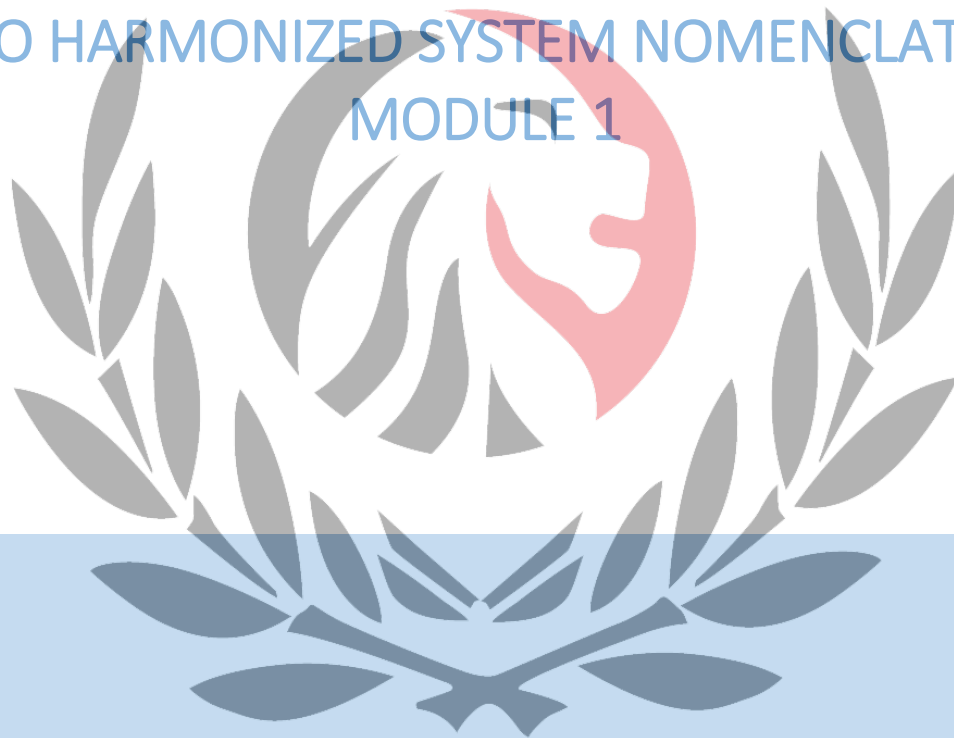


WCO HARMONIZED SYSTEM NOMENCLATURE
MODULE 1



**Kenya School of Revenue
Administration**

Mr. Kimani Kang'ethe

KENYA REVENUE AUTHORITY

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Kenya School of Revenue Administration

WCO Harmonized System Nomenclature

Introduction to the World Customs Organization Harmonized System Nomenclature Course

Kenya School of Revenue Administration (KESRA) warmly welcomes you to the WCO Harmonized System Nomenclature (HS) course unit. The Harmonized System Nomenclature, developed by the Customs Co-operation Council, now known as the World Customs Organization (WCO), is an international goods classification document used by more than 200 countries and economies in the world. This course evaluates the historical development of the HS, its structure and the various principles applied in the classification of process. The course seeks to equip both managers and technical staff with sufficient skills to explain the theoretical and practical issues which relate to the classification of goods in international trade. As such, we as a school are committed to help you provide expert contribution to your organization and equally propel your career to the next level. Your active participation in all activities relating to this course is highly encouraged and it is very important that you keep up with your fellow students as failure to do so may significantly impact on your overall mark for this course. We wish you success and hope that this course offers you academic excitement to your satisfaction.

Overall course Objective

The main aim of this course is to help trainees use the WCO Harmonized System Nomenclature in a consistent and effective manner and thus facilitate accurate classification of internationally traded goods.

Specific course Objectives:

- Provide trainees with the necessary tools to understand the major issues and importance of the Harmonized System, its application and scope.
- Show the Nomenclature structure (macro and micro structures) and provide a methodology to understand the thinking behind its organization and operation.
- Provide trainees with effective and suitable resources to understand and take ownership of the Nomenclature methodology.
- By means of goods classification exercises, equip the trainees with the knowledge required to apply the Harmonized System Nomenclature correctly.

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Module Chapters

Chapter 1: Introduction and Background of the WCO Harmonized System Nomenclature

Chapter 2: General Structure of the Harmonized System Nomenclature

Chapter 3: Application of General Interpretative Rule 1 to Rule 3

Chapter 4: Application of General Interpretative Rule 4 to 6

Chapter 5: Identification and Application of Legal Notes in the Classification of Goods

Chapter 6: Headings and Subheadings of the Harmonized System

Chapter 7: Classification of goods of Agricultural Products

Chapter 8: Classification of goods of Mineral Products

Chapter 9: Classification of goods of Chemicals and allied Products

Chapter 10: Classification of Leather, Wood and Paper Products



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Chapter 1: Introduction and Background

Topic Objectives

By the end of the lecture, the learner should be able to;

1. Define key terms used in the HS Nomenclature;
2. Discuss the origin and globalization of the HS Nomenclature
3. Identify and discuss the uses and users of the HS Nomenclature,
4. Discuss the governance structure of the WCO HS Nomenclature

1.0 Introduction to the Harmonized System Nomenclature

In the late 1960's, a growing awareness developed among the major trading partners of the need to rationalize and harmonize trade documentation data, in particular, to find a common way of designating and coding all commodities involved in international trade. To this end, the Customs Cooperation Council initiated exploratory studies and preparatory work on the development of a new commodity classification system. The work was completed in June 1983 with the creation of the Harmonized Commodity Description and Coding System and the establishment of the new international Convention to govern its implementation.

The HS Convention entered into force on 1 January 1988, under the Customs Co-operation Council, renamed World Customs Organization (WCO) in 1995, and based in Brussels, Belgium. Kenya became a signatory to the HS Convention on 29 July 1988 and commenced its implementation on 1 July 1989. The HS, designed to provide a method for classifying all goods in international trade, is a structured nomenclature comprising descriptions of goods that are set out under 4-digit classification numbers called **headings**. Most of these headings are further sub-divided into 5 and 6- digit classification numbers called **subheadings**. It is the language of international trade.

Presently, the HS Convention has 156 Contracting Parties, including Kenya, with most of the remaining non contracting countries also basing their tariffs on the HS covering about 98% of world trade. With over 5,000 international traded commodity groups, each identified by a 6-digit code, arranged in a legal and logical structure, there is now a higher level of harmonization of customs clearance procedures based on the HS than we have ever witnessed before.

1.1 Historical background of the Harmonized System Nomenclature

The first International Statistical Nomenclature was adopted at the second International Conference on Commercial Statistics held in Brussels in 1913. In May 1927, the idea of having a common framework of Customs Tariff arose during the World Economic Conference in Geneva.

1.1.1 Geneva Nomenclature

Following the economic depression of 1929, there was need to revitalize trade and the international community through the League of Nations helped create the first international Customs Nomenclature

in 1931. This came to be known as the Geneva Nomenclature. The aim was to have it serve as the common basis of a nomenclature for the most trading nations. However, following the collapse of the League of Nations, the Geneva Nomenclature ceased after it failed to meet the expectations of the trading community.

1.1.2 Standard International Trade Classification (SITC)

In 1938, The League of Nations published a document that was referred to as the “*Minimum List of Commodities for International Trade Statistics*”. This list was based on the 1937 revision of the League’s **Draft Customs Nomenclature**. The **Minimum List** required a lot of modifications and by 1950, the United Nations developed, with the help of expert consultants, what came to be known as the United Nations Standard International Trade Classification (SITC).

1.1.3 Brussels Tariff Nomenclature (BTN)

In 1947, thirteen governments represented in the Committee for European Economic Co-operation set up a Study Group to examine the possibility of establishing one or more Customs Unions between the various European Countries, in accordance with the GATT principle. In 1948, the Study Group decided to establish two committees. One of the Committees later became the Customs Co-operation Council (CCC). The Convention establishing the CCC entered into force on 4 November 1952. The CCC developed and published Brussels Tariff Nomenclature (BTN) in 1955.

The classification criteria that were taken into account to order the goods in the BTN were mainly starting from raw materials, the processing stage and the industrial origin. The criteria of industrial origin of goods for its part was included at the request of the statisticians who participated in its preparations. The intent of this criterion was to ensure to a large degree that each subheading of the classification should include only those goods normally produced by the same industry. These classification criteria considered by BTN have served as the basis for the development of other international classifications like the UN Central Product Classification (CPC).

The BTN was later renamed Customs Co-operation Council Nomenclature (CCCN) in 1974 and the document had 21 Sections, 99 Chapters and 1,241 headings.

Learning activity 1.1: List down three criteria that was applied in organizing the order of goods in the BTN.

1.1.4 Customs Cooperation Council Nomenclature (CCCN)

Although the BTN was a major development that saw the creation of an international tariff nomenclature, it had a number of shortcomings such as;

- It was not used by all the major trading nations, for example the US, Canada and China continued to retain their own tariff systems,
- Although the BTN proved adequate for customs purposes, it did not provide enough details for other potential users, for example, statisticians, carriers and insurance companies,
- It was outdated by technological developments
- It did not respond quickly enough to changes to trading patterns.

Thus pressure mounted through the 1960's for a modern coding system that could be used by all parties that were involved in international trade. In 1970, the CCC was tasked with developing a new nomenclature. In 1973 the CCC set up the Harmonized System Committee, together with a technical team to service the Committee. In 1974, the BTN was renamed the Customs Cooperation Council Nomenclature (CCCN) to relate it more clearly with the institution that it produced.

1.1.5 Harmonized Commodity Description and Coding System

The process of establishing a more robust classification system started in 1974 when the Customs Cooperation Council set up the Working Party to assist the Harmonized System Committee and develop a new classification system that reflected the changes in international trade. The Working Party was made up of:

- Members of the Harmonized System Committee;
- Representatives of other countries- not necessarily countries that were using the CCCN;
- Non customs organizations, for example, UN Statistical Office and the International Air Transport Association.

By May 1983, the HS Committee and its Working Group had completed their task of developing the HS. The HS was largely based on the CCCN. It was borrowed from SITC, the European Community Nomenclature, the US Nomenclature, the Canadian and Japanese Nomenclatures, whose components were augmented to form the HS. It entered into force on 1 January 1988 delivering a new classification system with multiple purposes.

In contrast to its predecessor CCCN, the HS 88 broadened the categories from four to six digits. The HS88 shows a structure of 21 Sections, 96 Chapters (including Chapter 77 for potential future use), and 1,241 headings of four digit codes. Of this total, 930 of the headings are divided into subheadings giving origin to a total of 5,019 groups of goods identified by a six digit codes. Later the HS88 was reviewed in the years 1992, 1996, 2002, 2007, 2012, 2017 and a further revision is scheduled to take place in 2022.

1.1.6 Benefits of the Harmonized System Nomenclature

The HS is used for various purposes, however, it is primarily used for the classification of goods in terms of the customs tariff and collection of customs duties and taxes. The HS Nomenclature is used by over 200 countries, unions or international organizations (e.g. WTO, UNO). The Common External Tariff (CET) used in the East African Community (EAC) is based on the WCO HS Nomenclature. Over 98 % of goods in the international trade are classified according to the HS Nomenclature. While adopting the HS in 1988, Contracting Parties cited the following benefits as justification for adopting the classification system;

- i. The HS provided the opportunity to modernize and restructure national tariff nomenclatures to eliminate anomalies and other problems;
- ii. The adoption of the HS resulted in improved collection of import and export statistical data;
- iii. It led to improved electronic processing of trade statistics;
- iv. It harmonized the administration of tariff classification system and made it more understandable;

- v. It improved countries ability to bargain more effectively in international trade negotiations and to monitor such negotiations;
- vi. It allowed proper and systematic evaluation of problems and opportunities related to import and export trade.

1.2 Uses of the WCO Harmonized System Nomenclature

The HS is used by governments, international organizations and private sector for the following;

- for national customs tariffs,
- for collecting international trade statistics,
- for defining origin rules,
- for trade negotiations,
- for collecting national taxes,
- for freight tariffs and transport statistics,
- for monitoring controlled goods (e.g. waste, drugs, chemical weapon, ozone depleting substances, protected species etc.) and
- as an indispensable tool in the performance of customs controls and customs procedures, risk analysis and in information technology.

Learning activity 1.2: List down five users of the Harmonized System Nomenclature

1.3 The role of the World Customs Organization (WCO) in Administering the HS

The primary role of the WCO is the maintenance of the HS ensuring its uniform interpretation and periodic updating in light of developments in technology and changes in the structure of the international trade. The WCO manages this process through the Harmonized System Committee which is composed of the representatives of the Contracting Parties to the Convention.

The Committee meets twice a year, and each contracting party represented in the Committee has the right to one vote. The Committee suggests decisions amending the Convention including the nomenclature. Further, it prepares Classification decisions, Explanatory Notes, Classification opinions or recommendations for the interpretation of the Convention. Working documents and reports on the work of the Harmonized System Committee are available to public.

Amendments to the Convention become binding for all Contracting Parties two years after the notification by Secretary General of the WCO. Decisions concerning the management and interpretation of the Convention must be adopted by the Contracting Parties within the period of two months after the approval by the HS Committee. All documents published by the WCO are available in English and French, which are the official languages of the WCO.

1.4 WCO Harmonized System Committee (HSC)

In accordance with the Preamble to the HS Convention, which recognized the importance of ensuring that the HS is kept up to date in the light of changes in technology or in patterns of international trade, the HS is regularly reviewed and revised. The HS Convention established the Harmonized System Committee (HSC), composed of representatives from each of the contracting parties, which meets twice a year. The HSC is assisted in its work by its Working Party, by the Review Subcommittee, and by the Scientific Subcommittee. The HSC, inter alia, considers the needs of users, as well as changes in technology and

patterns of international trade, and proposes amendments to the HS based on its considerations, prepares recommendations about and circulates information concerning the application of the HS, and gives guidance on matters concerning the classification of goods.

1.5 Responsibilities of the WCO Harmonized System Committee (HSC)

1.5.1 Ensuring uniform interpretation and application of the HS

The HSC takes measures and makes proposals to the Council to ensure the uniform interpretation and application of the HS.

To fulfill this task, the HSC;

- Prepares Explanatory Notes, Classification Opinions and individual formal advice as a guide to the interpretation of the HS
- Prepares recommendations to secure uniformity and transparency in the interpretation and application of the HS
- Collates and circulates information concerning application and maintenance of the HS.

