



TC05546

Appeal number: TC/2015/04101

***CUSTOMS DUTY – WHETHER TONER CARTRIDGE IS A PART OR
ACCESSORY WITHIN 8443 999000 – YES - APPEAL ALLOWED***

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

KIP UK LIMITED

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE IAN HYDE
RICHARD LAW**

Sitting in public in Birmingham on 11 July 2016

Tim Brown, counsel, for the Appellant

**Isabel McArdle, counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. This appeal concerns the liability of the appellant, KIP UK limited (“KIP”) to
5 customs duty on their importation of certain toner cartridges. KIP originally made
reclaims for overpaid duty in 2014 in respect of a number of cartridges some of which
in a decision dated 1 June 2015 were allowed by HMRC and others rejected. The
rejected claims were discontinued by KIP save for reclaims in respect of one type of
toner cartridge, known as KIP 7170, which is the subject of this appeal.

10 2. KIP argues that KIP 7170 should be classified under heading 8443 999000
(other printers, copying copiers and facsimile copiers, whether or not combined; parts
and accessories thereof) and so attract 0% duty.

15 3. HMRC argue that KIP 7170 falls within heading 3707 902090 (chemical
preparations for photographic uses (other than varnishes, glues, adhesives and similar
preparations); unmixed products for photographic uses, put up in measured portions
or put up for retail sale in a form ready for use) and so is subject to 6% duty.

The facts

4. The facts of this appeal are not in dispute and the Tribunal’s findings of fact are
set out below. The terms printer and copier were used by the parties interchangeably
20 in this appeal as they are in this decision.

5. Mr Mark Biddulph, the technical manager of KIP, gave evidence as to the design
and use of the KIP 7170 cartridge. We were also shown a short video in which Mr
Biddulph demonstrated how the cartridge fitted into the copiers and their operation.

6. Sample cartridges cut away to show their inner workings were produced at the
25 hearing and their features and workings described by Mr Biddulph. These were KIP
7170, an earlier design KIP 9900 and a gravity fed hopper design KIP 700M. The
latter did not assist the Tribunal save to illustrate that toner could be fed by gravity
rather than by mechanical means as used in KIP 9900 and 7170.

7. HMRC referred to the Explanatory Notes to the Harmonised System drawn up
30 by the World Customs Organisation (“HSENS”) for 3707 90, Binding Tariff
Informations (“BTIs”) for products in other European jurisdictions and minutes of the
52nd European Customs Code Committee (Mechanical/Miscellaneous sub-section).
The minutes recorded discussion of draft regulations concerning classification of
toner cartridges but no regulations had been adopted at the date of the hearing.

8. Following the hearing the Tribunal requested submissions from the parties on
35 Tariff Notice and Commission Regulation 2016/1354 (“the 2016 Regulations”). The
2016 Regulations seek to ensure uniform application of the Council Regulation (EEC)
No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the
Common Customs Tariff (“The Combined Nomenclature” or “CN”) and specify the
40 classification of a type of toner cartridge as a part within 8443 999000. We assume,
but have no evidence to this effect, that the 2016 Regulations are the product of the

discussions in the European Customs Code Committee the minutes of which were produced in evidence by HMRC.

5 9. KIP is the subsidiary of a Japanese company, the Katsuragawa Electric Company Limited which manufactures large format copiers, designed primarily for architects, engineers and the construction industry and able to print on paper up to 0.9m wide and up to 64 metres long. KIP imports the copiers and cartridges into the UK and, via a distributor network, into other parts of Europe, Scandinavia, the Middle East and South Africa.

10 10. We are concerned here with toner and not ink. Further, there are different types of toner printing being laser or, as is the case in this appeal, photo conductive. The toner itself is of a plastic type that is applied to the paper in the printing process by a combination of heat and pressure.

15 11. The KIP 7170 toner cartridge is designed to be installed horizontally in a KIP copier. It is a plastic cylinder of some 30 cm in length and 7cm in diameter and is in two parts. The main part of the cylinder, being some 25cm long on the external surface but recessing into the cap or housing section, contains as part of the moulded plastic a spiral groove or “screw thread” recessed into the body of the cylinder along its length and forming an indentation on the external surface and creating a spiral ridge just over 5mm in depth inside the cylinder. The remaining part of the cylinder consists of a section some 5cm on length, marginally wider than the grooved section the end of which fits inside. This cap or housing section engages into a slot in the copier and has a cog which attaches to a motor in the copier. The copier’s developer unit contains a reservoir of toner sufficient to enable continuous printing but when the copier’s sensor detects that is insufficient the motor rotates the spiral grooved section of the cartridge which delivers the toner to the copier via a connector in the stationary housing section.

