions of the Agreement upon submission of either:*

(a) a movement certificate EUR.1, a specimen of which appears in Annex III; or

(b) in the cases specified in Article 21(1), a declaration, subsequently referred to as the 'invoice declaration', given by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified; the text of the invoice declaration appears in Annex IV.

2. ...

[87] At the material time the Respondent required importers to submit movement certificate EUR 1 in proof of origin. The Appellant did not submit any such certificate.

[88] On my reading of Article 16(1) of Protocol I, it is the importer who would have the obligation to submit proof of origin, not the customs authorities of parties and states to the EPA. It is therefore my view that an importer may properly engage either option provided to it in the Article, in proof of origin. The question which then arises is whether the conditions for making out “*invoice declaration[s]*” in Article 21 were satisfied on those submitted by the Appellant.

[89] Article 21 reads:

1. *An invoice declaration as referred to in Article 16(1)(b) may be made out:*

(a) by an approved exporter within the meaning of Article 22; or

(b) by any exporter for any consignment consisting of one or more packages containing originating products whose total value does not exceed EUR 6 000.

- 2. An invoice declaration may be made out if the products concerned can be considered as products originating in the CARIFORUM States or in the EC Party and fulfil the other requirements of this Protocol.*
- 3. The exporter making out an invoice declaration shall be prepared to submit at any time, at the request of the customs authorities of the exporting country, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Protocol.*
- 4. An invoice declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the declaration, the text of which appears in Annex IV to this Protocol, using one of the linguistic versions set out in that Annex and in accordance with the provisions of the domestic law of the exporting country. If the declaration is handwritten, it shall be written in ink in printed characters.*
- 5. Invoice declarations shall bear the original signature of the exporter in manuscript. However, an approved exporter within the meaning of Article 22 shall not be required to sign such declarations provided that he gives the customs authorities of the exporting country a written undertaking that he accepts full responsibility for any invoice declaration which identifies him as if it had been signed in manuscript by him.*
- 6. An invoice declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing country no longer than two years after the importation of the products to which it relates.*

- [90] Counsel for the Appellant was unable to point to any of the declarations submitted and I was unable to locate any which met the criteria in Article 21 for an “*invoice declaration*’. In the circumstances I can find no error on the part of the RAD in rejecting the invoice declarations submitted by the Appellant in proof of origin. Absent proof of origin as required by the convention, the imported goods cannot benefit from the 0% duty rate treatment under the EPA.
- [91] On consideration of all the foregoing, I find that the Appellant’s appeal should be refused.

(vi)

Whether the court has jurisdiction to restore the Respondent’s classification of goods and additional duties which are not the subject of the Appellant’s appeal.

- [92] Premised on this court’s jurisdiction to hear appeals by way of rehearing, the Respondent asks that its classifications of all goods the subject of its additional assessment and the duties assessed by it be restored *in toto*. The court does not have the jurisdiction to do as the Respondent has asked in respect of aspects of the decision of the RAD which are not the subject of the Appellant’s appeal.
- [93] Section 18 (1) of the CA makes provision for an “*objector*” who disputes an assessment and is dissatisfied with the decision of the Respondent Commissioner on objection to appeal to the RAD. Pursuant to section 18(3), it is the said “*objector*” who is dissatisfied with the decision of the RAD who may appeal to this court.
- [94] Further, under the **Revenue Appeals Division Act** (hereinafter called “the RADA”), a taxpayer aggrieved by a decision of a Revenue Commissioner, including the Respondent, may appeal to the Commissioner of the RAD or directly to this court. Where the appeal is made to the RAD and the taxpayer is

aggrieved by the decision of the Commissioner of the RAD, the taxpayer may appeal to this court pursuant to section 14 (1) of the Act. Appeals to this court are limited to the grounds of appeal submitted by the taxpayer unless the court exercises its discretion to permit amendments to those grounds in accordance with section 14 (3).

[95] Neither the CA nor the RADA gives the Respondent the right or option to appeal or cross appeal any decision of the Commissioner of the RAD. A Revenue Commissioner is accordingly bound by the decision returned on a taxpayer's appeal to the RAD in respect of tax liability. That is not surprising when the role of the RAD in the revenue ecosystem is considered. The RAD is established by its enabling statute as a division of the Ministry with responsibility for finance and has the principal function of facilitating the determination of appeals by taxpayers against decisions of Revenue Commissioners about their revenue liability under relevant revenue laws.

ORDER

1. The appeal against the decision of the Revenue Appeals Division of 11th September 2024 is dismissed.
2. The decision of the Revenue Appeals Division reducing the assessment on appeal to the sum of **Twenty-Seven Million Three Hundred and Fifty-Seven Thousand Five Hundred and One Dollars and Seventy-Three Cents (\$27,357,501.73)** is confirmed.
3. Costs of the appeal to the Respondent, to be taxed, if not sooner agreed.
4. The Respondent is to prepare, file and serve this order.

Carole S. Barnaby
Puisne Judge