Much of the above is achieved during its bi-annual meetings. At these meetings, technical and general issues are examined and subsequent action is determined.

1.5.2 Settlement of classification disputes

The HSC is also the arbitrator of classification disputes between Contracting Parties. However, countries are encouraged to first solve such disputes among themselves and reach an agreement. Where such agreements are reached, Members are advised to inform the HSC Secretariat accordingly.

Classification disputes that cannot be settled by direct negotiations between Members in the first instance are referred to the HSC for adjudication at its bi-annual meetings, where after examination; the Committee makes recommendations for their solutions.

In the unlikely situation where the Committee is unable to settle the dispute, it may refer the matter to the Council for a recommendation. Members aggrieved by the decision of the HSC have a right of appeal and any Member wishing to exercise this right must lodge a reservation to the HSC Secretariat on or before the last day of the two full subsequent calendar months after the end of the HSC meeting.

1.5.3 Continuous updating of the Harmonized System Nomenclature

Unlike its predecessor, the HS has an inbuilt mechanism of continual amendment. This is very important in order for the HS to keep pace with advancement in technology and international trade. The HS has a five-year review cycle. A review cycle may look at the Nomenclature as a whole, or they may address certain sectors, or particular areas- for example a review period may focus on heavy machinery classifications or on computer related component. The review cycle is a very intensive undertaking and involves many submissions and consultations between HSC and its sub-committees.

1.5.4 Harmonized System Committee Sub-Committees

As we have already seen, there are several sub-committees that support the HSC in its work. They are;

a. Review Sub-Committee (RSC)

This sub-committee is responsible for the systematic review of the Nomenclature on an ongoing basis. It consists not only representatives from Contracting Parties to the HS Convention, but also of representatives

of non-governmental international organizations and any experts whose participation is considered valuable.

It operates by consensus and where consensus cannot be reached on a particular issue, the differing views together with their rationale are forwarded to Harmonized System Committee (HSC).

b. Scientific Sub-Committee (SSC)

The SSC is an advisory body of the WCO Council on questions involving chemicals or other scientific matters. It consists mainly representatives of the Customs laboratory services of the Council Members. The SSC often assist the Harmonized System Committee and the Review Sub-Committee in questions involving the classification of chemical products.

c. World Customs Organization (WCO) Secretariat

Nomenclature and classification matters are handled within the WCO Secretariat by the Nomenclature and Classification Sub-Directorate of the Trade and Tariff Affairs Directorate of the World Customs Organization. This body performs secretarial work in regards to meetings of the HS Committee and its various sub-committees.

1.6 The International Convention on the Harmonized Commodity Description and Coding System

The HS is governed by "The International Convention on the Harmonized Commodity Description and Coding System", which was adopted in June 1983 and entered into force on 1 January 1988. Under the HS Convention, the contracting parties are obliged to base their tariff schedules on the HS nomenclature, although parties set their own rates of duty.

The HS Convention, among other things;

- Incorporates the HS Nomenclature in the Annex
- Requires that the Contracting Parties apply the HS as the basis for their Customs tariffs and trade statistics
- Establishes the Harmonized System Committee to administer the Nomenclature
- Provides for settlement of classification questions and disputes to secure uniform interpretation and application of the HS
- Provides for the periodic updating of the HS Nomenclature to reflect changes in technology and trade patterns.

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1.6.1 Obligations of Contracting Parties to the HS Convention.

The HS is a legal instrument. A contracting party to the HS Convention has two main obligations: to bring its customs tariff and statistical nomenclatures into conformity with the HS; and to make its import and export trade statistics publicly available at the six-digit level or beyond. Fulfilling these obligations requires that contracting parties use all the HS headings and subheadings and numerical codes, without addition or modification; that they apply, without modification, the General Rules for the Interpretation of the Harmonized System as well as all section, chapter and subheading notes; and that they follow the numerical sequence of the HS.

Learning activity 1.6. Read the Harmonized System Convention and list down five obligations of Contracting Parties

1.7 Harmonized System Reference Materials

To assist users in the implementation of the HS, the World Customs Organization issues and periodically updates the following supplementary information:

- Explanatory Notes to the Harmonized System
- Alphabetical Index to the Harmonized System
- Compendium of Classification Opinions to the Harmonized System
- Harmonized System Commodity Database
- E-learning Modules on the Harmonized System
- Correlation Tables between the latest and previous version of the HS

1.7.1 Harmonized System Explanatory Notes (HSEN)

The HSEN provides official interpretation of the HS Structure and follow systematic of the Chapters of the HS. They provide the following functions;

- Provide a commentary on the scope of the headings and where appropriate subheadings
- Provide a commentary on the meaning of legal notes
- Provide a commentary on the meaning of the Interpretation Rules
- List the main products that are included within headings
- List products that are excluded from headings
- Provide technical descriptions (appearance, characteristics and uses) of goods
- Provide guidance for the identification of goods

Every heading in the HS has a corresponding Explanatory Note. In some instances, Explanatory Notes relating to subheadings are also provided. Where this is the case, a “(+)” sign appears after the text of the heading.

Initially published in 1986, the HSEN are not legally binding on the Contracting Parties. They are however an important part of the HS reference materials and should be used to ascertain the correct interpretation and scope of the texts of the Nomenclature.

1.7.2 Compendium of Classification Opinions

This is a publication of classification decisions made after issues have been deliberated and a subsequent view formed at a Harmonized System Committee meeting. The Compendium provides the following services;

- The classification decisions contained therein provide an indication of the scope of the coverage of the headings/sub-headings
- It gives an insight into the Committee’s thinking in respect of various classification issues or principles.

1.7.3 Harmonized System Commodity Data Base

Contained on a CD-ROM, the Commodity Data Base is an electronic listing containing some 200,000 products, together with their corresponding 6-digit HS code numbers. Though not a legal instrument, the Data Base is designed to help users determine classifications of goods.

1.8 General Rules for the Interpretation of the Harmonized System

The Harmonized System incorporates a series of preliminary provisions codifying the principles on which the HS is based and laying down general rules for ensuring uniform legal interpretation. There are six of these rules, known as the General Rules for the Interpretation of the Harmonized System, also known as the General Interpretative Rules (or GIRs), which are applied in hierarchical fashion, i.e., Rule 1 takes precedence over Rule 2, Rule 2 over Rule 3, etc. Classifiers are required to apply these rules when classifying goods in international trade.

1.8 Summary of the Chapter

This brings us to the end of this topic. Its purpose is to set the scene at an international level for the HS structure and classification process that follow in this course unit. The term “globalization” has been widely used in recent years, for example, in the globalization of the monetary system, the banking system, industrial standards, among others. Of the various globalizations, the globalization of the Customs tariff in the form of the Harmonized System is surely one of the most successful application of globalization in international trade.

As of March 2017, the International Convention on the Harmonized Commodity Description and Coding System had 156 Contracting Parties and the HS is being used by 200 countries and economies in the world. No other technical Convention in the field of Customs and tariff has attracted such a large number of Contracting Parties and users.

The success of the HS is credited to the high quality of the system which has been progressively refined as a result of a long process of development, international cooperation with the United Nations Statistical Division, the World Trade Organization and the International Chamber of Commerce and other international organizations with an interest in international trade.

1.9 Assignment 1

The international Customs tariff nomenclature has been progressively developed over time. From your research, discuss five developmental stages the HS has undergone until 1 January 1988.

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Chapter 2: General Structure of the WCO Harmonized System Nomenclature

Lecture objectives;

By the end of this lecture, the learner should be able to;

1. Demonstrate understanding of the structure of Sections in the HS;
2. Demonstrate understanding of the structure of Chapters in the HS;
3. Demonstrate understanding of the structure of Headings and Subheadings
4. Discuss the principles used in arranging the structure of the HS.
5. Briefly discuss GIRs and Legal Notes

2.0. Introduction

The structure of the HS Nomenclature is organized in a logical manner. When presented in a triangular form, at the top there are 21 Sections followed by 99 Chapters. Chapter 77 is reserved for future use while Chapters 98 and 99 are reserved for special uses by Contracting Parties. For instance, Kenya uses Chapter 99 for communication services while Canada uses one of the headings in Chapter 98 for goods declared by returning residents. Sections and Chapters cover very broad categories of related goods. To provide for narrow categorization, the Chapters are divided into 1,222 Headings which are then subdivided into 5,367 sub-headings as found in the current edition (HS 2017). In this lecture, we shall examine how these Sections, Chapters, Headings and Subheadings are arranged including how Titles, General Interpretative Rules and Notes are applied.

Under the Common External Tariff (CET), the HS Nomenclature has two schedules, that is Schedule 1, which is made up of 21 Sections, 99 Chapters, Headings, Subheadings and legal notes and corresponding rates of duty, while Schedule 2 consists a list of sensitive items.

2.1 The Structure of the Harmonized System Nomenclature

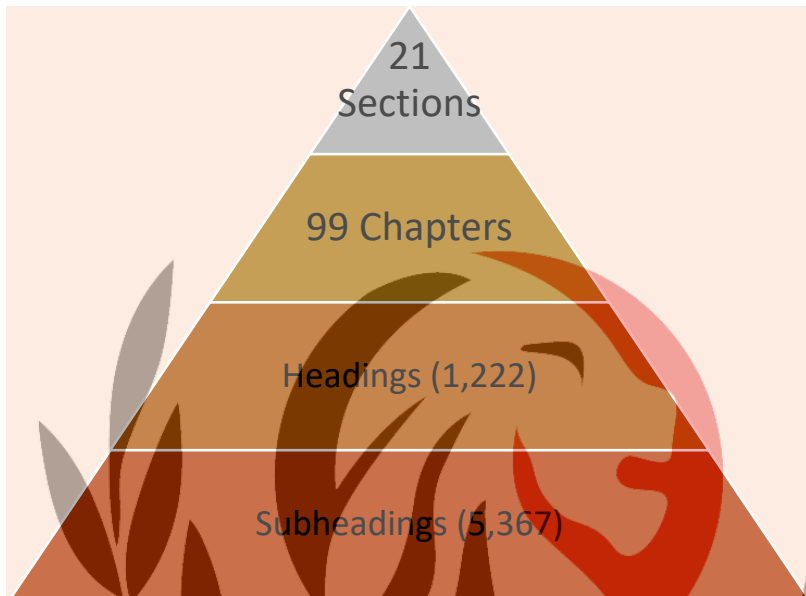
The HS Nomenclature comprises more than 5,000 groups of goods each identified by a six-digit code and arranged in a legal and logical structure:

- the first four digits of the code correspond to the relevant HS heading number,
- the fifth and the sixth digits identify the HS subheadings.

The HS Nomenclature includes:

- Sections;
- Chapters;
- Headings;
- Subheadings;
- Legal Notes and
- General Interpretative Rules.

2.1.1. Diagrammatic representation of the Structure of the HS



2.2 Sections of the Harmonized System Nomenclature

As we have already seen, there are 21 Sections. Sections are used to group related goods though in a very broad way. Below are the Sections found in the HS Nomenclature;

Section I: Live animals; animal products

Section II: Vegetable products

Section III: Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal and vegetable waxes;

Section IV: Prepared foodstuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes

Section V: Mineral products

Section VI: Products of the chemical or allied industries

Section VII: Plastics and articles thereof; rubber and articles thereof

Section VIII: Raw hides and skins, leather, furskins and articles thereof; saddlery and harness; travel goods, handbags and similar containers, articles of animal gut

Section IX: Wood and articles of wood; wood charcoal; cork and articles of cork; manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork

Section X: Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard; paper and paperboard and articles thereof

Section XI: Textiles and textile articles

Section XII: Footwear, headgear, umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof; prepared feathers and articles made therewith; artificial flowers; articles of human hair

Section XIII: Articles of stone, plaster, cement, asbestos, mica or similar materials; ceramic products; glass and glassware

Section XIV: Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal and articles thereof, imitation jewellery; coin

Section XV: Base metals and articles of base metal

Section XVI: Machinery and mechanical appliances; electrical equipment; parts thereof; sound recorders and reproducers; television image and sound recorders and reproducers, and parts and accessories of such articles.

Section XVII: Vehicles, aircraft, vessels and associated transport equipment

Section XVIII: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; clocks and watches; musical instruments; parts and accessories thereof

Section XIX: Arms and ammunition; parts and accessories thereof

Section XX: Miscellaneous manufactured articles

Section XXI: Works of art, collectors' pieces and antiques

Sections I through IV contain the majority of animal and plant products. This group of Sections provides a good illustration of the classification logic used throughout the Harmonized System. These Sections, taken together, deal with a broad commodity grouping. The basic commodities themselves, in their raw or moderately processed state are covered in the first two Sections. More processed products are dealt with in the next two Sections. Within the Sections that contain more than one Chapter, the Chapters are also defined according to further commodity specification and degree of processing.

As a general rule, goods are arranged in the HS in order of their degree of manufacture: raw materials, unworked products, semi-finished products and finished products. The same order exists also within chapters and headings. This principle is also used in systematically arranging the Sections, where natural goods such as live animals will appear under Section I while finished manufactured articles will be classified in Section XX. In the HS, Sections are numbered in Roman numerals, for example, I,II,XI, etc.

2.2.1. The number of Chapters in a Section

Sections are made by grouping either one or more Chapters of largely related goods. The number of Chapters in a Section will vary from one Section to another, for example, Section I is composed of five (5) Chapters while Section III and Section XIX has only one Chapter each.

Depending on the categories of goods in a particular Section, some Sections are larger than others, as we have already seen. The largest Section in the HS is Section XI that has 14 Chapters (Chapters 50-63), followed closely by Section XV that has 12 Chapters (Chapters 72-83). Eleven Chapters are grouped together to make Section VI while Sections IV and II are made of by nine Chapters each.

2.2.2. Principles applied in the arrangement of Sections in the HS Nomenclature

As we have already seen, Sections are arranged in a logical manner to ensure a systematic navigation of the nomenclature. Classifiers are required to have an understanding of the logical process as this

knowledge is instrumental in the identification of the correct HS codes during the classification process. The drafters of the HS organized the Sections using three main criteria;

i. Material content

Articles that are made from the same material are grouped together into Sections. These Sections will entirely be made of Chapters or in some cases a single Chapter consisting wholly those articles that are either manufactured from the same materials or originate from similar natural process. Let us look at these examples;

Section II, which has nine Chapters, that is Chapters 6-14, covers vegetable products only. All vegetable products have been grouped together to form this Section.