30 12. The cartridge contains a semi-conductor microchip which confirms to the copier that the cartridge is present and that it is a KIP cartridge. If there is no cartridge fitted or it is not a KIP cartridge the copier will turn on but its screen will be greyed out and the copier will be unable to print.

13. The KIP 7170 cartridge could therefore be said to perform the following functions;

- (1) the cartridge holds the toner;
- 35 (2) the combined effect of the rotation and the groove in the main part of the cylinder cartridge agitates the toner to prevent it solidifying or “caking”, an important issue for toner cartridges where the dry powder has a tendency to form into clumps and interrupt the flow of powder (“the agitation function”);
- (3) the rotation and the groove in the main part of the cylinder cartridge moves the toner along the cylinder and delivers the toner to the copier via the connector in the stationary housing section (“the delivery function”); and
- 40 (4) the microchip alerts the copier to the presence of a KIP toner cartridge

14. KIP 7170 is itself a development of an earlier toner cartridge KIP 9900 and is described as more efficient and environmentally friendly. HMRC has always accepted that KIP 9900 should be classified under customs classification 8443 999000.

5 15. A cut away sample of KIP 9900 was also provided during the hearing and time was taken in the hearing to compare the two cartridges. KIP 9900 is broadly the same length but of greater diameter than KIP 7070. The KIP 9900 cartridge, like KIP 7170, has a spindle that is connected to a motor in the copier. However in the case of KIP
10 9900, the cylinder does not revolve but instead the cylinder contains a separate spiral or screw thread within and along the length of the cylinder which is rotated by the copier motor via the spindle. It is common ground that this thread performs the same agitation and delivery function as the spiral groove and rotation of the cylinder in KIP 7170. KIP 9900 does not contain a microchip.

15 16. Aside from the microchip, the difference between the two cartridges can therefore be summarised as being that KIP 9900 agitates and delivers the toner with a separate screw mechanism or component whereas KIP 7170 achieves the same result by integral internal spiral ridges in the cylinder wall and rotation of the main part of the cylinder itself.

Classification of goods

20 17. There was no disagreement as to the principles applicable to the classification of goods for customs duty purposes.

18. Customs duty is payable on the import of goods into the United Kingdom from outside the European Union in accordance with the Combined Nomenclature which provides for a systematic classification of goods.

25 19. Goods on importation are given a numerical or classification code of at least four digits, sometimes eight. The first two refer to the relevant Chapter in the Combined Nomenclature, the next two refer to the Heading and, if relevant, another four digits refer to the Subheading.

30 20. There are six General Rules of Interpretation (“GIRs”) set out in Annex 1 of the EC Council Regulation which have legal force in assisting in interpretation of the Combined Nomenclature and must be applied in numerical order so that if an earlier rule determines the point then the later rules are irrelevant. These are, so far as they are potentially relevant;

Rule 1

35 “The titles of sections, chapter and sub-chapter 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”

40 Rule 2

“(b)...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”

5 Rule 3

“(a) the heading which provides the most specific description shall be preferred to headings providing a more general description...

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

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

Rule 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”

20 Rule 6

25 “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 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 the rule the relative section and chapter notes also apply, unless the context otherwise requires”

30 21. In addition to the HSENS there are also Explanatory Notes to the Combined Nomenclature (“CNENS”) drawn up by the European Commission which are valid aids to the construction of the Combined Nomenclature but do not have legal force (*British Sky Broadcasting Group plc and another v Revenue and Customs Commissioners* Cases C-288/09 and C-289/09 [2011] STC 1519 at paragraphs 63-65). The only HSENS or CNENS we were taken to was the HSENS for 3707 relied upon by HMRC which indicated that 3707 90 includes “Toners to modify the colour of the image”.

40 22. We were taken to a number of authorities on the principles to be applied and it is common ground that in classifying goods for customs purposes regard must be had to the goods objective characteristics and properties as defined in the wording of the relevant headings, *Turbon International GmbH v Oberfinanzdirektion Koblenz* (Case C-250/05) (described in the hearing and in this decision as “*Turbon IP*”) at paragraph 16;

5 “It is settled case-law that, in the interests of legal certainty and for ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the wording of the relevant heading of the CN. The explanatory notes drawn up by the Commission of the European Communities as regards the CN and by the World Customs Organisation as regards the HS are an important aid to the interpretation of the scope of the various tariff headings but do not have legally binding force...”

