



TC07672

CUSTOMS DUTY - ANTI-DUMPING DUTY AND COUNTERVAILING DUTY – country of origin of solar panels – rate of duty applicable

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Appeal number: TC/2017/06221

BETWEEN

ZENEX SOLAR LTD

Appellant

-and-

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

Respondents

**TRIBUNAL: JUDGE VICTORIA NICHOLL
MEMBER IAN ABRAMS**

Sitting in public at Taylor House, London on 13-14 January 2020

Mr Kenneth Davies, Trade Customs Compliance Consultancy Ltd, for the Appellant

Mr Howard Watkinson, counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. This appeal is against a C18 Post Clearance Demand Note (“C18”) issued on 14 February 2017 by the Respondents (“HMRC”) on in respect of the importation of crystalline silicon photovoltaic modules (“solar panels”) by the Appellant (“Zenex”) in January 2014. The C18 was issued for £67,129.02 underpaid anti-dumping duty, £10,402.56 countervailing duty and £15,506.31 import VAT, making the total demand in the sum of £93,037.89.

PRELIMINARY ISSUES

2. The Skeleton Arguments for Zenex were served on 30 December 2019. Whereas the sole grounds of appeal, as set out in the Notice of Appeal dated 7 August 2017, were the questions of (i) whether the evidence provided by Zenex establishes that the solar panels imported by Zenex were of Malaysian origin, and (ii) whether HMRC had sufficient evidence to conclude that the panels were of Chinese origin, the Skeleton Arguments raise three new grounds. HMRC object to these being raised some fourteen days prior to the hearing without permission.

3. The three new grounds of appeal are:

(1) Zenex made all reasonable checks to confirm the correct origin of the solar panels purchased, and the duty should be remitted pursuant to Article 239 of the Community Customs Code and Article 899 of the Commission Regulation (EEC) 2454/93:

(2) Mistakes were made by the Malaysian authorities, and that the duty should be remitted under Article 220(2)(b) Community Customs Code (“Article 220(2)(b)”): and

(3) HMRC should have assessed the amount of duty using the specific rate for Hangzhou Zhejiang University Sunny Energy Science and Technology Co. Ltd (“Sunny”), and not the residual rate for non-cooperating exporters.

Zenex also made an application to HMRC a few days before the hearing for details of the treatment of other taxpayers.

4. The Tribunal was advised that HMRC have not received an application for remission of the duty from Zenex. It is a precondition under Article 239 that the relevant application is submitted, in accordance with the committee defined procedure, within 12 months from the date of notification of the duty to the applicant. HMRC advised that they could not treat the submissions put forward by Mr Davies in his Skeleton Arguments for Zenex as an application, and that there is therefore no appealable decision for the Tribunal to consider. Similarly, this case cannot be compared with *Manor Park Trading Company Ltd v The Commissioners for Her Majesty’s Revenue and Customs* [2010] UKFTT 505 in which the Tribunal decided that it could address Article 220(2)(b), as suggested by Mr Davies, because Zenex has not claimed or demonstrated an error on the part of the Malaysian customs authorities.

5. On the basis that the Tribunal has no jurisdiction, absent an appealable decision, permission to raise the grounds set out in paragraph 4(1) was refused. Permission to raise the grounds set out in paragraph 4(2) was refused because Zenex had not raised this application for remission in the three-year period since HMRC notified its C18 decision, notwithstanding a case management hearing to consider HMRC’s application to produce further evidence. HMRC and its witnesses have not had an opportunity to obtain evidence or otherwise prepare to address these grounds. It was also agreed that the application concerning the treatment of other taxpayers should be refused.

6. The Tribunal allowed the addition of ground 4(3) on the basis that HMRC should apply the correct rate of duty, as determined by the Tribunal’s findings of fact. HMRC agreed that if

the Tribunal were to find that the exporter is Sunny, the assessment would be adjusted as necessary to reflect the rate of duty applicable to exports of solar panels by Sunny.

BACKGROUND AND FINDINGS OF FACTS

7. We made the following findings of fact from the evidence in the Tribunal's bundles, and the witness evidence of Allister Hawes, HMRC Customs International Trade assurance officer, and Mr Guy Jennes of the European Union's Anti-Fraud Office ("OLAF"). We found the witness evidence of Mr Jennes of great assistance because of his depth of knowledge, experience and clarity on the evidence. Zenex's director at the time of the relevant transactions chose not to provide witness evidence.