Another example is **Section XI**, which is actually the largest in the HS as it has 14 Chapters of largely related products. All textile materials, will unless the context otherwise requires will be classified here.

ii. General usage/function of the articles

Goods that are used for the same need or function are grouped together to form a Section. A practical example is;

All articles that are used to transport either passengers or cargo and their associated equipment are grouped together under **Section XVII**.

All articles used for military or police as weapons, their accessories and their parts are grouped together and classified under **Section XIX (Arms and Ammunitions)**

iii. Degree of Processing

Another principle that is applied in arranging the Sections is the degree of processing or manufacture. To illustrate this principle, let us look at this example;



The above example illustrates that those goods that appear naturally, are of-course with certain exceptions, will to a larger extent be classified in the Sections appearing early in the Nomenclature, while semi-processed items will be classified somewhere in the middle of the HS and complete manufactured items will be classified mostly in the last Sections, in the chronological order.

Learning Activity 1.

- a) Identify two examples the demonstrate the application of function principle in arranging the HS.
- b) Identify two examples that demonstrate the application of the degree of processing principle in arranging the HS.

2.2.3 Chapters of the Harmonized System Nomenclature

Chapters are the next level of sub-division after the Sections. As we have already seen there are 99 Chapters in the Harmonized System Nomenclature. Chapter 77 is retained for future use while Chapters 98 and 99 are reserved for special use by the Contracting Parties to the HS Convention. In the case of Kenya, Chapter 98 is used for the purposes of telecommunication services while in countries such as the United States of America, Chapter 98 is reserved for, among others, classification of articles for the military, returning residents etc. Each country is at liberty to use these Chapters according to their own

specific needs.

A Section will be made up of one or more Chapters. As we have already seen, Sections are used to classify goods at the broadest classification, while Chapters are used to classify articles which are more closely related. In the structure of a Chapter, there will be Chapter titles, which though useful in the classification process, only provide guidance on which type of goods are classifiable in the Chapter. Titles, also found in Sections, do not have legal effect in the classification process and should not be cited as grounds used in determining the correct tariff codes. For legal purposes, Chapter Notes form the basis of determining the correct tariff codes when applied together with the General Interpretative Rules.

A number of Headings are grouped together to form a Chapter. For example, Chapter 1, which is used to classify live animals is made up of six Headings and one legal Note with three sub-notes, while Chapter 61, *Articles of Apparel and clothing accessories, knitted or crocheted*, has 17 Headings and 10 Legal Notes. This illustrates that the number of headings will vary from one Chapter to the next.

2.2.4 Headings of the Harmonized System Nomenclature

Headings are the third level of sub-division in the HS and are usually denoted by four-digit codes, for example, Heading 01.01. The first two digits show which Chapter a commodity belongs to and the last two digits indicate position of the heading in a Chapter. In the example below;

01.01 (Shows that the heading is in Chapter 1)

61.02 (Shows the heading is in Chapter 61)

01.01 (Shows that is the first heading of Chapter 1)

61.02 (Shows that is the second heading of Chapter 61)

The four-digit codes are usually followed by a Heading text. For example,

Heading 03.01

Live fish

Heading 87.15

Baby carriages and parts thereof

Headings are more specific as they specifically identify articles to be classified in a particular heading, subject to the application of legal notes and GIRs. For example, we can only classify live fish in heading 03.01 and nothing else. However, there are some headings that are more general in application as they will allow an array of goods to be classified therein. These types of Headings are known as Residual Headings and are usually followed by the texts "Other" in the Heading texts.

2.2.5 Subheadings of the Harmonized System Nomenclature

A Heading may further be sub-divided into two or more subheadings, where deemed appropriate, individualizing narrower categories of commodities. However, not all Headings are sub-divided and in cases where a heading is not sub-divided, two zeroes are added after the four-digit codes.

Subheadings use a dash system to show sub-division. For example, a one dash subheading is shown as five digit numerical codes which are generated by adding one digit to the heading. The one dash subheading may further be sub-divided to a two-dash subheadings which are presented as six digit numerical codes created by adding one more digit after their parental one dash subheading codes. More digits are often used at national or regional level. For example, the EAC Common External Tariff (CET) uses eight digit codes at the regional level. Identification of duty rates is done at the eight-digit code numbers in the case of the CET.

Point to Note:

The criteria for creating new tariff headings and subheadings in the HS depend on the annual trade volume, and the thresholds are as follows:

for a new tariff heading: 100 million USD,

for a new tariff subheading: 50 million USD.

Derogations from these criteria are possible in the case of goods of a significant social or environmental relevance, goods subject to international conventions and goods of particular importance for the developing countries.

2.3 General Rules for the Interpretation of the HS

Goods must be classified in the HS Nomenclature clearly and unambiguously according to the General Rules for the Interpretation of the HS; these rules ensure that a certain product is always classified under the same tariff heading. In total, there are six rules that govern the classification of goods and are applied in a hierarchical manner. Rule 1 and Rule 6 apply in the classification of up to 95% of goods but this does not mean that other rules are not important. We will look into detail these rules in the next chapters.

2.3.1 Section, Chapter and Subheading Notes

Legal Notes are intended to define the scope of each tariff heading / subheading, chapter or section in order to avoid classification dilemmas. We will look into Notes later in the module.

2.3.2 Explanatory notes to the Harmonized System Nomenclature

The official interpretation of the Harmonized System (HS) is given in the so-called Explanatory Notes to the Harmonized System or the HS Explanatory Notes published by the WCO, which represent an important means for uniform application of the Common Customs Tariff.

The HS Explanatory Notes and Classification Opinions are published by the WCO as tools that support the correct classification of goods according to the Harmonized System as they promote uniform interpretation of the system at an international level. They do not form part of the Convention on the Harmonized Commodity Description and Coding System and are therefore not legally binding. However, they are indispensable in the daily use and in the interpretation of tariff headings and tariff subheadings, which has also been confirmed by the case law. The European Court of Justice agrees that the HS Explanatory Notes and Classification Opinions are not legally binding, but contribute greatly to the interpretation of individual HS codes.

Suggestions for amendment of the HS Explanatory Notes can be made to the WCO Secretariat by any Contracting Party. The HS Explanatory Notes which are published by the WCO in English and French only are amended by the Harmonized System Committee.

Common External Tariff of the East African Community

The Common External Tariff (CET) is applied across the EAC region. Through the EAC Gazette Notices, the EAC Council of Ministers may review the rates of duty in the CET in line with measures geared towards promoting industrialization, encouraging local investments and creating incentives in the agricultural and manufacturing sectors.

The CET publication contains the following:

- The text of the Nomenclature established under the International Convention on the Harmonized Commodity Description and Coding System, approved by the Customs Co-operation Council on June 1983, amended as at 1st January 2017.
- The General Rules for the Interpretation of the Harmonized System,
- Abbreviations and symbols,
- Section, Chapter and Subheading Notes, and
- The headings and subheadings.

Each heading is identified by four digits, the first two indicating the Chapter number and the second two the numerical order in which the heading appears within the Chapter.

The heading numbers are shown in the first column. The second column contains the eight-digit codes of the Harmonized System as transposed at the EAC level. The third column contains the text of the headings in bold and the texts of subheadings. The fourth column contains units of quantity for use when reporting statistics based on the Harmonized System. The fifth column contains applicable Common External Tariff rates.

The Handbook comprises Schedule 1 with duty rates under the three-band tax structure and Schedule 2 with duty rates of sensitive items.

The fifth column of Schedule 1 contains applicable Common External Tariff rates and where the abbreviation "SI" (Sensitive Items) appears the applicable duty rates are those specified in Schedule 2.

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2.4 Summary of the Chapter

Administration

This is a very important lecture in shaping the tone of a more detailed examination of the HS Nomenclature. Understanding the structure of the document is critical to a classifier as this helps the classifier to look through the classification process in a structured and logical way. In summary, the structure can be said to include the following; Sections and their titles and Notes, Chapters and their titles and Notes, Headings and their texts, Subheadings and their texts, as well as GIRS and the Explanatory Notes. Also, it is important to keep in mind the principles that have been adopted in organizing the content of the Nomenclature, as this will always be helpful when navigating through the HS during classification process.

Assignment 2:

Review the Common External Tariff abbreviations and symbols and identify ten symbols and their meanings.



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Administration**

Chapter 3: General Rules of Interpretation of the Harmonized System Nomenclature

Lecture Objectives

By the end of this lecture, the learner should be able to;

1. Apply GIR 1 in the classification of commodities;
2. Apply GIR 2 in the classification of commodities;
3. Apply GIR 3 in the classification of commodities
4. Apply the concept of essential character in determining appropriate HS codes

3.0. Introduction to the General Interpretative Rules (GIRs)

General Interpretative Rules, otherwise commonly known as the GIRs are legal texts that form part of the structure of the Harmonized System Nomenclature. These rules are six and are applied in a hierarchical format, that is, if an article cannot be classified by the application of GIR1, it is only then that the classifier is allowed to apply GIR 2 and so on. The GIRs were developed to ensure that the interpretation and application of the Harmonized System Nomenclature is the same in all Contracting Parties. The rules provide a systematic way of classifying commodities as they provide the legal basis for classification decisions. In this topic, we shall look at the theoretical and practical application of GIR 1 to 3.

3.1 General Interpretative Rule 1 (GIR 1)

GIR 1 directs that:

“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”.

Over 95% of goods are classified by use of Rule 1 and Rule 6 and Rule 1 is the easiest of all the Rules. For us to understand the rationale and the application of this Rule, let us divide the rule into three parts as follows:

3.1.1 Titles are for ease of reference only

Rule 1 begins by establishing that the Section, Chapter and Sub-Chapter titles are provided for ease of reference only and do not possess any legal force. These titles appear immediately after Section, Chapter or sub-chapter number. The titles are to be used as a good hint and should not be used for interpreting the HS. Titles are a guide and they have no legal bearing on the classification of goods.

To illustrate this, the title of Section XV is: “Base metals and articles of base metal.”

Even though the title of Section XV provides for classification of base metals and other articles of base metals, this title does not mean that all articles of base metals are classified within the headings of Chapters 72 to 83 and nowhere else. Actually, these articles of base metal are also classified in other Sections as well. Rule 1 directs that classifiers should never apply the titles as the basis for their classification decision.

Example 1

Let us consider the classification of magnet which is an article of iron or steel and it could possibly be classified within the headings of Chapter 73. A classifier may omit examining Chapter 85, which according to the title, covers: “Electrical machinery and equipment; ...” However, magnets are classified within heading 85.05 which covers: “electro-magnets, permanent magnets and articles intended to become permanent magnets.....”

Let us consider the title of Chapter 86. Are these the only goods that are classified within Chapter 86?

The answer is no as heading 8609.00 covers containers that are specially designed and equipped for carriage by one or more modes of transport.

In brief, in accordance with Rule 1, titles should informally be referred to but only for purposes of providing guidance and a quick hint to the classifier. Always remember that these titles do not possess any legal force and they should therefore not be cited as justification in classification process.

Learning Activity 3.1

Identify two Sections where articles may be classified even though the titles of these Sections may be said to be prohibiting the classification of these articles in those Sections.

Having looked at the first part of GIR 1, let us now proceed to discuss the 2nd part of this Rule;

3.1.2 Classification to be according to the Terms of Headings and any relative legal notes

The 2nd part of Rule I directs that;

...for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes...

What this means is that classification of goods in the HS, and in any national tariffs, is to be determined by reference to 4 digit headings and the Section or Chapter Notes. They are the primary classification factors.

The terms of headings are self-explanatory. GIR 1 directs that an article shall be classified in the heading which specifically mentions such article, provided there is no legal note that prohibits such classification. If an article is mentioned within the texts of a terms of a heading, then that article is so classified unless there is a prohibition from some legal notes.

For example, let us consider the wordings of heading 01.04 “Live sheep and goats”. In which heading would you classify a live goat? The answer is heading 01.04, because the texts of this heading specifically mention “live goats” as products of heading 01.04 and by doing this, you will be applying GIR 1.

While choosing the appropriate heading, it is very important to have regard to punctuation within the makeup of a heading. It is very important to read what is there and not what you assume is there. Many classification mistakes are made because of misreading the HS. For example, in the HS, a semi colon has the same effect as a full stop, that is, each groupings of words on either side of the semi colon is independent of the other.

Example 2:

Let us consider the wording of heading 84.22

Note that after the words “Dish washing machine” there is a semi-colon (;). There is also another semi-colon after the word “containers”, on the second line. There are three more semi-colons, each after the word containers on the third and fourth lines, and a further one after the word “machinery” on the 5th line.

Heading 84.22 may pose a problem for someone trying to locate the classification of “aerating machines”, because the initial words do not give any indication that those goods may be classified within the heading. It is therefore necessary to examine the entire text of the heading and do not disregard the heading on the first instance.

Section and Chapter Notes

GIR 1 directs that classification shall be determined by any relative legal notes. Notes are important because they define terms and they also direct classifiers to and from certain areas of the HS. They bear a legal force and appear at the front of some Sections and all but two chapters. The expression “provided such headings or notes do not otherwise require” implies that the terms of headings and any relevant section or chapter notes are the principle factors that should be considered in the classification of goods under the HS.

Example 3

Let us examine heading 95.06

This heading covers among other goods; “...equipment for sport...or outdoor games...”

However, Note 1 to Chapter 95 excludes certain goods, which at first consideration may have been thought to be classified within this heading.

It should be standard practice for classifiers to go to the beginning of relevant Sections and Chapters and check to see whether there are any legal notes that relates to the goods. Failure to do this, the goods will almost certainly be incorrectly classified.

Learning Activity 3.1.2:

Identify the appropriate Heading for a horse that is part of a travelling circus.

3.1.3 Regard is to be had to the other Interpretation Rules

The 3rd part of GIR 1 directs that;

“...and, provided such headings or Notes do not otherwise require, according to the following provisions.”

In simple terms, Rule 1 directs that when classifying goods, unless so prevented by the wording of the heading or legal notes, you must consider all the Interpretation Rules. Do not just stop at Rule 1. However, it is imperative to understand the classification under a heading can be achieved without consideration of the subsequent Rules where a single heading provides a complete description of the imported good, such as for live horses classifiable under heading number 01.01. In other cases, two or

more headings may provide a description of the article and it is in such circumstances that the classifier is required to consider the subsequent Rules.