10 23. Further, Judge Hetherington in the Upper Tribunal in *EP Barrus, Kubota (UK) Ltd v HMRC* [2013] UK UT 449 (TCC) has at paragraph 41 in his decision helpfully summarised the approach to be taken in these disputes which both parties in this appeal accepted as accurate and is adopted by this Tribunal;

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

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

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

(4) The CNENs and HSEs should be used as an aid to interpretation as can specific classification regulations, but the latter only in relation to products identical to those specifically classified...

25 (5) Marketing materials and a product’s targeted use are not to be taken into account...”

30 24. The issue in this appeal is whether by applying these settled principles KIP 7170 should be classified, as KIP argued, under heading 8443 999000 which is part of CN Chapter 84 “Nuclear reactors, boilers, machinery and mechanical appliances: parts thereof“;

“printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442: other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof

35 parts and accessories:

- other”

or, as HMRC argue, under heading 3707 902090 being part of CN Chapter 37 (“Photographic or cinematographic goods”);

Chemical preparations for photographic uses (other than varnishes, glues, adhesives and similar preparations); unmixed products for photographic uses, put up in measured portions or put up for retail sale in a form ready for use

5 Other

Developers and fixers

Other

10 25. The main argument in this appeal is whether KIP 7170 satisfies the wording of 8443 as being within the phrase “parts or accessories thereof” or falls into the “developers and fixers” subheading in 37 07.

The “part” argument

15 26. Mr Brown for KIP relied upon *Unomedical v Skatterministriet* [2011] Case C-152/10 where the Court recognised in the context of a different heading in the Combined Nomenclature that there was no definition of part but said that in order to be a part it must be essential for the working of the other product and quoted with approval *Turbon International* Case C-276/00 (“*Turbon I*”) at paragraph 30;

20 “In that connection, it should be observed that the word “part”, within the meaning of CN heading 8473, implies a “whole” for the operation of which that part is essential...and this is not so in the case of the cartridge at issue in the main proceedings. While it is true that, without an ink cartridge, a printer is not able to carry out its intended functions, the fact remains that the mechanical and electronic functioning of the printer in itself is not in any way dependent on such a cartridge. The inability of the printer, in the absence of an ink-cartridge, to transcribe on to paper the work produced with the aid of a computer is caused
25 by lack of ink rather than a malfunctioning of the printer.”

27. KIP argued that here KIP 7170 was essential to the operation of the printer in that

- 30 (1) Without the cartridge’s semi-conductor the printer will not print;
- (2) The copier interacts with the cartridge in respect of when and how it delivers the toner; and
- (3) As with the older cartridge KIP 7170 prevents caking.

35 28. Of the three features Mr Brown concentrated on the anti-caking feature. The mechanism of the rotating cartridge with the groove within the rotating cylinder make the cartridge a part, fulfilling the agitation and delivery function. This sophistication goes beyond the ink cartridge under consideration in *Turbon I*.

29. Mr Brown referred to the First-tier Tribunal decision in *Xerox Ltd v HMRC* UKUT 631 (TCC), [2014] UKFTT 83(TC) where “ink sticks” – being solid ink which was melted in the printer – was held to be classifiable both as a part under 8443 and also as printing ink under 3215 but the Tribunal applied GIRs 3(a) and decided that
5 3215 was the correct classification because it was more specific. In the current appeal 3707 is not as specific.

30. We were also referred by KIP to *Xerox Canada v Canada Border Service Agency* (AP-2013-015), a decision of the Canadian Trade Tribunal. In the decision the Tribunal found that cartridges with a microchip and an antenna were highly
10 engineered goods and the copiers would not function without them. They were therefore parts and essential to the copier’s function. Mr Brown recognised that the decision was not binding but he highlighted the need for consistency across all countries.

31. Mr Brown argued that, as the copiers are categorised under 8443, so should KIP
15 7170, being a part or accessory of a copier. Apart from not having a microchip, KIP 9900 performs the same functions as KIP 7170 and HMRC are happy for KIP 9900 to be categorised under 8443. The distinction between a stirrer as a separate component and one integral to the casing of the cartridge is artificial.