(1) Anti-dumping duty, an import duty imposed in addition to normal customs duty across the EU on goods sold for export at less than their market value, was applied to import of certain types of solar panels originating in or consigned from China with effect from 6 December 2013. Countervailing duty, a duty imposed on goods which have received government subsidies in the originating exporting country, was imposed at the same time.

(2) This appeal relates to solar panels that Zenex ordered from Eco Future Manufacturer Industry (Malaysia) SDN.BHD ("Eco Future"). Eco Future's address is in Klang, in the Selangor state in Malaysia. On 12 December 2013 Zenex sent an email to Eco Future asking them to confirm that the goods to be supplied were 'manufactured 100% in Malaysia and that the EU anti-Chinese dumping duties do not apply'. Eco Future responded by sending a copy of an earlier certificate of origin with the consignee details blanked out and they provided an undertaking on the origin of the goods. The solar panels were agreed to be shipped from the seaport of Port Klang, Selangor, Malaysia to Zenex in the United Kingdom.

(3) On 23 January 2014 the Port Klang Authority registered the arrival of the MSC Katie. On 24 January 2014 a consignment of 1,512 solar panels weighing 30,928kg gross and 135.5 m² volume was loaded on the MSC Katie for shipping to consignee Zenex. The MSC Katie arrived in Felixstowe on 13 February 2014. Zenex received the delivery of the solar panels in Brighouse on 19 February 2014. The import declaration was made on the basis that the goods are of Malaysian origin.

(4) In March 2014 OLAF opened an investigation into possible irregularities at import into the European Union of solar panels. OLAF had received information that raised suspicions that solar panels that were declared at import to be originating in Malaysia, had originated in the People's Republic of China ("China"). This information related to solar panels that were traded by companies of the Suntellite Group. The Suntellite Group is a Chinese enterprise. Its clear reference on its website to manufacture and export of the solar panels by Sunny establishes that it is at least linked to Sunny, and it appears that Suntellite is the trading name of Sunny.

(5) OLAF met with the anonymous source of this information in June 2014. The information provided by the source included photographs of a factory facility, said to be Eco Future's, that show it was not a working factory at the time that the photo was taken. In July 2014 OLAF received further information from Customs in the Netherlands. This concerned a test purchase by a Dutch retailer who ordered two solar panels from Eco Future. The parcel was delivered from China, and had both Eco Future and Suntellite labels. The Dutch retailer also stated that "Mrs Candy", a director of Eco Future, had attended a trade fair in the Netherlands and that she had said that she could offer Chinese solar panels that would not be subject to anti-dumping duty.

(6) The information provided included an offer by the Suntellite group to a Dutch retailer in 2013 in the following terms:

“In order to avoid possible anti-[dumping] duties of solar panel after June 6th, we had already successfully registered one company in Malaysia: Eco Future Industries PLT and factory in Malaysia. Will export solar panel from Malaysia to Europe directly.

All solar panels with new information in Malaysia with certificate of origin Malaysia, none Chinese information. But still with Suntellite Group logo. The quality will be same. We promise that if any anti-[dumping] duties for our solar panel, we will undertake it. And the price of solar panel will be same as former.”

(7) Other information provided was an image of Eco Future’s web page and an almost identical web page for Suntellite. OLAF also noted that the LinkedIn profile of Monica Zheng describes her an International Sales Manager at the Suntellite Group. Monica Zheng is also named as Eco Future’s International Sales Manager on LinkedIn. Mr Davies suggested that the photos from the two profiles were not of the same person, but we agree with Mr Jennes that it is difficult to be categoric either way on such small photos.

(8) We were also referred to trade statistics from March 2011-January 2013 that showed a tenfold increase in imports to the EU of solar panels from Malaysia and a similar increase of imports from China to Malaysia of solar panels.

(9) In October 2014 an agreed mission was carried out between OLAF, including Mr Jennes in person, and the competent Malaysian authorities, being the Ministry of International Trade and Industry, Malaysian Customs and the Free Commercial Zone authorities, including the Port Klang Authority that is responsible for the Free Commercial Zone (“FCZ”) in Port Klang. The purpose of the mission was to establish the origin of the solar panels exported from Malaysia to the EU, and to investigate the alleged evasion of anti-dumping and countervailing duties imposed on imports of solar panels from China.