Since GIR 1 deals with classification up to the heading level, it is important to understand the meaning of the terms used in those headings and the type of commodities contemplated under a heading. One of the ways of understanding the meaning of such terms is to read the Explanatory Notes as they serve an essential role in clarifying the meaning of terms where there are no legal notes to provide the interpretation. The Classification Opinions are a second tool that is used in the interpretation of the headings and subheadings.

3.2 General Interpretative Rule 2 (GIR 2)

GIR 1 limits the classification of goods within the heading to what is contained in the wording, together with any relevant legal notes. What happens when imported goods are not specifically recognized within the wordings of the headings? This is where GIR 2 comes in. Rule 2 extends or broadens the scope of headings to include those goods imported in a condition that is not specifically recognized within the terms of headings. In other words, Rule 2 comes into play when there is no exact heading to cover the subject goods in their condition as imported.

Rule 2 is divided into two sub rules, namely 2(a) and 2(b).

3.2.1. Interpretation Rule 2(a)

Rule 2(a) directs that:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

Rule 2(a) broadens the scope of various headings beyond the terms of their texts. This is because, this Rule provides for the classification within a heading even if that article is incomplete or unfinished, or is presented unassembled or disassembled, or is a combination of these. An article presented incomplete or unfinished is still classified as if it were complete or finished, provided, the article has the **essential character** of the complete or finished article. Incomplete or unfinished article as presented for importation into Kenya must have the essential character of the complete or finished article to be classified under the same heading as that article.

From the reading of Rule 2(a), we can identify two principles on its application.

- An incomplete or finished article is to be treated as a complete article, provided it has the essential character of the complete article
- An unassembled or disassembled article is to be classified as if it were assembled.

First Principle

In the application of the first principle, let us have a look at a pen. To be incomplete, a pen may have the cap or the clip or the knob at the end missing. To be unfinished, the pen may yet need to have the company's manufacture's name painted on it.

"Incomplete" means that there is some bit of the pen missing. "Unfinished" indicates that there is some process in the manufacture that still has to be performed.

And since Rule 2(a) directs that goods presented incomplete or unfinished should be classified as if they are in the finished state, provided they have the essential character of the finished goods, this Rule calls for the classifier (you) to make a judgment.

- In the case of the unpainted (unfinished pen), the classifier has to decide if it has the essential character of a finished pen
- Similarly, in the case of the incomplete pen, for example, a pen without its cap, the classifier has to decide if it has the essential character of a complete pen.

This Rule is subject to the terms of headings and any relevant legal notes.

Essential Character

This is a very important aspect of the classification process. In the context of Rule 2 (a), the term essential character means comparing an incomplete or unfinished article with that article when presented complete or finished. The essential character question is a very gray area and it is one of the main reasons for classification disputes as it can be very subjective.

Essential character – pen

Is a pen presented without the cap or the knob at the end considered to have the essential character of a complete pen? In deciding this issue, which questions do we ask ourselves? What if the cap and the knob are both there, but the ink tube and the ball point is missing? Does the new entity have the essential character of a pen?

Perhaps the questions to ask are:

- What is the function of a pen, or what is a pen bought for?
- What is it about a pen that gives it its characteristics?

In this particular example, it is considered that the characteristics of a pen are dependent upon its normal function, which is its ability to write.

Articles presented "unassembled or disassembled" means articles of the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts etc) or by riveting or welding provided only assembly operations are involved

The following points should be taken into consideration when applying Rule 2 (a):

- No account is to be taken in that regard of the complexity of assembly method. However, the components shall not be subjected to any further working operation for completion into the finished state.
- Unassembled components of an article which are in excess of the number required for that article when complete are to be classified separately as an independent article.

- Cases covered by this Rule are cited in the General Explanatory Notes to Sections of Chapters.
- Goods of Section I to VI are not covered under this Rule.

Example:

A bicycle presented unassembled is classified in heading 87.12 as a complete bicycle since it has the essential character of the complete bicycle.

Second Principle

Rule 2 (a) directs that:

...It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented **unassembled** or disassembled.

In simple terms, this principle requires that, for example in our **pen example**, if the pen is imported in an unassembled (or disassembled) condition, it shall still be classified as though it was an assembled pen.

Unassembled goods are those that have never been assembled, that is a collection of parts that must be put together to form a complete article. Disassembled goods consist of components which were once together and have since been taken apart.

3.2.2. Interpretation Rule 2 (b)

Rule 2(b) directs that:

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

Rule 2 (b) concerns mixtures and combination of materials or substances, and goods of two or more materials or substances. The headings to which this Rule refers to are those headings in which there is a reference to a material or substance, for example, heading 05.07 (ivory, etc), a heading in which there is a reference to goods of a given material or substance, for example, heading 45.03 (Articles of cork)

This Rule only applies only if the headings or the Sections or the Chapter Notes do not otherwise require.

The effect of the Rule is to extend any heading referring to a material or substance to include mixtures or combinations of that material or substance with other materials or substances. The other effect of this Rule is to also extend any heading referring to goods of a given material or substance to include goods consisting partly of that material or substance.

Like Rule 2 (a), Rule 2 (b) can also be divided into two separate principles.

First principle

Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances.

This principle of Rule 2 (b) is directing that any reference in a heading to a particular good can be expanded to include mixtures or combinations of that good with other goods.

Example:

A chicken feed mix comprising only of a mixture of wheat and oats. The goods are not a preparation and therefore do not meet the terms of headings 23.08 or 23.09. There is no heading that covers the mixture of these goods.

Let us consider the chicken feed mix and substitute the ingredients of the mix for the words “material or substance”.

Any reference in a heading to...[wheat]...shall be take to include a reference to mixtures or combinations of...[wheat]...with [oats]’

And conversely,

Any reference in a heading to ...[oats]...shall be taken to include a reference to mixtures or combinations of ...[oats]...with [wheat].

If Rule 2 (b) did not exist, then there would be nowhere to classify a mixture like this.

So this part of the Rule directs;

- There is a heading for wheat- heading 10.01
- There is a heading for oats- heading 10.04

Therefore, it is possible to classify this wheat and oat mixture in one of these headings. Please note that, that is all this Rule is saying and it does not provide a classification answer.

Second principle

The second part of Rule 2(b) directs that;

...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...

This principle is extending the scope of headings to include goods that are made out of different materials.

Example:

Let us consider a glass fruit bowl having an ornamental pewter rim.

There is no one heading that covers these goods. However, there is a heading that covers “glassware of a kind used for table....purposes”- heading 70.13, and there is a heading that covers “other articles of tin” – heading 80.07.

Let us substitute what the goods are made of with the words “material or substance”

Any reference of goods of...[glass]...shall be taken to include a reference to goods consisting wholly or partly of...[glass]...

And conversely,

Any reference to goods of...[tin (pewter)]...shall be taken to include a reference to goods consisting wholly or partly of....[tin (pewter)]..

The application of Rule 2(b) is that classifiers may include within heading 70.13, a glass bowl that also comprises materials other than glass. Conversely, the Rule allows heading 80.07 to include a pewter bowl that also comprises material other than pewter. It does not however provide a classification answer.

Third principle

When applying Rule 2 (b), the result will be a situation where two or more headings will be made available for consideration. In determining which heading to apply, the classifier is directed to proceed to Rule 3.

The final sentence of Rule 2(b) provides that mixtures, combinations of materials or substances and goods consisting of more than one material or substance cannot be classified under the provisions of Rule 2(b). They must be classified according to the provisions of Rule 3.

3.3 General Interpretative Rule 3

Rule 3 provides for the classification of goods which by application of Rule 2 (b) or for any other reasons, such goods are classifiable under two or more headings. The preamble sets out the circumstances under which Rule 3 may be used.

Rule 3 directs:

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 carried out as follows:

- a. The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*
- b. Mixtures, composite goods consisting different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.*
- c. When goods cannot be classified by reference to 3 (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

Rule 3 provides three methods for classifying goods that are, for any reason prima facie classifiable under two or more headings. These methods operate consecutively, in the order in which they are presented in the Rule. Rule 3 (a) must first be applied to goods that are prima facie classifiable under two or more headings. If this Rule is not determinative of classification, then Rule 3(b) is applied. Finally, if both of these methods fail to provide for classification, the Rule 3 (c) is applied.

The three methods provide a clear process for the application of GIR 3 in which a classification answer may be obtained.

The term **prima facie** means at first sight, there is genuine possibility.

Goods may fall within two or more headings for a number of reasons: They are;

- Mixtures, or
- Goods that are made from different materials, and are covered by the provisions of GIR 2 (b)

They may also be:

- Sets of goods, for example, a gift pack of soap, bath salts and a flannel or wash cloth,
- Composite goods composed of two or more other goods, for example a pen that incorporates a small calculator, or
- Goods that meet the terms of descriptions that are set out in more than one heading.

Application of Rule 3 is hierarchical, in that, (a) must be applied first before moving to (b) and (c) respectively.

3.3.1. General Interpretation Rule 3 (a)

Rule 3 (a) directs;

The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

With respect to Rule 3 (a), the Explanatory Notes acknowledges that it is “not practicable to lay down hard and fast rules by which to determine whether one heading more specifically describes the goods than another”. However, certain general principles can be identified. First, a description by name is more specific than a description by class, second, if one heading provides a clearer or more accurate description than another heading, the goods should be classified under that heading.

As we have already seen, Rule 3 (a) relates to specific description. For example, “base metal filling cabinets” are classified within heading 83.04 (which specifically describes the goods) rather than heading 94.03 (which covers other furniture).

Another example is the “driver’s seat for use in a motor vehicle” is considered to be classifiable under heading 94.01 (which covers seats.) and not heading 87.08, which covers parts of a motor vehicle.

Rule 3 (a) applies only when the heading in contention describes the subject article as a whole and when Rule 3 (a) is not determinative of classification, then Rule 3 (b) is applied.

3.3.2. General Interpretation Rule 3 (b)

The most used part of Rule 3 is Rule 3 (b). It directs:

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

Rule 3 (b) covers the classification of:

- Mixtures, for example, the chicken feed mix.
- Goods consisting of different materials, for example, the glass fruit bowl with an ornamental pewter rim
- Composite goods consisting of different components: (the components may not be designed to be separated from each other, for example, a pen that incorporates a small calculating machine, components may be separate- provided they are mutually complimentary and that together they form an entity which would not normally be sold in separate pieces- an example of this would be an ashtray consisting of a metal stand incorporating a removable glass ash bowl.
- Sets that are put up for retail sale.

All of these goods have different bits and pieces. Rule 3 (b) directs that goods of this kind shall be classified according to the component that gives the entity its essential character.

Unlike in Rule 2 (a), the HSEN provides guidelines in determining “essential character” in Rule 3 (b). The HSEN states that;

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of goods.

For example, in considering the classification of the chicken feed mix, a relevant factor to consider may be the proportion or weight of wheat to oats. If the mixture contains twice as much wheat as there is oats, there would be some justification in arguing that it is the wheat that gives the mixture its essential character. The classification of the mixture would therefore be within heading 10.01.

Determining essential character on many occasions as it relates to Rule 3 (b) can be a challenge. Let us consider the chicken feed mix.

If the chicken feed mix comprises equal quantities (both by weight and volume) of wheat and oats, all other factors being equal, then neither grain could be said to impart more essentially than the other.

In instances such as this, Rule 3 provides a further solution. That is Rule 3 (c).

3.3.3 General Interpretative Rule 3 (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 3 (c) directs that if the classification cannot be determined by specific description or essential character- if it is not obvious- the goods shall be classified within the last occurring heading applicable to the material or component among those materials or components that equally merit consideration.

In the case of the container of equal quantities of wheat or oats, the materials would be classified separately;

- Wheat: heading 10.01
- Oats: heading 10.04

Since the classification of oats occurs later in the HS than the classification of wheat, by virtue of Rule 3 (c), the classification of the mixture falls within heading 10.04.

There has been criticism towards application of Rule 3 (c) because of its random or arbitrary nature, see (Sharp Corporation of Australia Pty Ltd and Collector of Customs [1195], Full Federal Court).

However, regardless of what has been said, Rule 3 (c) is a valid part of the HS and should be applied where previous Rules have been exhausted. You should go to the extremes of trying to manufacture essential character in order to avoid using this Rule.

Exercise:

Let us consider the classification of a brush, comb and mirror set. There is no one heading that covers this combination.

- Mirror: heading 70.09
- Brush: heading 96.03
- Comb: heading 96.15

By application of Rule 3 (b), the essential character of this set is derived from either the brush or the mirror. In this case, the comb is disregarded. Having disregarded the comb and it is determined that classification cannot be determined by application of Rule 3b since neither the brush nor the mirror can be said to impart greater essentiality over the other, then recourse to Rule 3 (c) is required.

In applying Rule 3 (c) and the comb having been disregarded at Rule 3 (b), the comb is not brought back for consideration. Therefore, in this case although the last occurring classification is heading 96.15, which is the classification of comb, the set is actually classified within heading 96.03.

What this means is that not all the components of a set or composite goods or mixtures need to be considered under Rule 3 (c). Only those that are judged to be inseparable insofar as the essential character argument is concerned ought to be considered under Rule 3 (c).

Another example involves the classification of multifunction machines. Pursuant to Note 3 to Section XVI, composite machines and multifunction machines are to be classified according to the principle function of the machine. The Explanatory Notes instructs that where it is not possible to determine the principle

function, and where the terms of headings and any relevant legal notes do not otherwise require, multifunction machines are to be classified according to Rule 3 (c).

Summary of the Chapter

In this lecture, we have learnt on how to apply GIR 1 to 3. As you already now know, GIR 1 is the most applied Rule together with GIR 6 as over 95% of merchandise can be classified by application of these rules. The application of GIR 2 and 3 may be considered a little complex as it requires the classifier to exercise a personal judgement in determining the classification of commodities presented incomplete or unfinished as he is required to make an assessment on whether the incomplete or unfinished commodities qualify to be treated as complete or incomplete articles. This is what we called "determining essential character" and is usually not a straight forward decision. As we have seen, Rule 3 provides three methods for classifying goods that are for any reason, prima facie, classifiable under two or more headings.