32. Ms McArdle for HMRC argued that in applying the test as to the objective
20 characteristics and properties of the products the KIP 7170 cartridge had the following objective characteristics;

- (1) A container for toner;
- (2) The toner in the cartridge is of a more specialist nature than ordinary ink;
and
- 25 (3) The cartridges contain no moving parts which agitate toner

33. HMRC argued that that being the case, the decided authorities on ink cartridges, whilst considering a different code heading, nevertheless apply equally to toner cartridges and pointed to KIP 7170 not being a part or accessory.

34. HMRC agreed with KIP that in order to be a part a cartridge must be essential
30 for the working of the other product and also relied upon paragraph 30 of *Turbon I* (paragraph 26 above) but drew different conclusions. A printer without a cartridge is still a printer, albeit one that cannot print and so the cartridge supplying that ink or toner is not a “part”. HMRC submitted that the Tribunal was bound by *Turbon I* to find that KIP 7170 was not a part.

35. HMRC cited the Upper Tribunal’s decision in *Xerox Ltd v HMRC* UKUT 631 as illustrating the point that just because something – in that case “ink sticks” - were essential to the operation of a printer did not mean it was a part for the purposes of 8443, so at paragraph 71 the Upper Tribunal observed;

40 “But in any event the question whether something is essential for the functioning of a machine cannot be determinative. Petrol, for example, is

essential to the functioning of a petrol-engine car, but the parties were agreed that petrol is not part of a car. This seems instinctively right and I agree”

36. HMRC further referred to the decision in *HMRC v Epson Telford Limited* [2008] EWCA Civ 567 where the Court of Appeal rejected a classification of ink cartridges as parts where the ink cartridges had circuit boards and chips embedded in the cartridge to provide information to the printer as to the level of ink in the cartridge enabling more effective delivery of ink and protecting the print head from damage in trying to print without ink, as Sir John Chadwick said;

“...even taking these differences into account the basic function of the ink cartridge remains: to supply ink to the printhead and so enable the printer to print.” (paragraph 45)

37. HMRC drew a distinction between the type of toner represented by KIP 9900 and KIP 7170, arguing that heading 8443 is only available if the agitator for the toner is mechanical, that is to say a separate component to the cartridge container itself. KIP 9900 has a separate spiral paddle which rotates and so qualifies as a “part” but KIP 7170 does not. Without a separate mechanical component the cartridge is not a “part” of a copier and simply serves as a container for the toner and so, following the above authorities, are properly to be categorised under heading 3707.

38. In support HMRC referred to the BTIs produced to the Tribunal and argued that they covered similar products in other European jurisdictions and, whilst not binding, demonstrated that other member states were classifying similar products under 3707 and only classifying cartridges with internal mechanisms for agitating ink or toner as parts within 8443. The English version had been obtained by Google Translate.

39. Further, HMRC argued that a similar approach was taken in the minutes of the European Customs Code Committee which showed that the view of the Committee was that toner cartridges without a stirring mechanism should properly be categorised under heading 3707.

40. On this point Mr Brown objected to the BTIs on two grounds. The translation to English was on Google Translate which is inadequate and it is not possible to identify the precise description of the relevant products. At the hearing Mr Brown dismissed the minutes of the Committee on the grounds that it was a discussion in 2011 about a draft regulation which was never implemented and has no legal force.

41. HMRC argued that under GIR 2(b) the reference to “goods of a given material or substance shall be taken to include reference to goods consisting wholly or partly of such material or substance” meant that the toner material should determine the classification of KIP7170.

42. Similarly, HMRC argued that under GIR 3(b) where, if the goods consist of a mixtures or composite which cannot be classified by reference to GIR 3(a) they shall be classified as if they consisted of the material or component which gives them their essential character. Here the essential character is toner in the same way as ink was

the essential characteristic for the cartridges in *Turbon I* and so the cartridges were not parts or accessories within 8473. In that case the Court said at paragraph 27;

5 “the element which gives the cartridge its essential character is the ink which it contains. The essential function of the cartridge consists in containing the ink and supplying the printer so as to enable the printer to transcribe on to paper work done with the aid of a computer”