(10) Goods entering into or departing from Port Klang in Malaysia physically move through the Free Commercial Zone (FCZ). Activities allowed in FCZs include transshipment and consolidation of cargo for subsequent shipment, but no origin-conferring manufacture or processing can take place in the FCZ. Goods entering the FCZ from overseas are registered in the ZB1 register. Goods departing for overseas from FCZ are recorded in the ZB2 register, in which the number of the corresponding ZB1 declaration has to be specified. Goods that registered on both the ZB1 (import) register and subsequently recorded in the ZB2 (export) register are transhipped and retain their origin.

(11) The OLAF mission report, including 13 annexes, dated 31 March 2015 summarises the findings and results of this work. The first paragraph of the conclusions reads as follows:

“Based on the information and documents provided by the Malaysian authorities, it was established that 686 unique containers loaded with solar panels as listed in annex 05 originate in or were consigned from China. The list contains the ZB1 and ZB2 data in relation to products under tariff heading 8541 exported to the EU for the period 01.06.2013 to 27.10.2014. These solar panels were shipped from China to the FCZ in Port Klang and, after reloading, were consigned to the EU. They were not subject to any processing or manufacturing activity in the FCZ in Port Klang.”

(12) Annex 5 of the OLAF mission report (referred to in the paragraph above) was prepared by OLAF to summarise the ZB1 and ZB2 data provided by the Malaysian authorities. This shows the shipment of the 1,512 solar panels to Zenex. The ZB1 and ZB2 references match the arrival of the consignment of the solar panels from Sunny in Port Klang, with the export of the panels from Port Klang to Zenex on MSC Katie. The weight and volume of the consignment to Zenex identified in the ZB1 and ZB2 data matches those recorded on the Bill of Lading in Zenex's evidence.

(13) Mr Davies drew our attention to the fact that the container numbers in the ZB2 data and the date of loading do not match those on the Bill of Lading. We accept HMRC's submission that it is most likely that this reflects the delay in loading and that the goods were loaded into different containers without the ZB2 being updated. This is consistent with the email from Monica Zheng of Eco Future to Zenex dated 21 January 2014 that explains that there would be a delay in the shipment because of the volume of goods in Port Klang.

(14) The ZB1 and ZB2 data shows the consignee of the import and the consignor of the export as Khans Metal & Grating. HMRC suggest that this may reflect the use of a third-party name to mask the identity of Eco Future. Mr Davies did not offer an explanation of why Zenex is shown as the consignee of a delivery of solar panels from Khan Metal & Grating.

(15) All member states were informed of the outcome of the mission by an AFIS message dated 7 July 2015. This included the statement that:

“The data (ZB1/ZB2) received from the Malaysian authorities evidence transshipment activities related to the above companies, via the Port Klang Free Zone.”

(16) On 28 October 2015 HMRC contacted Zenex to inform the company that they would be carrying out a compliance intervention to look at Zenex's imports and exports. HMRC was informed that Zenex had been acquired by Segan Ltd in February 2015 and that it was no longer trading. HMRC asked to see the original certificates of origin for a list of import entries to which a preferential rate of duty had been claimed by Zenex. Following a visit, HMRC asked for the original bill of lading and certificate of origin in respect of goods supplied by Eco Future.

(17) On 11 February 2016 the EU Commission implemented a regulation to extend the anti-dumping duty imposed on imports of solar panels from China to imports consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not. This cited the mission investigation and noted that a company in Malaysia was found not to have sufficient production capacity to produce the volumes of the product under investigation that it had exported. The company was not able to supply any labour contracts for its employees, or purchase supply contracts for the production machines, and it had failed to disclose its relationship to a Chinese exporting producer. Mr Jenness confirmed that company referred to in these statements is Eco Future and that its application for exemption from the anti-dumping measures was refused.

(18) In January 2017 the investigation of Zenex's imports was passed to HMRC assurance officer Hawes. Officer Hawes sent a 'right to be heard' letter to Zenex on 12 January 2017. This stated that Officer Hawes had concluded that a demand should be issued, but that Zenex would be given 30 days to provide any further evidence or argument that might change his decision. Following the receipt of further information and a meeting, Officer Hawes wrote to Zenex on 12 February 2017 to confirm his decision and the issue of a C18 duty demand in the sum of £93,037.89.

(19) On 20 February 2017 Zenex requested an independent review of the decision. This was carried by review officer Steve Palmer. The review concluded on 3 May 2017 that the C18 decision should be upheld.

(20) On 7 August 2017 Zenex filed its Notice of Appeal against the decision to issue the C18.