Assignment 3

- a. Determining the essential character of an article is a highly judgmental process as it can be influenced by personal experiences. In relation to GIR 2(a) and 3 (b), and citing relevant jurisprudence, discuss why determining essential character is a subjective affair.
- b. In your own words, discuss how a classifier can maintain objectivity while applying GIR 2 (a) and 3 (b).



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Chapter 4: Application of General Interpretative Rules 4 to 6

Lecture Objectives;

By the end of this lecture, the learner should be able to;

1. Apply GIR 4 in the classification of commodities;
2. Apply GIR 5 in the classification of commodities;
3. Apply GIR 6 in the classification of commodities

4.0 Introduction

In this topic, we shall learn how to apply GIR 4, 5 and 6. Rule 4 and 5 still relates to classification at the heading level while Rule 6 broadens the scope of all the Rules to the subheading level. As you will notice, Rule 4 is rarely used and Rule 5 is distinguished from other Rules in that it does not form part of the linear progression of classification principles but rather it provides stand-alone principles for classifying certain cases, containers and packing materials.

4.1 General Interpretation Rule 4

GIR 4 states that:

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.

This Rule was developed as a safeguard to ensure that new technologies do not make the HS obsolete. Although Rule 4 has existed since the inception of the Nomenclature, discussions regarding its application remain limited. This Rule is rarely applied because most HS Chapters incorporates residual headings, for example, headings 39.26 or 84.79, which cover goods that are not specifically included elsewhere.

Rule 4 directs that if, after recourse through GIR 1 to 3, a classification decision cannot be determined for a certain type of goods, then such goods will be classified in the heading appropriate to the commodity to which those goods are most akin. The Explanatory Notes indicate that in order to classify such goods, it is necessary to compare with similar goods in order to determine the goods to which they are most akin. The goods are classified under the same heading as the goods to which they are most akin.

The way to tackle classification under Rule 4 therefore, is to select a particular commodity with which the subject goods are akin, classify that particular commodity according to the provisions of Rules 1 to 3, then apply the resultant classification to the subject goods.

A dictionary definition of “akin” that best suits the purposes of Rule 4 is “allied in character”. Due to its very subjective nature, consideration of classifications involving the use of Rule 4 has nearly always been confined to international debate between Member Countries of the HSC. The Explanatory Notes acknowledges that kinship can depend on many factors, citing goods description, character, and the purpose of goods as examples of the factors may be considered.

A classic example of application of Rule 4 relates to the *John Martens Co. v. Deputy Minister of National Revenue for Customs and Excise (1993)*, where the Canadian International Trade Tribunal determined that proper tariff classification of certain fishing tackle boxes had to be solved by the application of Rule 4. The Deputy Minister classified the goods under heading 39.26 as articles of plastic; while the appellant claimed they should be classified under heading 42.02 as containers “similar” to those named in that heading. In rendering its decision, the Tribunal referred to the Explanatory Notes to heading 42.02, which indicate that heading 42.02 covers only tool boxes or cases specially shaped or internally fitted to contain particular tools. Similarly, the Explanatory Notes to heading 39.26 indicate that tool boxes not specifically shaped to accommodate particular tools are included within that heading.

In explaining its decision, the Tribunal stated that it was unable to classify the tackle boxes in accordance with Rules 1,2 or 3 and therefore applied Rule 4 by stating that;

“It considers the fishing tackle boxes in issue to be most akin to tool boxes organized into various compartments and not designed to accommodate a particular item, the pursuant to Rule 4, it classifies them as the tool boxes would be classified. As such, tool boxes made of plastic would be classified in heading No. 39.26 so too would the fishing tackle boxes.”

Another more recent example, related to the year 2000 classification dispute which was referred to the Harmonized System Committee for settlement. The HSC used Rule 4 to settle a classification issue in respect to solar-powered barbecues.

The goods were a barbecue that used a built in reflector to direct the rays of the sun onto its cooking plate. The Committee agreed that the goods were correctly classified within heading 73.21, which covered:

Stoves, ranges, grates, cookers, (including those with subsidiary boilers for central heating), barbecues, braziers, gas rings, plate warmers and similar non-electric domestic appliances, and parts thereof, of iron and steel.

The HSC further agreed that the goods were classified within 5-figure subheading 7321.1, which covered:

Cooking appliances and plate warmers:

However, obtaining a 6 figure subheading caused a problem because the structure within subheading 7321.1 read:

- 7321.11 – For gas fuel or for both gas and other fuels
- 7321.12 – For liquid fuel
- 7321.13 – For solid fuel

There was no residual subheading.

To overcome this anomaly, the HSC decided to classify the goods within subheading 7321.11 by virtue of provisions of Rule 4, ruling that the goods were akin to a gas-powered barbecue.

Having decided, the Committee, at the same session, decided to modify the 6-figure subheading structure. The amended structure of heading 73.21 now looks like this:

- 7321.11 – For gas fuel or for both gas and other fuels
- 7321.12 – For liquid fuel

This illustrates that the HSC would rather change the structure of the HS rather than maintain the use of Rule 4 as the reason for a classification decision.

Key point: The message is: Do not use Rule 4

4.2 General Interpretative Rule 5

Rule 5 relates to the classification of cases, containers and packing materials. This Rule directs:

In addition to the foregoing provisions, the following Rules shall apply in respect of the goods referred to therein:

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

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

4.2.1. General Interpretative Rule 5 (a)

Rule 5 (a) relates to the classification of cases that are presented with article for which they are intended. The cases are therefore required to be imported with the article, even though the article and the case may be packed separately for ease of transport. This rule refers to certain cases that are specifically shaped or fitted to contain a specific article.

These cases:

- Are normally sold with the article they are designed to contain
- Keep and protect the article when the article is not in use
- Are of no real use for articles other than those for which they are designed
- Are suitable for long-term use, or at least have durability comparable with the article they are designed to contain. They are not the type of goods that are disposed off, once you have the contents.

This Rule directs that the classifier should classify these cases and containers in the same heading as the articles they are designed to contain, provided they meet the above conditions. Examples of containers that maybe classified under the heading for the article they contain include;

S/No.	Type of container/cases	Heading Number
1.	Camera cases	90.06
2.	Electric shaver cases	85.10
3.	Binocular and telescope cases	90.05
4.	Musical instruments cases, boxes, and bags	92.02
5.	Gun cases	93.03

Please note that if these cases/containers are imported without their contents, they are to be classified according to their own characteristics. When cases/containers are so imported, many of them will be classified within heading 42.02. Those which cannot be classified within heading 42.02 will normally be classified within the headings that relates to the goods in terms of their constituent materials- usually within the residual sub-heading.

It is important to note that Rule 5 (a) does not apply to containers which give the whole its essential character. What does this mean? It means that if the combination of the contents and container is considered to derive its essential character from the container, then the classification of the article will go to that of the container.

Experience has shown that where a container is considered to give the essential character to an entity/article, the decision is usually based on the relative values of the container and its contents.

Explanatory Notes to Rule 5 give the following examples:

- A silver tea caddy containing tea is classified within heading 71.14 rather than in heading 09.02
- A ceramic bowl containing confectionary is classified within heading 69.12 rather than in heading 17.04
- A gold cigarette case containing cigarettes is classified within heading 71.14, rather than 24.02
- A crystal decanter containing a recently distilled whisky is classified within heading 70.13 rather than heading 22.08.

These containers, together with their contents, are considered composite goods that must classified according to Rule 3.

4.2.2 General Interpretative Rule 5 (b)

Rule 5 (b) relates to the classification of packing materials and packing containers of a kind normally used for packing the goods to which they relate. These are the outside containers, for example:

- Crates
- Cardboard boxes
- Poly bags (used to pack shirts)
- All variety of flexible containers, bags, sacks etc.

Rule 5 (b) also covers inner packing materials, for example:

- The loose material used for shock absorbing purposes (foam pellets, felt, scrap textile, etc)
- The cardboard stiffeners
- Cardboard dividers.

The distinction between Rule 5(a) and Rule 5 (b) is that under Rule 5 (a), the cases/containers may be packed separately during importation, the packing materials under Rule 5 (b) must contain the goods

namely, “presented with the goods therein” for such packing materials to qualify for classification with the goods.

It is important to note that the provisions of Rule 5 (b) are not binding when such packing materials or packing containers are clearly suitable for repetitive use. Rule 5 (b) does not apply to goods such as pressurized gas bottles or oil barrels. These goods are clearly for repetitive use, and as such, they are classified in their respective headings. Containers and packing materials that are not designed for repetitive use, but which may be used for other purposes, are to be classified with the goods they contain at the time of importation.

4.3 General Interpretative Rule 6

Interpretation Rule 6 states that:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related Subheading Notes and, mutatis mutandis, to the above Rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

Rule 6 therefore relates to the sub-headings of a heading. It was introduced specifically to ensure uniform classification of goods at the subheading level. Since the HS provides for 5- and 6-figure subheadings, it was decided that there had to be a rule to cover classifications at those levels.

4.3.1. Classification according to the terms of subheadings and subheading notes

Rule 6 directs that classification of goods in subheadings is according to the terms of subheadings and subheading notes. This Rule requires the classifier, once he has selected a 4-figure heading, to examine the terms of subheadings (if applicable) within the selected heading, and take into account any subheading notes.

4.3.2 Classification at Subheading level

According to GIR 6, 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.

The term “*mutatis mutandis*” means with the necessary changes having been made. This means that one is to take the circumstances that are relevant to one particular issue and apply them in total to another issue. Applying that in Rule 6, the term *mutatis mutandis* is directing the classifier to read any reference to the word “headings” in the other Interpretation Rules as a reference to “subheadings”.

4.3.3 Comparability of the Subheadings

The GIR 6 Rule specifies that for classification purpose, only subheadings at the same level are comparable; This means that, within a single heading the choice of one dash subheading must be made only in comparison with the texts of the competing one dash subheadings; similarly, the selection of the appropriate two dash subheading, where necessary may be made only on the basis of the texts of subdivisions within the applicable one dash subheading.

This means that a 5 figure subheading shall only be compared to another 5- figure subheading within the same heading. It cannot be compared with a 6- figure subheading. A 6- figure subheading may only be compared to another 6- figure subheading.

Example

Heading	Subheading	Description
20.09		Fruit juice and vegetable juices
	2009.1	- Orange juice
	2009.11	-- Frozen
	2009.12	-- Not frozen of Brix value not exceeding 20
	2009.19	-- Other
	2009.2	- Grapefruit (including pomelo)
	2009.21	-- Of Brix value not exceeding 20
	2009.29	-- Other

Note: Brackets in the original image indicate that subheadings 2009.12, 2009.19, 2009.21, and 2009.29 are 'Comparable', while 2009.2 is 'Not comparable'.

A product must first be classified in its appropriate 4 digits heading, then to its appropriate one- dash subheading within that heading and only thereafter to its appropriate two-dash subheading within the predetermined one-dash subheading.

It should be noted that at each step in the classification process, no account is taken of the terms of any lower-level subdivisions. This principle applies without exception throughout the HS.

4.3.4 Relative legal notes apply, unless the context otherwise requires

The last sentence of Rule 6 directs that for the purposes of this Rule the relative Section and Chapter Notes also apply, unless the context otherwise requires. What this means is that when determining a classification below heading level, the terms of section and chapter notes, as well as information at subheading level, must be considered. However, precedence is to be given to the terms of the subheadings and any subheading notes, should there be any conflict between them and the section and chapter notes.

Summary of the Chapter

This brings us to the end of the key topics on the application of the General Interpretative Rules. As we have seen, these Rules form the legal basis for the classification process and were introduced to ensure there is uniform application of the Harmonized System nomenclature throughout. The Rules were first introduced in the Brussels Tariff Nomenclature (BTN) and were retained in the HS after its adoption in June 1983.

Chapter 5: Identification and Application of Legal Notes

Learning Objectives

By the end of this lecture, the learner should be able to;

- a. Identify seven categories of legal notes;
- b. Apply legal notes in the classification of goods.

5.0 Introduction

These are legal provisions to be referred to during classification of goods. They guide users during classification of goods. The notes form an integral part of the HS and appear after the titles of Sections and Chapters in the nomenclature. There are three types of Notes that is; Section Notes, Chapter Notes and Subheading Notes. Section and Chapter Notes clarify the scopes of Section, Chapter and heading (within 4-digit level). Subheading Notes only clarify the scope of subheading for the purpose of classification at the subheading level (within 6-digit). In this topic, we shall have a look at how to identify these notes and how the notes are applied in the classification process.

These are legal provisions that guide the classification at the subheading level. They may appear after Chapter notes in the nomenclature

5.1 Functions of Legal Notes

Legal Notes establish as precisely as possible the scope and limits of certain Sections, Chapters and Headings or define or give classification guidance to certain terms or expressions. These notes derive their legality from GIR 1 and 6. The legal notes can be grouped into seven categories:

- (a) Illustrative Notes
 - i. Exhaustive lists
 - ii. Non-exhaustive lists
- (b) Exclusion Notes
- (c) Definition Notes
- (d) Classification Notes
- (e) Limitation Notes
- (f) Preference Notes
- (g) Constructive Notes

Let us look at each of these notes;

5.1.1. Illustrative Notes

These Notes demonstrate an exhaustive or non-exhaustive list of goods falling in a heading of a group of headings. Illustrative Notes can further be divided into exhaustive and non-exhaustive Notes.

(i) **Exhaustive Notes**

They exemplify an exhaustive list of goods falling in a heading or a group of headings.

Examples:

- Note 3 to Chapter 39 gives the exhaustive list of goods falling in headings 39.01 to 39.11 (synthetic polymers in primary forms)
- Note 11 to Chapter 39 enumerate ALL articles which are to be classified in heading 39.25 (e.g. builders' ware of plastic which includes reservoirs, tanks, of a capacity exceeding 300 liters, doors, windows and their frames). The Chapter Note provides the definite scope of Heading 39.25.
- Note 7 to Chapter 90 describe all the goods falling in heading 90.32 (Automatic regulating or controlling instruments and apparatus).