43. The CJEU in *Turbon II* went further at paragraph 23;

10 “Even if an ink cartridge, such as that at issue in the main proceedings, is constructed in such a way that the printer does not function in the absence of that cartridge, the fact remains that the ink contained in the cartridge is the most important factor for the purpose of using the goods at issue. In fact, the ink cartridge is not inserted in the printer to make the printer function but specifically to supply it with ink. Therefore, the ink must be regarded as determining the essential character of an ink cartridge, such as that at issue in
15 the main proceedings”

44. The 2016 Regulations were published after the hearing but the Tribunal asked the parties to make submissions. The relevant goods were described as;

20 “A rectangular plastic recipient with dimensions of approximately 11cm x 11cm x 7cm filled with toner. On the outside the cartridge is provided with sprocket wheels specifically designed to be used in connection with certain mechanical parts of a specific printer. Inside, the cartridge is equipped with a rotating mechanism that works in conjunction with the sprocket wheels. When the toner cartridge is placed in a printer, the rotation prevents the toner from agglomerating. The cartridge has the capacity of releasing the toner by
25 electrostatic attraction”

45. The reasons given for classifying the cartridges as 8443 9990 include;

“classification under heading 3707 as a chemical preparation for photographic use is excluded as the cartridge comprises not only the toner but also mechanical components such as sprocket wheels and a rotating mechanism

30 The presence of the specific dedicated sprocket wheels identifies the cartridge as being intended for use in a specific printer. It is essential for the actual mechanical functioning of the printer as the mechanical parts of the printer work in conjunction with the mechanical parts of the cartridge and the printer could not function without this specific cartridge.”

35 46. The cartridges are by the short description given, similar to KIP 9900 except that they were cuboid rather than cylindrical.

47. HMRC made submissions that the 2016 Regulations supported their position as the regulations illustrate that an internal stirring mechanism is essential if a toner cartridge is to be classified as a part. KIP did not make any submissions.

40 **The accessory argument**

48. KIP argued that, as an alternative to KIP 7170 being treated as a part, the cartridge could be seen as an accessory. KIP did not argue the point very strongly but referred to *Unomedical*. Again the relevant principle is to be found in *Turbon I*, this time at paragraph 32;

5 “Equally, such a cartridge cannot be classified under heading 8473 as an
“accessory” of the printers in question. While the cartridges are interchangeable,
they are not designed to adapt the printers for a particular operation, or to
perform a particular service relative to their main function, or to increase their
10 range of operations, within the meaning of the HS explanatory note relating to
heading 8473. Such cartridges merely enable ESC printers to fulfil their usual
function, namely, the transcription on to paper of work produced with the aid of
a computer.”

49. HMRC argued that the cartridge cannot be an accessory. The cartridge supports the printer’s primary function and does not satisfy the test in *Turbon I* by adapting the
15 printer or enabling it perform a particular service or increase its range of operations.

Arguments on 3707

50. The parties also made some discrete points on the interpretation of 3707.

51. KIP argued that 3707 could not in any event apply because 3707 9020 headings related solely to goods “in the manufacture of ink toner bottles or cartridges” and
20 “other” should be read in that context. As KIP 7170 is not used in such manufacturing then this heading cannot apply. Further, “other” can only apply to the ink or powder and not the cartridges.

52. HMRC argued that 3707 did not relate exclusively to manufacturing but instead to all “developers and fixers” and the fact that other categories were limited to
25 manufacturing did not mean that the “other” category was so limited. Further, the HSENS for 3707 describe 3707 90 as including “toners to modify the colour of the image”. Applying GIR 2(b) the cartridge takes its characteristics from the toner.

Decision

53. The starting point is to determine which Combined Nomenclature heading
30 applies to the goods in question. In this appeal the parties effectively agreed that the test is whether KIP 7170 could properly or most naturally be described as “parts and accessories” of a printer within 8443 999000. If not then it should be classified under 3707 902090. If KIP 7170 is a part or accessory then KIP win the appeal.

54. In determining the correct classification of goods for customs duty purposes the
35 Tribunal or court must identify the products objective characteristics and properties (*Turbon II*). Further, the relevant criteria must be apparent from the external characteristics of the goods so that they can be easily appraised by the customs authorities (*EP Barrus*).