(21) The documents provided by Zenex initially, those supplied as part of its response to the 'right to be heard' letter, those supplied in the review period and in support of this appeal are referred to by Mr Davies as its "Suite of Documents". These are as follows:

(a) A sales contract dated 6 December 2013 between Eco Future, as the seller, and Zenex, as the buyer, for the supply of 1,512 solar panels at a cost of £162,540. HMRC note that the contract provides for payment to an account in HSBC in Hong Kong in another company's name (Eco Future Industries Co., Ltd), rather than an account in Eco Future's name based in Malaysia:

(b) A TUV certificate of factory production control that is stated to be valid from 31 May 2013 showing that Eco Future was licensed to produce solar panels of the type supplied. A copy of a raw material purchase order by Eco Future dated 2 January 2014 was also provided. HMRC note that these documents do not determine that the solar panels were manufactured in Malaysia:

(c) A declaration from Eco Future dated 12 December 2013 that they "guarantee that all ECO series solar modules exported to Zenex Solar Ltd are manufactured in Malaysia and it has nothing to do with EU's anti-dumping law against Chinese solar modules":

(d) A certificate of origin for the solar panels supplied by Eco Future to Zenex with a departure date of 24 January 2014. HMRC note that another copy of a certificate of origin provided has Eco Future's name as the consignor, but the consignee section is blank even though it is signed and dated 28 August 2013. No explanation has been provided for this. OLAF also advised HMRC that no origin certificates were issued in Malaysia for consignments from Eco Future. HMRC also noted that Zenex had not been provided with the supporting documentation that Eco Future should have provided to the Malaysian authorities to allow them to endorse the certificate of origin. These would usually include records of panels and serial numbers provided by the factory. Zenex had not asked Eco Future to supply this information in support of the Certificate of Origin:

(e) A copy of the invoice from Eco Future for 1,512 solar panels. The invoice is dated 8 January 2014 and is number is ECO-F1312012. It states that the goods are to be shipped by sea from port Klang, Malaysia, to Felixstowe, UK:

(f) A copy of the packing list from Eco Future dated 8 January 2014. It shows that the goods were packed on 56 pallets with a gross weight of 30,928kgs and 135.5 cbm volume:

(g) A signed copy of the Bill of Lading (ref:MY1471668 dated 24 January 2014). This shows that the goods were declared on import as shipped from Malaysia with Eco Future as the consignor:

(h) A copy of the bank transfer to an account in Hong Kong in the name of Eco Future Industries Co Ltd: and

(i) A UK delivery note of the goods to Zenex in Brighouse, dated 19 February 2014.

(22) Officer Hawes explained to the Tribunal why he had concluded that he had not been provided with solid evidence that the solar panels had been manufactured in Malaysia. One of the significant factors that identified to him that the solar panels were of Chinese origin was that the weight and volume of the consignment identified as entering Port Klang from China in Annex 5 and of the consignment received by Zenex were the same (as noted in paragraph 7(12) above). We accept Officer Hawes' evidence that as the gross weights and volume matched exactly, it was more probable than not that the consignments of solar panels identified in the FCZ records as shipped into and out from Port Klang were the same goods as those received by Zenex. This is because, based on his experience of 35 years as a Customs Officer, he believes that the same goods will have a different gross weight and volume once packaged due to the different weight of the packaging used by suppliers. Officer Hawes also noted that the same vessel was recorded in the ZB2 data and the bill of lading.

(23) Officer Hawes also explained HMRC's doubts about the documents provided by Zenex, including the absence of the supporting documentation as noted in paragraph 7(20)(d). He had also been advised by OLAF that they had established that no Malaysian certificates of origin had been issued to Eco Future for solar panels.

(24) Mr Jennes explained how OLAF had prepared Annex 5 by extracting the raw data provided by the Malaysian Authorities. This recorded that no exports had been made by Eco Future through Port Klang during the relevant period. Instead the export to Zenex is in the name of Khan Metals & Grating. Zenex has not provided an explanation for this.

(25) Mr Jennes noted that the container numbers and date in the ZB2 entry for the export to Zenex did not match those on the Bill of Lading, but that the ZB numbers, weight, volumes and vessel all matched. He agreed with HMRC's submission (set out in paragraph 7(13) above) that this most probably reflected late reloading into different containers following a delay referred to in correspondence between Eco Future and Zenex. The critical evidence is that the ZB numbers for the export to Zenex from Port Klang clearly match it with the import to Port Klang from Sunny of the same quantity of goods. Mr Jennes also noted that the unloading of goods from one container to another is a method used by some to conceal the transshipment of goods.

