



TC05034

Appeal number: TC/2015/02553

*Customs Duty – Combined Nomenclature -Binding Tariff Information –
cardiotocography belts –correct classification –objective characterisation -
relevance of intended purpose –part or accessory – held – objective
characterisation as textile –intended purpose not inherent–not part or
accessory-appeal dismissed.*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Graphic Controls Limited

Appellant

- and -

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

**TRIBUNAL: JUDGE Rachel Short
 Mr William Haarer (Member)**

**Sitting in public at the Magistrates' Court, Heavitree Road, Exeter on 21 March
2016**

Mr Timothy Brown of Temple Tax Chambers for the Appellant

**Mr Simon Pritchard of Blackstone Chambers, instructed by the General Counsel
and Solicitor to HM Revenue and Customs, for the Respondents**

DECISION

1. This is an appeal against a Binding Tariff Information issued on 22 August 2014 to the Appellant concerning the classification of cardiocography belts (“Cardio Belts”).

2. The parties accepted that this Tribunal has a full appellate jurisdiction in this appeal; it can both review HMRC’s decision and replace that decision with a different decision of its own, in accordance with section 16 of the Finance Act 1994.

10 *Background to this appeal*

3. The Appellant made an application for a Binding Tariff Information (“BTI”) on 16 July 2014 in respect of the Cardio Belts. The Appellant initially stated that the correct classification of the Cardio Belts under the Combined Nomenclature was under commodity code 9018 1990 00, but is now arguing that the correct commodity code is 9018 1910 00.

4. The Respondents issued a BTI on 22 August 2014 giving the commodity code 6307 9010 00.

5. The Appellant requested a review of that decision on 18 September 2014. HMRC confirmed that they considered that they had applied the correct commodity code on 7 October 2014. The Appellant requested a review of the decision on 15 October 2014 and the Respondents completed that review and upheld their original decision on 12 February 2015.

6. The Appellant appealed to this Tribunal on 30 March 2015.

7. This appeal was made late, due to omissions in the original appeal notice, but HMRC had no objection to the Tribunal granting an extension of time for the appeal to be made.

Description of the goods

8. The goods are described as a “cardiocography belt” by the Appellant, used to secure a monitor to read a baby’s heartbeat during labour and childbirth, and in more detail in the Appellant’s review request letter of 18 September 2014;

“These belts are specifically designed to work with the Fetal Transducer Systems and most systems use wireless electrodes to monitor both the babies’ heart beat and the contractions. Therefore these electrodes have to move in line with the baby as it engages and descends through the birth canal These belts are comfortable and have multiple holes to enable different sized patients to use them, the properties of the belt also allow the electrodes to be used under water and with patients that perspire during labour. The belts can be shifted within seconds to maintain a constant link to the machine. By using the belts with the

wireless electrodes it gives the patient the freedom of movement required when in labour”.

Appearance

- 5 9. We were shown two of the Cardio Belts, one blue one pink. They appeared as wound strips of light webbed material, about 1 inch wide and with holes at regular intervals.

Matter in dispute

- 10 10. The Appellant argues that the Cardio Belts should be categorised under Chapter 90 of the Combined Nomenclature as “*Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments or apparatus and parts, accessories thereof*” and under subheading 9018 1910 00; “*instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphy apparatus, other electro-medical apparatus and sight-testing instruments*” and subject to 0% duty.

- 15 11. HMRC argue that the Cardio Belts should be categorised under Chapter 63 of the Combined Nomenclature as a textile article “*Other made up textile articles; sets; worn clothing and worn textile articles; rags*”...and under subheading 6307 9010 00 “*other knitted and crocheted articles*” and by reference to Note 15 “*belts which although worn around the waist, do not have the character of belts of heading 6217, e.g. belts for occupational use (electricians’ aviators’, parachutists’ etc.); webbing carrier straps and similar articles*”. This categorisation leads to duty chargeable at 12%.

Law

- 25 12. Council Regulation (EEC) No 2913/92 established the Community Customs Code and at Article 20 established the Customs Tariff as the basis for the classification of all imported goods by reference to the Combined Nomenclature.

- 30 13. Council Regulation (EEC) No 2658/87 sets out at Appendix 1 the Combined Nomenclature, which is the framework for the systematic classification of all goods in international trade and the duty payable on those goods. That classification is based on categories which are given an eight digit code and a narrative description of the goods covered by that category.