For example, the texts of Note 11 to Chapter 39 reads like this;

“Heading 39.25 applies only to the following articles, not being products covered by any of the earlier headings of sub-Chapter II:

- a) Reservoirs, tanks (including septic tanks), vats and similar containers, of a capacity exceeding 300 l;
- b) Structural elements used, for example, in floors, walls or partitions, ceilings or roofs;
- c) Gutters and fittings thereof;
- d) Doors, windows and their frames and thresholds for doors;
- e) Balconies, balustrades, fencing, gates and similar barriers;
- f) Shutters, blinds (including Venetian blinds) and similar articles and and parts and fittings thereof;
- g) Large-scale shelving for assembly and permanent installation, for example, in shops, workshops, warehouses;
- h) Ornamental architectural features, for example, flutings, cupolas, dovecotes; and
- i) (ij) Fittings and mountings intended for permanent installation in or on doors, windows, staircases, walls or other parts of buildings, for example, knobs, handles, hooks, brackets, towel rails, switch-plates and other protective plates.”

In essence, if an article does not appear in the list within the texts of this note, then that article is automatically excluded from that heading 39.25. When they appear, exhaustive notes provide an absolute list of goods to be classified in a particular heading or groups of headings.

ii. Non-Exhaustive Legal Notes

These are Notes which point out a non-exhaustive list of typical goods falling in a heading. It should be noted that those non-exhaustive lists merely give examples of products to be covered by particular headings.

Examples:

- Note 4 to Chapter 15 lists some examples of products falling in heading 15.22.
- Note 4 to Chapter 25 give a list of goods, inter alia, included in heading 25.30 (Mineral substances and products).
- Note 11 to Chapter 48 states that heading 48.23 (Other papers) applies, inter alia, to the products mentioned in the Note

- Note 2 to Chapter 86 gives a list of goods, inter alia, falling in heading 86.07 (Part of railway, etc.) the list given is not exhaustive.

Learning Activity 5.1: Identify five exhaustive notes and list them down

5.1.2. Exclusion Notes

These legal Notes are designed to avoid misclassification arising when goods are classifiable under two or more headings by application of only the provisions of terms of headings. Therefore, they exclude some articles from a particular heading. These Notes give an inventory of certain articles that must not be included in a particular Section.

Examples:

Section Note

Legal Note 1 to Section XI and Note 1 to Section XV provide the descriptions which list certain articles that must be excluded from the Chapters of those Sections.

Chapter Notes

These Notes denote goods/commodities that should be excluded from a particular heading in favor of another heading for example;

- Note 1 to Chapter 15 excludes certain goods like pig fat (heading 02.09), cocoa butter (heading 18.04).
- Note 2 to Chapter 10 excludes sweet corn from heading 10.05 (Maize corn).
- Note 5 to Chapter 59 excludes certain fabrics from heading 59.07.

Learning Activity 5.2: Identify five Notes of exclusion and list them down.

5.1.3. Definition Notes

These Notes ascertain the meanings of particular terms or expressions within a Chapter or a Section.

Examples

- Note 1 to Section II defines the term “pellets” mentioned in that Section.
- Note 5 to Section XVI give the meaning of the term “machine” used in Notes 1 to 4 of that Section.
- Note 2 to Chapter 44 defines the meaning of the expression “densified wood” applicable throughout that Chapter.

Learning Activity 5.3: Identify five definition notes and list them down.

5.1.4. Classification Notes

These Notes establish the class of certain goods which are clearly classifiable under two or more headings. They instruct users how to classify such commodities for examples;

- Note 1 to Section VII establishes the classification of certain goods put up in sets consisting of two or more separate constituents.
- Note 4 to Section XVII establishes the classification of “amphibious motor vehicles”

Learning Activity 5.4: Identify three classification notes.

5.1.5. Limitation Notes

These legal Notes give lists of classifiable goods or articles, stipulate requirements for classification, or clarify the scopes of headings. The limitation Notes basically include the expressions such as: “... apply only to ...” or “... cover only ...” or “does not cover...” in those texts.

Examples:

Note 3 to Chapter 39 (Heading applies only to ...) and Note 1 to Chapter 82 (This chapter covers only.....) Note 1 to section IX (This section does not cover.....)

5.1.6. Preference Notes

These legal Notes give priority to one or several headings over one or several other headings for examples;

- Note 2 to Chapter 84 stipulate that headings 84.01 to 84.24 and 84.86 take preference over headings 84.25 to 84.80.
- Note 5 to Chapter 90 gives preference to heading 90.31 over heading 90.13 for certain measuring or checking optical instruments, appliances or machines.
- Note 3 to Chapter 25 gives preference to heading 25.17 over any other heading of that Chapter as to the products which could potentially be classified in that heading.
- Note 2 to Section VI gives certain headings preference over all other headings throughout the Nomenclature, in respect of products put up in measured dozes or for retail sale.

5.1.7. Constructive Notes

These legal notes have expressions like “... to be regarded as ...” or “applies only...” in those texts, for example; Note 3 to Chapter 12 (the seeds listed in the Note are to be regarded as “seeds of a kind used for sowing”).

Summary of the Chapter

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Legal Notes are instrumental in the classification process and they must be consulted before a choice of definitive chapter, heading or subheading is made. As we have seen, legal notes together with the General Interpretative Rules provide the classification principles and give the legal backing to classification decisions. Before, you conclude that a particular article is classifiable under a certain chapter, heading or a subheading, you must be certain that there are no legal notes that may prohibit that article from being classified there. The 2017 HS Edition contains 386 legal notes and 63 subheading notes.

Assignment 5

Review Chapter 1 to 30 and identify the following;

- a. Five Notes of Exclusion
- b. Five Notes of Limitation



Kenya School of Revenue Administration

Chapter 6: Detailed Review of Headings and Subheadings of the WCO Harmonized System Nomenclature

Lecture objectives

By the end of this lecture, the student should be able to;

1. Define a heading
2. Classify goods up-to the heading level of the WCO HS;
3. Apply punctuation marks in the classification of goods;
4. Understand how headings are sub-divided;
5. Identify residual headings in HS.

6.0 Introduction

Headings form an important structure of the harmonized system. They appear after each chapter. The heading number is denoted by four digit codes. The first two digits show which chapter a commodity belongs to and the last two digits indicate position of the heading in the Chapter. A heading may further be subdivided into two or more sub-headings, where deemed appropriate, individualizing narrower categories of commodities.

1,224 Headings (4 digits)

5,212 Subheadings (6 digits)

6.1 Heading List

The HS Nomenclature does not incorporate a Chapter/Section list in its structure; neither does it have a listing of headings within each chapter. However, some customs administrations such as Australia, for example, have incorporated heading lists within their national tariff structures.

Together with the Chapter/Section list, the heading list, or Contents Tables, as they are referred to in Australia, is a valuable means of overcoming the daunting size of the Nomenclature. They enable the classifier to quickly get into the document.

6.2 Number of Headings in a Chapter

The number of headings may also vary from Chapter to Chapter, for example, Chapter 13 has two headings while Chapter 84 has 87 headings.

6.2.1 Headings may be said to;

- Provide a more specific grouping of goods and approximate description
- Consist of a four-digit number (01.04)
- Describes the commodity (terms of the heading)

6.2.2 Subdivision of a heading

Headings may be further subdivided;

- into subheadings, where deemed appropriate, individualizing narrower categories of commodities.
- In the case that a heading is not further subdivided, two zeros are added to the four-digit code number, for example, Heading 84.44. whose subheading is therefore 8444.00

Learning activity 6.1. Identify and list down five headings which are not subdivided and are themselves considered as subheadings.

6.3.2 Arrangement of Headings in the HS Nomenclature

Arrangement of headings in a Chapter may be done to show the degree of processing of goods within that Chapter. Let us look at this example;

Chapter 79;

- 79.01,79.02 Raw material
- 79.03, 79.04,79.05 Semi finished and finished
- 79.07 Finished articles e.g. Zinc tubes

6.4 Terms of headings

These are descriptions of commodities in the HS at four-digit level. Headings having mutually related scopes are grouped into a Chapter, and the relevant Chapters are grouped into a Section.

6.4.1 Features and Style of the Terms of Headings

There is a difference between punctuation marks which are used in a normal text and the ones used in the HS.

6.4.2 Terms with broad meanings

Some of the terms of headings refer to a specific product or article, for example, heading 04.09 Natural Honey, heading 12.03: Copra, heading 96.04: Hand sieves and hand riddles

Terms of headings having broad meanings, for example, heading 39.26 “Other articles of Plastics”, is a basket heading of Chapter 39 (for articles of plastics), if those articles are not referred to in other headings.

6.4.3 Application of Punctuation Marks in the HS Nomenclature

Terms of heading with semi-colon (;)

Some of heading texts include independent items which are divided by semi-colon. This means that the semi-colon has two functions;

- As a full stop
- It separates a heading into parts of different scopes.

For example, heading 42.02 reads:

“1)Trunks, suit-cases, vanity cases, executive cases, brief cases, school satchels, spectacle cases, binoculars cases, camera cases, gun cases, holsters and similar containers; 2) travelling bags, insulated food or beverages bags, toilet bags, rucksacks, handbags, shopping bags, wallets, purses, map cases, jewellery boxes, powder boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or of paperboard, or wholly or mainly covered with such materials or paper”

These commodities listed before the semi-colon in the terms of heading (part 1 above) have no limitation regarding their material content. However, on the other hand, the later ones after the semi-colon in the terms of heading (part 2 above) must be made of ***“leather, of composition leather, of sheeting of plastics, of textile materials, of vulcanized fibre or paperboard, or wholly or mainly covered with such materials or paper”***.

Terms of Heading with comma(s) (,)

In the HS, commas are distributive. This means that in the terms of heading, a description after the last comma applies to all the goods previously mentioned.

For example, heading 69.11 reads:

“Tableware, kitchenware, other household articles and toilet articles, of porcelain or china”

This expression implies that the tableware and kitchenware must be of porcelain or china and that other household articles and toilet articles must also be of porcelain or china.

6.5 HS Review at heading level

Amendments resulted from changes in international trade patterns. Headings 69.07 (unglazed ceramic products) and 69.08 (glazed ceramic products) were merged to take account of the fact that the main subheadings within these headings concern products which are essentially no longer manufactured, and the industry and trade no longer make a distinction between unglazed and glazed ceramic products, whilst new products with a very high trade volume are classified under subheadings 6907.90 and 6908.90 ("Other").

Exercise 1

Please locate the appropriate headings (4 figure classifications) for:

S/No.	Product Name	Heading Number
1.	Live domestic cows	
2	Shampoo	
3	Men’s knitted trousers	
4	Portland Cement	
5	Palm oil	
6	Keys, for padlocks	
7	Buoys	
8	Marmalade	

9	Bottle of vodka	
10	Serviettes, of paper	

6.5.1 Residual Headings (“Other”)

Many Chapters within the HS contain what is referred to as the “residual headings” which exist to accommodate the vast array of other products that are traded to a lesser extent and do not merit individual recognition within the Nomenclature.

Examples

Heading 21.06 covers: “Food preparations not elsewhere specified or included”

Heading 44.21 covers: “Other articles of wood”

Heading 84.79 covers: “Machines and mechanical appliances having individual functions, not specified or included elsewhere in the Chapter”

Residual headings are an integral part of the Nomenclature and they have the same status, and are therefore available for consideration as any other classification within the document. Classifiers should not attempt to fit goods in the preceding headings at all costs, with a view to avoiding classifying goods within these “other/residual” headings.

Classification of goods within residual headings is dependent upon those goods not being classified in headings that more specifically describe goods.

The correct procedure to classify goods in residual headings is not to compare residual headings with other more specific headings but rather to ask the question:

“Are goods classified in the more specific heading?”

If the answer is “yes”, the goods are so classified, and there is no need to proceed to the residual heading. If the answer is “no”, the goods are classified within the residual heading.

NOTE: The Harmonized System Committee adopts a threshold method to determine whether a commodity should be described in its own right in the HS. For a commodity to merit a heading status, its value of trade is to exceed USD 100 Million annually. For a commodity to merit a subheading status, its value of trade should exceed USD50 million annually.

Headings form an important part of the structure of the HS.

Learning Activity 6.2:

Classify to the heading level the following;

- 1.1. Live domestic cow
- 1.2. Dog shampoo
- 1.3. Men’s knitted trousers

- 1.4. Portland cement
- 1.5. Palm oil

An interesting issue in respect of heading 05.11 concerning classification of cadaver was addressed by Harmonized System Committee (HSC) in the year 2000. During the discussion, it was argued that these human remains could be classified in this heading as they could answer to the description of “other animal products”. However, the HSC decided that in the interest of human dignity, cadavers were not to be classified in any heading of the Harmonized System Nomenclature.

6.6 Subheadings of the Harmonized System Nomenclature

The HS Subheading number is denoted by six digit codes. A heading may further be subdivided into two or more sub-headings, where deemed appropriate, individualizing narrower categories of commodities.

- 21 Sections
- 96 Chapters (2 digits)
- 1224 Headings (4 digits)
- 5212 headings (6 digits)**

6.6.1 Structure of the Subheading

Subheadings which are preceded with one or two dashes as the case may be are identified with an additional two-digit numerical code. The one-dash subheadings are shown as five digit numerical codes which are generated by adding one digit to the heading.

One-dash subheading may be further sub-divided into two-dash subheadings, which are presented as six digit numerical codes created by adding one more digit after their parental one-dash subheading’s code.

The one-dash headings and two-dash subheadings are also identified by recognizing the dashes (-) and (-) placed before their terms of headings respectively. In the case a heading is not further subdivided, two zeros are added after the four digit codes.

The EAC-CET uses eight digit codes at its regional level.

Example:

Heading 84.44 is not subdivided and its subheading therefore has two zeros after the four digits, as 8444.00. In the EAC-CET, two more zeros are added as the 7th and 8th digits, 8444.00.00.

a. One-dash terms of subheading with a colon (:)

When a colon appears at the end of one-dash subheading text, it indicates that the one dash subheading is further divided into two-dash subheadings.

Example:

Heading 01.03		Live swine
0103.10	-	Pure bred breeding animals
	-	Other:
0103.91	--	Weighing less than 50kg
0103.92	--	Weighing 50kg or more

The one dash subheading text (pure bred breeding animals) does not have a colon (:) and therefore not further subdivided. On the other hand, the one dash subheading (Other) has a colon, meaning it is further subdivided into weighing less than 50kg and those weighing 50kgs or more.

b. Classification at Subheading level

According to GIR 6, 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.

The term “mutatis mutandis” means with the necessary changes having been made. This means that one is to take the circumstances that are relevant to one particular issue and apply them in total to another issue.

A product must first be classified in its appropriate 4 digits heading, then to its appropriate one- dash subheading within that heading and only thereafter to its appropriate two-dash subheading within the predetermined one-dash subheading.