(26) Mr Davies queried the fact that the date and container numbers in Annex 5 were different to those in the Bill of Lading, but he did not provide an explanation of why the ZB numbers, weight, volume and vessel all match those of the supply of solar panels to Zenex or why Zenex is shown as the consignee of the solar panels from Khan Metals and Grating. Mr Davies referred us to a document that suggests that Eco Future had shipped solar panels outside the free zone, under K1 and K2 references for such exports, but he did not state that his case was that the solar panels were not shipped through the FCZ. Mr Davies also queried how a photograph of a factory could be said by OLAF to be evidence that Eco Future's was not an operating factory, but the evidence that he produced of manufacture taking place was the TUV certificate.

(27) Mr Davies said that his client was a former director of Zenex, Julian Wiley, who was liable for the duties assessed under the terms of the sale of the company, and that they were acting on behalf of the new owner of Zenex. Mr Davies suggested that his

client could not incur the costs of contacting Eco Future for further evidence to support their case, noting that Zenex is now dormant, and that too many years have passed for it to ask Eco Future for a statement or the documents to support the certificate of origin. Mr Davies did not explain why the former director did not provide witness evidence, but stated that the Suite of Documents speak for themselves.

(28) We have considered the evidence and concluded that the weight of the evidence in Annex 5 establishes that the solar panels were manufactured by Sunny in China and that they were transhipped through Port Klang, and that this outweighs the evidence put forward by Zenex that they are of Malaysian origin. Our conclusion is also supported by the circumstantial evidence provided by OLAF, including the evidence linking Eco Future with Suntelite and Suntelite with Sunny, and the increased trade figures for exports of solar panels from China to Malaysia and from Malaysia to the EU.

RELEVANT LAW

8. The relevant law is set out in the Appendix to this decision.

9. Whereas the grounds of appeal include the claim that HMRC have failed to provide evidence to conclude that the solar panels are of Chinese origin, Mr Davies accepted during the course of the hearing that as the appeal is made under section 16 Finance Act 1994, section 16(6) provides that the burden of proof is on Zenex to show that the grounds on which any such appeal is brought have been established.

SUBMISSIONS

10. Zenex claims that it has provided the Suite of Documents that speak for themselves and establish that Malaysia is the country of origin of the solar panels supplied by Eco Future. Mr Davies submits that the documents provide a chain of evidence that the solar panels delivered in the clearly identified containers were manufactured and shipped by Eco Future in Malaysia.

11. Mr Davies submits that in contrast to his case, the container numbers cannot be tracked through the ZB1 and ZB2 records provided by OLAF. Mr Davies submits this shows that the goods purchased by Zenex were not those recorded as being transhipped through the free zone. The alternative is that the ZB1/ZB 2 data is not accurate in any event. Mr Davies also submits that there is no clear link between Eco Future and the Suntelite Group.

12. HMRC submit that if the Tribunal is satisfied that there is a *prima facie* case that the goods originated in China, then the Tribunal can, since no proper reason has been given for the absence of key witnesses, draw the adverse inference in support of HMRC's case. Mr Watkinson referred us in particular to Morgan J's summary of the relevant principles in *British Airways PLC v Airways Pension Scheme Trustee Ltd* [2017] EWHC 1191 (Ch) at [141-143].

13. HMRC submit that Zenex has failed to establish the authenticity of the Suite of Documents and has failed to discharge its burden of proof as to the Malaysian origin of the goods.

DELIBERATIONS

14. This appeal concerns the question of the correct rates of duty to be applied to the import of the solar panels by Zenex. The parties agree that this is a binary issue as the goods are either of Chinese or Malaysian origin, and that this will be determined by the Tribunal's findings of fact.

15. As we noted in paragraph 7, our findings are that the solar panels that Zenex purchased from Eco Future are of Chinese origin and that they were manufactured by Sunny. We accept that the evidence in Annex 5 establishes that the solar panels were transhipped through Port

Klang. Our findings are supported by Mr Jennes' clear explanation of the evidence collated by OLAF and Officer Hawes' explanation of the key relevance of the gross weight and volumes of the consignments.