14. The Combined Nomenclature has its own rules of interpretation the “General Rules for Interpretation” or “GIR”. These provide specific guidance including:

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

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

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

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.

10 **Rule 6** For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section and chapter notes also apply, unless the context requires otherwise.”

15 15. The Customs Co-operation Council has provided explanatory notes (HSEs) to the Combined Nomenclature which are not legally binding but are an aid to interpretation.

16. We were also referred to the following authorities:

20 (1) *Turbon International GmbH v Oberfinanzdirektion Koblenz* Case C-276/00

(2) *Bioforce GmbH v Oberfinanzdirektion Munchen* [1997] EUECJ C-405/95

(3) *Unomedical A/S v Skatteministeriet* [2011] Case C-152/10

(4) *Receveur principal des douanes de Roissy Sud & Others v Rohm & Haas Electronic Materials CMP Europe GmbH & Others* Case C-336/11

25 (5) *HARK GmbH & Co KG Kamin und Kachelofenbau v Hauptzollamt Duisburg* Case C-450/12

(6) *Metherma GmbH & Co KG v Hauptzollamt Dusseldorf* Case C-403/07

(7) *British Sky Broadcasting Group plc & another v Revenue and Customs Commissioners* Cases C-288/09 & C-289/09 [2011] STC 1519.

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The facts

17. The material facts are not in dispute between the parties

(1) The goods were described by the Appellant in the BTI application as

35 “Cardiotocography belts – transducer belts having easy lock/unlock buttons holes at intervals to obtain the most comfortable and safely secured CTG monitor position. It is used as a belt to hold the monitor in place which is then used to record an unborn baby’s heartbeat. Designed to be used once or [sic] hygiene purposes. Supplied in 3 different colours,

*pink and blue (set of two). The different[*sic*] colours allow maternity sta[*sic*] to differentiate between the foetal heartbeat electrode and contractions[*sic*] electrode. Also supplied in lak [*sic*] (set of two). Dimension; width 52mm + 5%, length 1.5mm + 5%. Material Polyester yarn, knitted, elasatan – either Polyester covered rubbed thread or Polyester covered spandex, elasticity 2+ x +5%...”*

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2) The Cardio Belts were imported from outside the EU by the Appellant and sold in the UK.

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3) The Cardio Belts could be used with at least two different heart rate monitors (“Cardio Monitors”) manufactured by different companies.

4) The Appellant did not sell the Cardio Monitors, only the belts and other related equipment such as gel.

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5) The purpose of the Cardio Belts is to ensure the Cardio Monitor is held and retained in optimum position on the patient’s body to read and register an unborn child’s heartbeats.

Witness Evidence

18. Mr Stephen Saunders, sales and marketing director of the Appellant appeared in person for the Appellant. We saw a witness statement from Mr Saunders dated 24
20 September 2015. Mr Saunders gave oral evidence before the Tribunal and was cross-examined.

19. He stated that the sole application of the Cardio Belt is to monitor babies before birth and during child birth. The target market for the Cardio Belt is labour wards, mid-wives, obstetricians and gynaecological consultants and the NHS Hub and
25 Supply Chain.

20. Mr Saunders told us that he had a medical qualification and had worked in the medical industry for many years. He had recently worked in a local hospital including in labour wards.

21. Mr Saunders said that he had never seen the Cardio Monitors used other than in
30 conjunction with the Cardio Belts. Manufacturers of Cardio Monitors also sell the Cardio Belts, but it is possible to buy the two things separately.

22. Mr Saunders explained that the Cardio Belts were used to ensure that the Cardio Monitors gave the best reading, avoiding any “drop out” of readings, being in the right place and with the right amount of pressure against the patient’s skin. He agreed
35 that it was possible to use other means to achieve this, such as holding the Cardio Monitor by hand or using medical tape.

23. Mr Saunders said that the Cardio Belts do not interact with the electronic functioning of the Cardio Monitor, they hold the monitor in place.