It should be noted that at each step in the classification process, no account is taken of the terms of any lower-level subdivisions. This principle applies without exception throughout the HS.

Examples of headings divided into sub-headings

Front-end shovel loaders

Front-end shovel loaders are classified in HS code 8429.51

The following steps were followed to reach at the above classification

- i. The article falls under Chapter 84
- ii. Terms of heading 84.29 has the following description;
Self-propelled bulldozers, angle dozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers.
- iii. At one (-) dash subheading, front-end shovel loader is under subheading 8429.5 comprising of:
Mechanical shovels, excavators and shovel loaders:
- iv. At two (--) dash subheading, front end shovel loader is specifically classified under HS code 8429.51—*Front-end shovel loaders.*

Explanatory Notes states that:

- i. Rule 1 to 5 govern, mutatis mutandis, classification at subheading levels within the same heading;
- ii. For the purposes of Rule 6, the following expressions have the meanings hereby assigned to them:
 - a. "Subheading at the same level" one dash subheadings (level 1) or two dash subheadings (level 2)

Thus, when considering the relative merits of two or more one-dash subheadings within a single heading in the context of Rule 3 (a), their specificity or kinship in relation to given article is to be assessed solely on the basis of the texts of the competing one-dash subheadings.

When one dash subheading that is most specific has been chosen and when that subheading is itself subdivided, then and only then, shall the texts of the two dash subheadings be taken into consideration for determining which two-dash subheading should be selected.

- b. "Unless the context otherwise requires": Except where Section or Chapter Notes are incompatible with subheading texts or Subheading Notes.

Example:

An example of inconsistency between a Chapter Note and a Subheading Note occurs in Chapter 71 where the scope assigned to the term "platinum" in the Chapter Note 4 (B) differs from that assigned to the term "platinum" in Subheading Note 2.

Note 4 (B) to Chapter 71 reads as follows: "The expression platinum means platinum, iridium, osmium, palladium, rhodium and ruthenium"

On the other hand, Subheading Note 2 of Chapter 71 stipulates as follows; notwithstanding the provisions of Chapter Note 4B, for the purpose of subheading 7110.11 and 7110.19, the expression "platinum" does not include iridium, osmium, palladium, rhodium and ruthenium".

For the purposes of interpreting subheadings 7110.11 and 7110.19, therefore, Subheading Note 2 applies and Chapter Note 4B is to be disregarded.

- iii. The scope of a two-dash subheading shall not extend beyond that of the one-dash subheading to which the two-dash subheading belongs; and the scope of a one-dash subheading shall not extend beyond that of the heading to which the one-dash subheading belongs.

c. Residual Subheadings

Just as there are residual headings, at or near, the end of most chapters, there is normally a "catch all" subheading which reads "Other". Classification within residual subheading is dependent upon the goods not being classified within a previous subheading.

d. The Dash System

In an effort to assist in the comparison of subheadings, the HS uses a system of dashes to differentiate between 5- and 6- figure subheadings. The dash system is a core feature of the HS.

The procedure for using the dash system when considering subheadings within the HS structure is:

- Within a heading, only compare one-dash subheadings
- When a 5-figure subheading has been determined, look to see if it is further subdivided into 6-figure subheadings (signified by two dashes)
- If so, then compare only the two- dash subheadings that are within the structure of the selected one-dash subheading.

To work through this principle, let's consider the subheading structure for heading **95.06**. Consider the classification of a baseball bat. A baseball bat is classified within heading 95.06. To determine the correct 6-figure classification, the classifier examines all the one-dash subheadings, namely: 9506.1, 9506.2, 9506.3, 9506.40, 9506.5, 9506.6, 9506.70, 9506.9.

The only option is subheading 9506.9. Having established the one-dash (5-figure) subheading, the next step is to examine the two-dash subheadings within the five-figure subheadings.

There are only two, two-dash subheadings within subheading 9506.9. As the baseball is not an article or equipment "for general physical exercise, gymnastics or athletics", the answer is subheading **9506.99**

i. The Dash system- not used by all countries

Not all HS Convention Members States use the dash system within their national tariff documents. For example, the US Customs administration uses a series of indentations to distinguish between their subheadings hierarchy, both within the 5- and 6- figure subheadings and the national part of their tariff structure.



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Summary of the Chapter

Headings form an important structure of the Harmonized System Nomenclature. Classification at the heading level is usually governed by relevant GIRs and legal notes. In the classification process, a classifier must first identify an appropriate heading before moving to the subheading level within the same heading. As we have already seen, headings are denoted by four-digit codes, which are followed by texts, referred to as the terms of headings. These texts describe commodities that are subject for classification within the heading. A number of classification errors occur when classifiers fail to pay attention to punctuation marks within the texts of a heading. It is therefore important to pay keen attention in the use of punctuation within the HS Nomenclature. The classification at subheading level must have a 6-digit code. Classification within subheadings is done according to the terms of the subheadings and the related Subheading Notes. GIR 6 relates to classification at subheading level. We have seen that GIR 6 specifies that only subheadings of the same level are comparable. Within a single heading, a choice of a one-dash subheading must be made only on the basis of the texts of the competing one-dash subheadings. Similarly, a selection of the appropriate two-dash subheading must be made only on the basis of the texts of the competing two-dash subheadings within the applicable one-dash subheadings.

Assignment 6

Classify to the subheading level the following items;

- 6.5. Keys for padlocks
- 6.6. Buys
- 6.7. Marmalade
- 6.8. Bottle of vodka
- 6.9. Serviettes of paper

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Chapter 7: Sections and Chapters of the Harmonized System Nomenclature

Learning Objectives;

By the end of this lecture, the student should be able to;

1. Identify types of goods classified in Chapters 1 to 24;
2. Properly classify these types of goods by applying appropriate GIRs and legal notes;
3. Identify goods which are excluded from these Chapters by virtue of legal notes.

7.0 Introduction

In this lecture, we shall have a look at the types of goods that are classified in Sections I to XI, which comprises Chapters 1 to 63. The goods classified in this Sections/Chapters are categorized into four sectors, that is, Agricultural and Food (Chapters 1-24), Chemicals (Chapters 25-40), Leather and Paper (Chapters 41-49) and Textiles (Chapters 50-63). In this lecture, we shall focus on these four sectors by applying relevant GIRs and legal notes to identify and classify these goods.

7.1 Agricultural and Food Chapters Sector

Sections I to IV relates to articles which may be grouped into either agricultural or food products, including wild animals. These Sections are made up of 24 Chapters with Chapter 1 being reserved for classification of live animals, while Chapters 2 to 14 cover vegetable products.

7.1.1 Section I: Live Animals

Section I covers, with certain exceptions, all live animals and products of animal origin which have not been processed or have been processed to a limited extent only. The expression “limited extent” means the products may undergo simple processes such as boiling, steaming, washing and smoking. **For example: boiled or smoked beef.** The boiling and steaming referred to above excludes cooking through boiling or steaming.

A young animal is classified in the same heading or sub-heading as a grown one unless the context otherwise requires. This Section is divided into 5 Chapters.

Some of the products classified in this section includes; horses, buffalo, cattle, swine, sheep, goats, poultry and birds, etc.

Examples:

S/No.	Description	Tariff No.
1.	Live turkey weighing not more than 185g	0105.12.00
2.	Live falcon	0106.31.00
3.	Fresh cow tongue	0206.21.00

4.	Salted meat offal of snake	0210.93.00
5.	Live Nile perch	0301.11.00

Exercise

In which heading (4 digit) would you classify a live bear that is part of a travelling circus?

Answer

GIR 1 states in part “For legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes”. Note 1 (C) to Chapter I stipulates that Chapter I does not cover animals of heading 95.08. The terms of heading 95.08 reads in part “Roundabouttravelling circuses and travelling menageries”

Therefore, by application of Rule 1, a bear that is part of a travelling circus is classified in heading 95.08.

7.1.2. Section II: - Vegetable products (Chapters 6-14)

This Section covers all living plants, edible vegetables and certain roots and tubers, edible fruits and nuts, coffee, tea, spices, products of the milling industry, oil seeds etc. This Section cover Chapters 6-14, which are all of the chapters that cover a genus of goods that are vegetable products.

Chapter 6 covers live plants and trees used by gardeners and the Chapter does not, according to Note 1, cover potatoes, onions, garlic as these products are classified in Chapter 7. Some of the products classified here include, cut flowers, bulbs, tubers, trees and shrubs that bear edible fruits. Inedible nuts or fruits are not classified under Chapter 8. All edible fruits and nuts, citrus or melon fruits are classified in this Chapter.

Note 1 (b) to Chapter 9 directs that mixtures of two or more of the products of different headings are to be classified in heading 09.10, subheading 0910.91.00. According to Note 2 to Chapter 10, sweet corn is classified under Chapter 7 and not Chapter 10 which is used to classify cereals. Further, Note 2 to Chapter 7 identifies sweet corn as vegetable.

Examples of articles classified in Section II are;

S/No.	Description	Tariff Code
1.	Fresh potatoes	0701.90.00
2.	Chilled tomatoes	0702.00.00
3.	Shelled Brazil nuts	0801.21.00

7.1.3. Section III: - Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes.

This Section consist a single Chapter, chapter 15. This Section covers animal or vegetable fats and oils and products derived from prepared fats, waxes. This section does not cover pig or poultry fat of heading 02.09 which is covered under Chapter 2. The chapter further does not cover cocoa butter, fat or oil as these products are covered in Chapter 18. Note 1 (a) to (f) to Chapter 15 enumerates some products which are excluded from the Chapter. According to Note 1 (c), edible preparations containing by weight more than 15% of the products of heading 04.05, are excluded from this Chapter and they

should generally be classified in Chapter 21. Some of the products covered here include; margarine, glycerol, sunflower oil etc.

Learning activity 7.1: Identify and list down the products targeted by Note 1 (c).

7.1.4. Section IV: Prepared food stuffs; beverages, spirits and vinegar; tobacco and manufactured tobacco substitutes.

This Section covers Chapters 16-24 as presented below;

Section IV	Chapter 16 Preparations of meat, of fish or of crustaceans, molluscs or other aquatic invertebrates	Chapter 17 Sugars and sugar confectionery	Chapter 18 Cocoa and cocoa preparations	Chapter 19 Preparations of cereals, flour, starch or milk; pastrycooks' products
	Chapter 20 Preparations of vegetables, fruit, nuts or other parts of plants	Chapter 21 Miscellaneous edible preparations	Chapter 22 Beverages, spirits and vinegar	Chapter 23 Residues and waste from the food industries; prepared animal fodder
				Chapter 24 Tobacco and manufactured tobacco substitutes

Section IV generally covers products of animal or vegetable origin which have been processed to an extent beyond that allowed in Section I or II.

Note 1 to Section IV defines the term “pellets” as products which have been agglomerated either directly by compression or by the addition of a binder in a proportion not exceeding 3% by weight.

Chapter 16 covers preparations of meat, fish, etc. (of Chapters 2 and 3)

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Food preparations fall in this Chapter provided that they contain more than 20% by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof. In cases where the preparation contains two or more of the products mentioned above, it is classified in the heading of Chapter 16 corresponding to the component or components which predominate by weight.

Learning Activity 7.1. Question: Is a leg of lamb in a sauce of wine, soya, salt and seasoning classifiable in Chapter 16?

Answer: Yes, in heading 16.02

Exercise;

How would you classify a product which contains :

- 10% chicken meat
- 12% liver sausage
- 38% potatoes
- 40% beans

Answer: Heading 16.01

Chapter 17 covers sugars, sugar syrup, artificial honey, caramel, molasses resulting from the extraction or refining of sugar and sugar confectionery. However, according to Chapter Note 1, the following articles are excluded from Chapter 17. They include;

- Natural honey (heading 04.09)
- Sugar confectionery containing cocoa (heading 18.06)
- Chemically pure sugars (other than sucrose, lactose, maltose, glucose and fructose) or other products of heading 29.40
- Medicaments containing sugar (Chapter 30)
- Sweetened forage (heading 23.09)
- Sweetened food preparations (Chapters 19, 20, 21 or 22)

Chapter 17 covers chemically pure sucrose, lactose, maltose, glucose and fructose. White chocolate is classifiable in heading 17.04 (sugar confectionery). Liquorice extract, containing more than 10% by weight of sucrose is classified in heading 17.04; containing less than 10%: heading 13.02. When put up as sugar confectionery, however, liquorice extract falls in heading 17.04 irrespective of the proportion of sugar

Chapter 18 covers Cocoa (including cocoa beans) in all forms, Cocoa butter, fat and oil and Preparations containing cocoa, except those mentioned in Chapter Note 1.

Exercise

Is the following product classifiable in Chapter 18? It contains : - sugar (13%) - peanuts (15%) - raisins (10%) - dried apricots (10%) - dried peaches (12%) - dried pears (9%) - gelatine (5%) - hazelnuts (14%) - dark chocolate (10%) - other (2%) This product is used as confectionery.

Answer: Yes, in heading 18.06 (see heading text (containing cocoa in any proportion)).

Chapter 19 covers preparations which are made either directly from the cereals of Chapter 10, from the products of Chapter 11 or from food flour, meal and powder of vegetable origin of other Chapters or from the goods of headings 04.01 to 04.04. This Chapter also covers pastrycooks' products and biscuits, even when not containing flour, starch or other cereal products (e.g., meringues consisting of egg white and sugar).

What does the term "flour" and "meal" mean? Read Note 2 (b) to Chapter 19.

Chapter 20 covers vegetables, fruit, nuts or other parts of plants prepared or preserved by processes not specified in Chapter 7, 8 or 11. According to Note 6 to Chapter 20 in respect to heading 20.09, the expression "juices, unfermented and not containing added spirit" means juices of an alcoholic strength by volume (see Note 2 to Chapter 22) not exceeding 0.5% vol.

The main preparations of Chapter 21 are :

- Preparations of coffee, tea or maté
- Roasted coffee substitutes
- Yeasts and prepared baking powder
- Sauces and preparations therefore
- Mixed condiments and mixed seasonings
- Mustard flour and meal prepared mustard
- Soups and broths and preparations therefore
- Homogenised composite food preparations
- Ice cream and other edible ice

Chapter 21 also covers food preparations, not classified elsewhere in the Nomenclature. This Chapter is usually referred to as the basket Chapter for food preparations.