55. Both parties sought not only to draw out principles from the reported cases but to argue by analogy. However, each decision on customs classification depends on its facts. Insofar as the features of the product are described in the reported cases, the goods did not have the mechanical functionality of KIP 7170. For example, the ink sticks in *Xerox* were very different from the rotating cylinder in KIP 7170. Similarly, we do not rely on the Canadian decision of *Xerox Canada v Canada Border Service Agency* advanced by KIP if only because the facts are not the same. These decisions cannot be automatically read across as a binding authority on the facts on this appeal. Indeed, the classification of KIP 9900 by HMRC and the recognition of internal mechanisms as qualifying toner cartridges as parts is also irrelevant. The function of this Tribunal is to identify the principles established in the decided cases and apply them to the facts as found in this appeal.

56. We find that the objective characteristics that should be considered in classifying of KIP 7170 are both as a container filled with toner and also a rotating cylinder with an integral internal groove that fulfils the agitation and delivery functions.

57. We agree with HMRC that just because a printer needs toner to print does not make the toner cartridge a “part” of the printer (*Turbon II* and *Xerox*). However, KIP 7170’s objective characteristics and properties go beyond the simple and necessary supply of toner to performing functions more associated with the execution of the printer’s activity of using the toner to produce printed paper. In other words “*the mechanical and electronic functioning of the printer in itself is...dependent on such a cartridge*” (*Turbon I* at paragraph 30).

58. This functionality involves moving components, namely the cog and revolving cylinder. HMRC accepted in principle that separate moving parts such as gearing and stirring mechanisms which agitate the toner would classify the cartridge under 8443. Here KIP 7170 has moving parts being the main cylinder with the integral spiral groove which through the operation of the cog, driven by the copier’s motor, transmits the turning motion to the cylinder through the fixed housing to fulfil the same functions.

59. The 2016 Regulations support the need for a part to have a mechanical function being performed by the cylinder. We infer that the reference in the 2016 Regulations to a mechanism as being “inside” is to a separate stirrer more akin to KP 9900 than KIP 7170. The reasoning in the 2016 Regulations, that the cartridge is a part where “it is essential for the actual mechanical functioning of the printer as the mechanical parts of the printer work in conjunction with the mechanical parts of the cartridge and the printer could not function without this specific cartridge” reflects *Turbon I* as quoted at paragraph 26 above and applies equally to the mechanical parts of KIP 7170.

60. However, following *EP Barrus*, classification regulations can be used as guidance but only in relation to products identical to those specifically classified. Accordingly, as KIP 7170 is not identical to the product that is the subject of the 2016 Regulations we do not attach any weight to them.

61. We do not find the microchip to be a factor as the evidence was that it simply alerted the printer to the presence of the cartridge. Further, we do not in our decision take into account the fact that KIP 7170 is a more cost effective and environmentally friendly development of KIP 9900, these factors not being objective characteristics and properties evident from the physical appearance of the goods.

62. We do not draw anything useful from the BTIs produced by HMRC. We agree with KIP's objection that the translations by Google Translate did not produce any meaningfully comprehensible summary of the relevant product which would enable the Tribunal to evaluate its similarity to KIP 7170. Indeed, HMRC in the course of the hearing quite properly accepted little weight could be attached to the BTIs.

63. In conclusion, applying GIR 1, we find that KIP 7170 is properly classified as a "part" within 8843 999000. We have, however, considered the application of the other GIRs in case we were wrong on our primary finding.

64. We do not find GIR 2 of any assistance except to note that GIR 2(b) requires classification of goods consisting of more than one material to be in accordance with GIR 3.

65. GIR 3(a) requires classification within the most specific wording. At the Chapter level neither description is helpful. It is at the heading level 8843 is more accurate being "other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof" which is much more specific and applicable description of KIP 7170 than "Photographic or cinematographic goods: other". GIR 3(a) therefore points to classification as a part under 8843 999000.

66. GIR 3(b) requires classification in accordance with a good's "essential character" which HMRC argued required classification as toner and so under 3707. However, GIR 3(b) only applies to goods "which cannot be classified by reference to 3(a)" and having determined GIR 3(a) applies, GIR 3(b) is of no assistance.

67. Accordingly, we find that KIP 7170, whether under GIR1 or GIR 3(a) should be classified as a part under 8843 999000. Having decided the classification in accordance with GIRs 1, 2 and 3, there is no need to look further.

68. For completeness we do not accept KIP's argument that the cartridge is an "accessory". Following *Turbon I*, the cartridge enables the printer to print. It does not create or enable other functions to be performed and so is not an accessory.

69. For the reasons set out above, we therefore allow KIP's appeal.

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

**IAN HYDE
TRIBUNAL JUDGE**

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RELEASE DATE: 12 DECEMBER 2016