Other evidence seen

24. Sales material from a Cardio Monitor supplier describing the Cardio Monitors and the Cardio Belts, referred to as the “CTS Cordless Fetal Transducer System”.
25. “An Overview of Fetal Monitoring” by Huntleigh explaining that:
- 5 *“The electronic technique used in fetal monitors to try to separate out the fetal heart sounds is called autocorrelation..... it can be thought of as a form of pattern matching which tries to “lift” the repetitive fetal heart sounds out of the general noise.....”*
- and describing some of the issues with the technique;
- 10 *“This leads to some compromises and some situations in which the fetal monitor cannot reliably separate out fetal sounds. In this situation the monitor will stop displaying the fetal heart rate and stop printing it out on the chart..... This results in gaps in the trace (sometimes referred to a drop out)..... This is entirely normal and does not represent a failure of the fetal monitor..... If periods of drop out are prolonged or repetitive, the user should try to re-position the transducer to get a better fetal heart signal with less background noise”.*
- 15
26. Photographs of Cardio Belts and of a Cardio Belt in use with a Cardio Monitor.
27. NHS Supply Chain catalogue extract showing Cardio Belts.
- 20 28. Description of the Cardio Belts on the Appellant’s website:
- “Designed for ease of use and comfort for both clinician and patient, these transducer belts have easy lock/unlock button holes, placed at intervals to obtain the most comfortable and safely secured CTG monitor position.*
- Disposable CTG Belts; Disposable belts come in pair of 2 (1 pink and 1 blue). Does not come with buttons.*
- 25
- Reusable CTG Belts. Reusable belts come in pairs of 2 Black belts. They can be used for approximately 20 -30 uses.....”*
29. Endorsements of the Cardio Belts from customers explaining their use as “sole use is in conjunction with the appropriate monitor to assist the clinical team to review the status of the foetus during child birth. The belt is fitted to the patient to wear during child birth..... these belts are designed for the express use as described above and we endorse their use for this procedure”.
- 30
30. Examples of two Cardio Belts.
31. Related correspondence between the Appellant and HMRC

Appellant Arguments

The intended use of the Cardio Belts

32. Mr Brown explained that in the Appellant’s view the intended use of the Cardio Belts with the Cardio Monitors is part of their objective characterisation and this brings them within heading 9018 of the Combined Nomenclature. The Appellant originally suggested that the correct commodity code was 9018 1990 00 in the BTI. Their notice of appeal referred to commodity code 9018 1910 00.

33. It is settled law that classification should be based on objective characterisation and properties as stated in the *Bioforce GmbH* decision. The intended use of a product may constitute an objective criteria for classification for these purposes as stated in *BSkyB* at para 76: “*It should be recalled that the intended use of a product may constitute an objective criterion for classification if it is inherent to the product, and that inherent character must be capable of being assessed on the basis of the product’s objective characteristics and properties.*”

34. Similarly the decision in *HARK* suggested that the intended use of, in that case a stove pipe which was part of a stove, is relevant to determine its objective characteristics:

“*It is apparent from the factual findings of the referring court that the tubular elbow component at issue in the main proceedings, as well as the chimney connections and the surround, are intended exclusively for use with stoves*” (para 38)

The Cardio Belt is a part or accessory

35. The sole or principal use of the Cardio Belts is to enable the foetal monitor to remain in position on the patient’s abdomen so that an accurate reading of the baby’s heart rate can be obtained. It is essential for the correct operation of the monitor that the sensor is fixed with the correct amount of contact with the patient’s skin. This is similar to the stove pipes in the *HARK* case:

“*..... in the absence of such a connection, the stove could not operate because the flue gas would escape. Therefore it must be concluded that the tubular elbow component is essential for the operation of the stove.....such a component may therefore be regarded as “part” of a stove....*” (para 39)

36. The Cardio Belts perform a service relative to the main function of the machine and adapt the machine to perform its function without the need for the sensor to be held in place. The Cardio Belt is both a part and an accessory of the monitor and therefore falls to be categorised under heading 9018.

37. Mr Brown pointed out that in their earlier correspondence HMRC had accepted that the Cardio Belts were accessories. Their review letter of 12 February 2015 stated that “*The belt is an accessory to the operation of the cordless fetal transducer system, but this does not mean that it is automatically included under heading 9018*”.

5 38. On behalf of the Appellant Mr Brown referred to the three types of accessory identified in the *Unomedical* case and suggested that here the Cardio Monitors could not carry out their function without the Cardio Belts to hold them in place. In the Appellant’s submission, the Cardio Belts fall within the types of accessory identified in *Unomedical*.

10 39. The Cardio Belts performed a particular service relative to the main function of the machine, the Cardio Monitor and/or adapted the machine for a particular operation, the reading of the unborn baby’s heartbeat. It was accepted, after questioning from the Tribunal, that the Cardio Monitors would still work if they were not correctly located, but no heart rate reading would be displayed.