16. Mr Davies submits on behalf of Zenex that HMRC should have assessed the amount of duty owed at the specific rates for Sunny, and not the residual margin for all non-cooperating exporters. He submits that this would reduce the combined anti-dumping and subsidy duties from 64.9% as assessed to 47.7%. We calculate that the anti-dumping and countervailing duties assessed are at the rates of 41.3% and 6.4% (making the total of 47.7%), being £67,129.02 anti-dumping duty and £10,402.56 countervailing duty on the purchase price of £162,540. If however HMRC have imposed duty at a rate higher than the rate applicable to Sunny, HMRC will adjust the C18 to reflect the duties applicable to Sunny.

17. We noted the points made by Mr Davies and Mr Watkinson on adverse inferences. Zenex chose not to provide a witness or witness statement, whether from the director involved in the relevant imports, a representative from Eco Future or otherwise, to explain or support its documents or case. The reasons for this failure are noted in paragraph 7(27) above and do not provide a satisfactory explanation for the absence of any such evidence. Mr Watkinson invited us to draw an adverse inference for this failure to support its case.

18. We noted the authorities cited by Mr Watkinson, but concluded that we did not need to draw and rely on an adverse inference to strengthen the evidence of the Chinese origin of the solar panels. This is because we find that the weight of the Annex 5 evidence as explained to us by Mr Jennes, together with the relevance of the matching weight and volume of the goods as explained by Officer Hawes, heavily outweighs the documentary evidence put forward by Zenex. The OLAF evidence was not challenged on behalf of Zenex (other than in relation to container numbers which we do not consider of significance for the reasons set out in paragraph 7(12) above), and it is accepted as establishing the transshipment and origin of the goods.

19. Zenex has failed to satisfy the burden of proof to establish that the solar panels were manufactured in Malaysia rather than China. For the reasons set out under 'Preliminary Issues', we are not required to consider whether the parties acted in good faith or whether there was an error, obvious negligence or deception on the part of any of the parties involved in the production of the Suite of Documents.

DECISION

20. The decision to issue the C18 is upheld and the appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

21. 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.

**VICTORIA NICHOLL
TRIBUNAL JUDGE**

RELEASE DATE: 9 APRIL 2020

APPENDIX

1. European Council Regulation (EEC) 2913/92 (“the Customs Code”) define the non-preferential origin of goods in Articles 23-26 for the purposes of applying the Customs Tariff of the European Communities, applying measures other than tariffs and the preparation and issue of certificates of origin. Article 26 provides that notwithstanding the production of a document as proof of the origin of goods, the customs authorities may, in the event of serious doubts, require any additional proof to ensure that the indication of origin does comply with the rules laid down by the relevant Community legislation.

2. Council Implementing Regulation (EU) No 1238/2013 of 2 December 2013 imposed a definitive anti-dumping duty on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China. The rate of the anti-dumping duty is set out in Article 1 of the regulation. This fixes the rate for specific companies and HMRC applied the rate of 41.3% applicable to “other co-operating companies in the anti-dumping investigation”.

3. Council Implementing Regulation (EU) No 1239/2013 of 2 December 2013 imposed a definitive countervailing on imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China. The rate applicable is set out in the regulation. HMRC applied the rate applicable to companies listed in Annex (6.4%), which includes Sunny.

4. Article 201 of the Customs Code provides that a customs debt on importation is incurred through the release for free circulation of goods liable to import duties. The debtor is the declarant or, in the event of indirect representation, the person on whose behalf the customs declaration is made.

5. Article 236 of the Code requires duties to be repaid if they were not legally due or where the amount has been entered in the accounts contrary to Article 220(2). Article 220(2) provides as follows:

"2. Except in the cases referred to in the second and third subparagraphs of Article 217(1), subsequent entry in the accounts shall not occur where—

(a) [...]

(b) the amount of duty legally owed was not entered in the accounts as a result of an error on the part of the customs authorities which could not reasonably have been detected by the person liable for payment, the latter for his part having acted in good faith and complied with all the provisions laid down by the legislation in force as regards the customs declaration.

(c) [...]."

6. Article 239 of the Code provides as follows:

"1. Import duties or export duties may be repaid or remitted in situations other than those referred to in Articles 236, 237, and 238—

— to be determined in accordance with the procedure of the committee;

— resulting from circumstances in which no deception or obvious negligence may be attributed to the person concerned. The situations in which this provision may be applied and the procedures to be followed to that end

shall be defined in accordance with the committee procedure. Repayment or remission may be made subject to special conditions.

2. Duties shall be repaid or remitted for the reasons set out in paragraph 1 upon submission of an application to the appropriate customs office within 12 months from the date on which the amount of the duties was communicated to the debtor.

However, the customs authorities may permit this period to be exceeded in duly justified exceptional cases."