15 *Interpretation of Chapter 90*

40. Additionally Mr Brown pointed out that if HMRC were correct and the Cardio Belts should be excluded from heading 9018, the chapter notes at Chapter 90 Note 1(a) give a prescriptive statement of the heading they should fall under, which is 5911 “*textile products for technical uses*”, but in fact the Cardio Belts do not fall within any
20 of the categories listed under 5911 which relate to textile articles of an industrial nature, and in particular are not support belts, leading to the conclusion that heading 9018 is the most appropriate for these articles.

41. In the Appellant’s view, heading 63 does not provide a more specific description of these Cardio Belts than heading 90, they are most specifically described
25 under heading 90. Heading 63 refers to belts worn around the waist, which is not an apt description of these belts.

HMRC Arguments

42. HMRC suggested there were three questions which the Tribunal were required to answer:

- 30 (1) Are the Cardio Belts part of the Cardio Monitors?
(2) Are the Cardio Belts an accessory of the Cardio Monitors?
(3) Which is the heading which most specifically describes the Cardio Belts?

43. Mr Pritchard stressed that the Combined Nomenclature is based on objective, physical characteristics because it is a system which has to be applied to goods as they
35 cross the border on import and are physically examined, as made clear in *Metherma* “*in the interests of legal certainty and ease of verification, the decisive criterion for the classification of goods for customs purposes is in general to be sought in their objective characteristics and properties as defined in the relevant heading of the CN and in the section or chapter notes*” (para 46).

44. The Belts are not a part or accessory as those terms have been defined by EC cases in particular the *Turbon* decision at para 30:

5 “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 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 by lack of ink rather than a malfunctioning of the printer.”

10 45. The Cardio Monitor can function without the Cardio Belts. They are “enablers” and so are not parts. The Cardio Belts are not accessories because on the authority of *Unomedical* they are not indispensable to the operation of the Cardio Monitors. The Cardio Belts do not vary any function of the Cardio Monitor itself or increase its functions. It is not established, as suggested in *HARK*, that “the mechanical functioning [of the Cardio Monitor] is dependent on the article [the Cardio Belt]”.

15 46. The rules of interpretation which need to be followed to apply the tariff (the GIR) are: look at the terms of the headings (Rule 1), the most specific description overrules a less specific description (Rule 3). Apply the heading first, then apply the same methodology to the subheadings (Rule 6). In this case the “textile” heading is the most specific and the subheading “other made up articles” which refers in Note 15
20 to belts for occupational use, provides the most specific description of the Cardio Belts.

25 47. In comparison the heading of Chapter 90 “*Optical, photographic, cinematographic, measuring, checking precision medical or surgical instruments and apparatus; parts and accessories thereof*” is a less specific description of the belts themselves and specifically excludes textile items and “support type” belts. (Notes 1(a) & (b)). That note also explains that Chapter 90 only includes parts and accessories which are suitable for use solely or principally with a particular kind of apparatus or machine.

Decision

30 *Findings of fact*

48. On the basis of the evidence provided to the Tribunal we find the following facts:

- 35 (1) As stand-alone items there is nothing in the physical appearance of the Cardio Belts to indicate that they can only be used to secure Cardio Monitors.
- (2) The Cardio Belts are intended to ensure that the Cardio Monitors read and display an unborn babies’ heart rate as effectively as possible.
- (3) It would be possible to achieve the same result as that achieved by the Cardio Belts when used with the Cardio Monitors through other means, manually holding the monitor or using tape to secure it, but this would be less
40 effective.

(4) The Cardio Monitors would still function as electronic sensors without the application of the Cardio Belts but it would be harder to distinguish a baby's heart rate and there would be a higher likelihood that the Cardio Monitor would stop displaying readings.

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Objective characteristics

49. The main difference between the parties is the extent to which it is possible to take account of the intended purpose of the Cardio Belts as well as their physical characteristics in determining the correct tariff code. The test to be applied to decide
10 whether the intended use of a product can be treated as an objective criteria for determining its correct classification is set out in *BSkyB*:

“It should be recalled that the intended use of a product may constitute an objective criterion for classification if it is inherent in the product and that inherent character must be capable of being assessed on the basis of the
15 product’s objective characteristics and properties.” (para 76)

50. Applying that test to the Cardio Belts, *is the intended use of the Cardio Belts inherent in the product?* We were not provided with any evidence about any other uses of these products, however on the basis of the Cardio Belts which we were shown, it seemed to the Tribunal that while the most common use of the Cardio Belts
20 might be the one for which they were used with the Cardio Monitors, that is not to say that they could not be used for other medical or non-medical purposes.

51. Even if the answer to the first question is yes, *is the inherent character of the product capable of being assessed on the basis of the product’s objective characteristics and properties?* It has to be said that the tests set out in *BSkyB* were to
25 answer rather a different question, namely whether TV equipment which could both receive TV signals and record onto a hard drive should be categorised under one or other of the characteristics, both of which were known, stated and understood by consumers.

52. The same test was applied in *HARK*, and as the Appellant stressed, it was
30 concluded that it was inherent in a stove pipe’s characteristics that it could only be used as part of the stove, leading to the conclusion that it should be categorised as part of the stove not a separate component. We accept that this test is largely a question of degree; in the *HARK* case it was found that the stove would not have operated without the stove pipe and the pipe was essential for the operation of the stove and intended
35 exclusively for that purpose.

53. We do not consider that this is true to the same extent for the Cardio Belts and their role with the Cardio Monitors. Our view is that there is nothing in the objective character of the Cardio Belts which makes their inherent character (for use only with Cardio Monitors) apparent. We were shown two examples of the Cardio Belts and it
40 would not have been possible to conclude, without the further information which we were given by the parties, that their intended purpose was only for this specific

medical procedure. They appeared as two strips of light textile material which, while their appearance suggested some medical purpose, provided nothing to suggest exactly what their purpose was; in our view they could have been used for any number of tasks which involved securing items of clothing or equipment.

5 54. Our conclusion is that the Appellant fails the test set out in *BSkyB* because we do not consider that it is inherent in the characteristics of the Cardio Belts that they are used only with the Cardio Monitors.

Are the Cardio Belts parts?

10 55. The authorities support a very restrictive definition of what, in the context of the Combined Nomenclature, can be treated as a “part” of another item. This is made clear in the *Turbon* and *HARK* decisions: “*the fact remains that the mechanical and electronic functioning of the printer in itself is not in any way dependent on such a cartridge*” *Turbon* para 30 and *HARK* “*it is not sufficient to show that, without that article, the machine or apparatus is not able to carry out its intended functions. It must be established that the mechanical or electric functioning of the machine or apparatus in question is dependent on that article.*” (para 36)

15 56. The fact that the Cardio Belt is an essential part of the medical procedure for which the Cardio Monitors are used does not mean that it is an essential part of the medical machinery to which it is related. The machine here is the Cardio Monitor. We were not provided with any evidence that the Cardio Monitor would not work without the Cardio Belt. We were told by Mr Saunders and the medical literature which we saw that the Cardio Monitor operated as an electronic monitor and picked up sound waves electronically. If it was not placed in the right place on a patient’s abdomen, it was more likely to pick up sounds other than then baby’s heart beat, but it still functioned electronically. Without the use of the Cardio Belt its function might have been less efficient, its readings might have been less clear and less consistent, but the monitor would still be operating electronically even if it was not picking up the baby’s heart rate because it was not properly placed on the patient’s abdomen.

20 57. To this extent the Cardio Belt is playing a function similar to the ink cartridge in the *Turbon* decision; it is supporting the machine’s output while not impacting the intrinsic electronic functioning of the machine itself. It is noteworthy that the *Turbon* decision accepted that the lack of an ink cartridge prevented the intended function of the printer, but it did not stop the printer itself from working or make it malfunction, therefore it was not a part.

25 58. We were also provided with evidence that there were alternative means of operating the Cardio Monitors without the Cardio Belts, using other types of fastening to keep the monitor in place or holding it manually. On that basis it cannot be said that the Cardio Monitor is dependent on the Cardio Belt.

30 59. For these reasons we do not think that the Cardio Belt can be treated as part of the Cardio Monitor.

Are the Cardio Belts an accessory?

60. Before the Tribunal HMRC did not accept that they had previously been prepared to treat the Cardio Belts as an accessory, pointing out that their review letter of 12 February 2015 was not intended to deal specifically with this point. We have
5 accepted that this issue is still in dispute and have considered this question applying the criteria in the authorities to which we were referred.

61. The *Unomedical* decision sets out three tests to determine whether a product will be an accessory. The Cardio Belt will be an accessory if it (i) adapts another machine to a particular operation (ii) increases the range of operations of another
10 machine or (iii) enables another machine to perform a particular function. Here, the Cardio Belt does not adapt, increase or enable the Cardio Monitor's function as an electronic sound monitor, it just makes it easier to operate that machine to read an unborn baby's heart rate.

62. In *Unomedical* it was significant that the function of the medical machine, dialysis, was complete before the "part", the urine bag was needed "*the process of
15 cleansing blood is complete at the time when the bag is used*" the apparatus had completed its task, there was a chronological separation between the dialysers' function and the function of the drainage bag. That is not true here, the Cardio Belt is used simultaneously with the Cardio Monitor carrying out its function; the separation
20 here is not chronological but physical (as in *Turbon*); the Cardio Monitor can still operate as an electronic sensor without the need for the Cardio Belt. As in *Unomedical*, the Cardio Belt does not enable the Cardio Monitor to perform operations other than that for which it is designed.

63. It is correct that the Cardio Monitor might work more effectively with the
25 Cardio Belt, because it is more likely to be able to pick up the baby's heart beat in a way which was distinguishable from other sounds if located in the optimum position, but an alternative means of ensuring that the monitor worked effectively was available, holding it manually for example.

64. For these reasons we do not consider that the Cardio Belts are an accessory of
30 the Cardio Monitor.

What is the most appropriate description of the Cardio Belts?

65. If the Cardio Belt is not a part or accessory, we need to look for the most appropriate description in Combined Nomenclature by reference to the objective, physical characteristics of the Cardio Belts as stand-alone items as suggested by the
35 case authorities "*the decisive characterisation for the classification of goods is to be sought in their objective characteristics and properties*". (*Metherma* at para 46) We have also to take account of the GIRs and particularly Rule 3; that a heading which provides the most specific description is to be preferred over one which provides a more general description.

40 66. HMRC say that the Cardio Belts are best categorized under Chapter 63 "*other made up textile articles; sets; worn clothing and worn textile article; rags*" and heading

6307 “other made up articles, including dress patterns” and subheading 630790 “other”. and as “textile belts” akin to the professional belts referred to in Note 15 of that heading “Belts which, although worn around the waist, do not have the character of belts of heading 6217, eg belts for occupational use”.

5 67. Looking at the examples of the Cardio Belts which we were given we agree with HMRC that heading 630790 is the most accurate description of the items when seen in isolation without any indication of any specific medical procedure for which they might be used and on the assumption that they cannot be treated as a part or accessory of any kind of medical apparatus.

10 68. The Appellant says that this is not an accurate description of these belts because they are not “worn around waist”. We do not agree with this distinction. In the context of Note 15 we do not agree that “wearing” in this instance connotes any element of embellishment. Our view is that it is intrinsic to concept of a belt, which is the description applied by the Appellant to these items, that it is worn around the waist.

15 69. The Note 15 to heading 6307 clearly applies to textile belts which are used for practical rather than embellishment purposes and while not precisely described in any of the examples given, our view is that this category of belt used for professional purposes most closely describes the Cardio Belts and therefore 6307 9010 00 is the most accurate description of these items.

20 *Interpretive Points – The exclusions from Chapter 90*

70. The Appellant argued that HMRC’s categorisation could not be right because of the prescriptive wording in Chapter 90 which directs that items which are excluded from that heading as textile items must be assigned to heading 5911. We do not view this as fatal to the Respondent’s case, since the application of that exclusion assumes
25 that starting point for the analysis is Heading 90; however prescriptive this might be, that is not what we consider to be the correct starting point, in particular by reference to the rules of interpretation at GIR 3 which direct us to look first at the heading which is most appropriate to the Cardio Belts, which we consider is 6307.

Conclusion

30 71. The Tribunal does not consider that the Cardio Belts can be treated as a part or accessory of the Cardio Monitors. It considers that the heading which most specifically describes the Cardio Belts is the heading suggested by HMRC, 6307 9010 00. For these reasons the Appellant’s appeal against this BTI is rejected.

72. This document contains full findings of fact and reasons for the decision. Any
35 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)”
40 which accompanies and forms part of this decision notice.

**Rachel Short
TRIBUNAL JUDGE**

RELEASE DATE: 19 APRIL 2016

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