According to Note 1 to Chapter 21, the following products are excluded from this Chapter:

- Mixed vegetables of heading 07.12;
- Roasted coffee substitutes containing coffee in any proportion (heading 09.01);
- Flavoured tea (heading 09.02);
- Spices or other products of headings. 09.04 to 09.10;
- Food preparations, other than the products described in heading 21.03 or 21.04, containing more than 20% by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof (Chapter 16);
- Yeast put up as a medicament or other products of heading 30.03 or 30.04; or
- Prepared enzymes of heading 35.07.

Chapter 22 covers beverages, sprits and vinegar. In accordance with Note 2 to Chapter 22, the "alcoholic strength by volume" shall be determined at a temperature of 20 °C. Further, Note 3 to Chapter 22 defines the term "non-alcoholic beverages" as beverages of an alcoholic strength by volume not exceeding 0.5% vol. Alcoholic beverages are classified in headings. 22.03 to 22.06 or heading 22.08 as appropriate.

According to subheading Note 1, with respect to subheading 2204.10, the expression "sparkling wine" means wine which, when kept at a temperature of 20 °C in closed containers, has an excess pressure of not less than 3 bars.

Chapter 23 covers various residues and wastes derived from vegetable materials, Certain products of animal origin. Heading 23.09 includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing. Heading 23.09 is the basket heading of Chapter 23.

Chapter 24 covers tobacco in all forms, manufactured tobacco substitutes, tobacco extracts and essences. This Chapter does not cover the following items;

- Medicinal cigarettes (Chapter 30)
- Living tobacco-plants (Chapter 6)
- Cannabis (heading 12.11)
- Nicotine (heading 29.39)
- Cigarettes to discourage smoking

Exercise;

Are tobacco plants, which are still growing in soil classifiable in Chapter 24 or Chapter 6?

Answer: Chapter 6, heading 06.02

Summary of the Chapter

In this Chapter, we have looked at how to identify and classify goods found in Chapters 1-24, otherwise referred to as the Agriculture and Food Sector. While classifying these products, it is always important to ensure that you review relevant legal notes, as the application of these notes together with the GIRs is required to be able to properly classify these products.

Assignment 7

What is the proper HS classification of a beverage that is marketed as “wine” but is in fact a mixture of rum and grape juice and has an alcoholic strength of more than 0.5% vol.? Justify your answer.

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Chapter 8: Mineral Products

Learning objectives

1. Identify types of goods classified in Chapters 25 to 27;
2. Properly classify these types of goods by applying appropriate GIRs and legal notes;
3. Identify goods which are excluded from these Chapters by virtue of legal notes.

8.0 Introduction

This Section covers non-metal and metal minerals, ores, mineral fuels, mineral oils and other mineral products. The Section is in principle restricted to low processed ores. It does not include high processed minerals. Petroleum products are typically classified under this Section.

There are only three Chapters in this Section divided as follows:

- Chapter 25: Salt, sulphur, earth and stone, plastering minerals, lime and cement
- Chapter 26: Ores, slag and ash
- Chapter 27: Mineral fuels, mineral oils and their distillation products, bituminous substances, mineral waxes

Products further worked or processed are classified in later Sections, for example:

- Chapter 25 generally Section XIII
- Chapter 26 generally Section XV
- Chapter 27 Generally Sections VI and VII

8.1 Chapter 25: Salt, Sulphur, Earth stones; plastering material, lime and cement.

This covers only products in the crude state or very roughly processed. Even though this Chapter covers substances which are naturally occurring on the earth, it does not cover precious or semi-precious stones. These stones are excluded to Chapter 71 Section IV. Note, in particular, that heading 25.17 has priority over any other heading of the Chapter. It is important to note that the following articles are excluded from this Chapter by virtue of Note 2 to Chapter 25;

- Certain sulphurs, e.g., sublimed, precipitated and colloidal sulphur (heading 28.02)
- Certain earth colours of heading 28.21
- Setts, curbstones and flagstones of heading 68.01

Exercise;

Where would you classify sulphur put up for retail sale as medicament?

Answer: Section VI Chapter 30: Pharmaceutical products.

8.2 Chapter 26 covers ores, slag and ash.

These products can be divided into two broad categories as follows;

- Metallic ores (including radioactive ores) and concentrates (headings 26.01 to 26.17)
- Residues derived from the working of metallic ores and concentrates (headings 26.18 to 26.21)

Except where the context otherwise requires, ores and concentrates comprising more than one mineralogical species are to be classified in headings 26.01 to 26.17, as appropriate, by application of GIR 3.

8.3 Chapter 27 covers the following:

- Solid fuels and their distillation products
- Liquid fuels, gases and their distillation products
- Some secondary products, including residues
- Electrical energy (optional heading)

Products in this Chapter are arranged according to the following broad categories;

Primary products:

- Solid fuels (headings 27.01 to 27.03)
- Crude petroleum (heading 27.09)
- Natural gas (heading 27.11)
- Natural bitumen and asphalt (heading 27.14)

Secondary (distillation) products:

- Solid fuel distillation products (headings 27.04 to 27.08)
- Petroleum distillation products (headings 27.07, 27.10 to 27.13)
- Bituminous mixtures (heading 27.15)

Chapter 27 is referred to as the energy sources. Electricity is therefore classified under Chapter 27. However, note that the heading 27.16 for electrical energy is the only optional heading in the HS (i.e., not all countries use this heading).

Products similar to petroleum oils, etc., with predominance by weight of aromatic constituents are classified in heading 27.07 and not in heading 27.10.

Goods in this Section may be crude or refined. However, when they are separate chemically defined organic compounds in the pure or commercially pure state, they are classified in Section VI, Chapter 29, for example, alcohol.

Summary of the Chapter

Classification of some items in this Chapter depends on the way they are packaged and others on their quality or composition. For example, petroleum jelly is classified in heading 27.12, but as cosmetic in heading 33.04, if of a kind suitable for the care of the skin.

Assignment

1. Identify three products that are excluded from Chapter 26
2. Classify to the subheading level the following:
 - a) Tarred macadam
 - b) Slag
 - c) Roasted iron pyrites
 - d) Aluminous cement
 - e) Fire clay



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Chapter 9: Products of the Chemical or Allied industries (Chemical Sector)

Lecture Objectives

1. Identify types of goods classified in Chapters 28 to 40;
2. Properly classify these types of goods by applying appropriate GIRs and legal notes;
3. Identify goods which are excluded from these Chapters by virtue of legal notes.

9.0 Introduction

This Section covers inorganic and organic chemicals and miscellaneous chemical products of Chapters 28-38. This Section does not include products which are excluded from the Section by the virtue of Notes to each Chapter, for example, yeast (Chapter 21 Sec IV), Optical goods (Chapter 90).

Section Note 1 is in two parts as follows;

- a. The first part gives priority to headings 28.44 and 28.45 over all other headings of the Nomenclature.

The effect of the Note is to consign virtually all radioactive materials and isotope to one of these two headings. Note that radioactive ores and concentrates are, however, classified in Section V and not in heading 28.44.

- b. The second part of the Note concerns only those products which cannot be classified in heading 28.44 or 28.45. Subject to this limitation the Note gives priority to headings 28.43 over all other headings of Section VI.

The effect of the Note is to consign all chemical compounds (both organic and inorganic) of precious metals to heading 28.43, compounds of mercury to heading 28.52 and those of rare-earth metals, yttrium or scandium, and most compounds mixtures of these metals, to heading 28.46. Note that headings 28.43, 28.46 and 28.52 take precedence only over other headings of Section VI (except headings 28.44 and 28.45) and not of the entire Nomenclature.

Note 2 to Section VI concerns only those products which cannot be classified in headings 28.43, 28.44, 28.45, 28.46 or 28.52. Subject to this limitation, Note 2 gives priority to headings 30.04, 30.05, 30.06, 32.12, 33.03, 33.04, 33.05, 33.06, 33.07, 35.06, 37.07 and 38.08 over all other headings of the Nomenclature.

Section Note 3 concerns goods put up in sets which consist of two or more separate constituents.

The constituents:

- (a) may partly or wholly fall in Section VI
- (b) should be intended to be mixed together to obtain a product of Section VI or Section VII
- (c) Should meet the three conditions set out at (a), (b) and (c) of Note 3.

Such goods put up in sets are to be classified in the heading appropriate to the product obtained by mixing the constituents. Note that goods put up in sets the constituents of which are intended to be used successively without prior mixing are not covered by Note 3 to Section VI.

When goods of Section VI undergo polymerization, a process of chemical synthesis, they are classified in Section VII for example, polymerization of Ethylene (Chapter 2901.21 Section VI to polymers of ethylene, we get a new product polyethylene, which is plastic in its primary form.

Dilution of goods of Section VI

Products of Chapter 28 and 29 in liquid solution, remain classified in the same heading if:

- They are dissolved in water
- They are dissolved in other solvents for reasons of safety or for transport purposes provided the solvent does not render the product particularly suitable for specific use. Where such substances are deliberately left in the product with a view to rendering it particularly suitable for specific use rather than for general use, they are not regarded as permissible impurities.
- They are dissolved and with an added stabilizer necessary for their preservation or transport
- They are dissolved and with an added substance (e.g. colorant) to facilitate their identification or for safety reasons.

Chapter 38, the last in this Section covers miscellaneous chemical products. It is sometimes referred to as the **basket chapter** for chemicals not covered somewhere else in the Nomenclature.

Question: Where would you classify petroleum oil waste?

Answer: Note 6 to Chapter 38 directs that such waste be classified in Chapter 27.

9.1 Chapter 28: Inorganic Chemicals

Chapter 28 deals with inorganic chemicals; the Chapter being restricted, in the main, to separate chemical elements or separate chemically defined compounds. Separate chemical elements are the single substances of chemistry. Calcium chloride is made of calcium combined with chlorine. Calcium chloride (CaCl_2) is a compound. Calcium (Ca) and chlorine (Cl) are elements. Separate (unmixed) chemical elements are therefore pure single substances.

Separate chemically defined compounds are compounds which can be defined chemically. The vast majority of chemicals combine in fixed proportions by weight, i.e., in stoichiometric ratio. This is the case, for example, with calcium chloride which always combines using the same proportions of calcium and chlorine. Therefore, simply by knowing that the substance is calcium chloride we have defined it.

On the other hand, there are such compounds as carbides (vanadium carbide) which contain the element carbon in a range of 14-20% by weight; they have a chemically defined constitution but there is a defect in the structure of their lattice (i.e., vacant sites for missing carbon-atoms) and the proportion of carbon is not fixed. These compounds are quasistoichiometric or non-stoichiometric and they are also classified in Chapter 28 as chemically defined compounds.

While this is a highly specialised field, and occasionally technical assistance (from a laboratory) may be necessary to identify the product to be classified, generally classifiers with only a basic knowledge of chemical terminology should be able to classify goods in this Chapter.

Structure of Chapter 28

The structure of the Chapter follows established chemical logic in the grouping of chemicals; starting from the more simple chemicals, the development of the headings progresses to compounds or derivatives of increasing complexity.

The Chapter has 53 headings which are arranged in six Sub-Chapters (grouping related chemicals) as follows:

- Chemical elements: Sub-Chapter I
- Non-metal compounds: Sub-Chapters II and III
- Metal compounds: Sub-Chapters IV and V
- Miscellaneous: Sub-Chapter VI

9.2 Selected Chapter Notes

A general principle of classification in Chapter 28 is that a named chemical is to be classified in the appropriately worded heading, for example, sodium bromide in the heading for bromides, 28.27, and magnesium sulphate in the heading for sulphates, 28.33. However, the Chapter Notes impose certain restrictions, for example;

Note 1 defines the state in which elements or compounds must be in order to qualify for classification in Chapter 28. Note 1 restricts the Chapter to chemicals of a commercially acceptable level of purity, while at the same time allowing for the legitimate needs of chemicals industry as regards presentation in solvents, with added stabilisers, anti-dusting agents, colourants, etc. Because of Note 1, GIRs 2 and 3 have very limited, if any, application in this Chapter.

Note 2 to Chapter 28 defines the boundary between Chapter 28 and 29. It gives an exhaustive list of compounds which contain carbon atoms, and which are classified in Chapter 28. These products are classified in headings 28.11, 28.12, 28.13, 28.31, 28.36 to 28.38, 28.42, 28.43 to 28.46, 28.47, 28.49, 28.52 and 28.53. All other compounds which contain carbon atoms are excluded from Chapter 28.

Further Note 3 to Chapter 28 is an exclusion Note and provides a list of substances which are excluded from Chapter 28, despite qualifying under Note 1 (a) as separate and chemically defined. This is not an exhaustive list of exclusions. Some products are excluded from Chapter 28 by virtue of Section VI, Notes 2 and 3. For example, products suitable for therapeutic or prophylactic uses put up in measured doses or in forms or packing for retail sale are classified in heading 30.04.

Note 6 to Chapter 28 deals with the question of radioactivity and isotopes; it supplements Note 1 (a) to Section VI. It defines and limits the scope of heading 28.44 to certain specific categories of products mentioned therein. For example, natural and artificial radioactive chemical elements and natural and artificial radioactive isotopes and their compounds and also mixtures and residues containing these products are all classified in heading 28.44.

Exercise:

Would copper phosphide containing 14% by weight of phosphorus be classified in heading 28.53?

Answer: No, it would be excluded from heading 28.53 since it does not contain more than 15% by weight of phosphorus. It is classified in heading 74.05 (Note 1 (c) to Chapter 74, HS ENs, p. XV-7405-1, heading 74.05, last para, exclusion).

Scope of the Sub-Chapters**9.2.1. Sub-Chapter I (headings 28.01 to 28.05)**

This Sub-Chapter covers the chemical elements. Chemical elements can be divided into two classes, non-metals and metals. This Sub-Chapter includes all non-metals (at least in some of their forms) and some metals, e.g., sodium, mercury, rare-earth metals, scandium, yttrium, whereas the majority of metals are classified elsewhere : precious metals (Chapter 71 and heading 28.43), base metals (Chapters 72 to 81), radioactive chemical elements and isotopes (heading 28.44) and stable isotopes (heading 28.45).

9.2.2. Sub-Chapter II (headings 28.06 to 28.11)

The Sub-Chapter covers inorganic oxygen compounds of non-metals (anhydrides and other), and also inorganic acids. Headings 28.06 to 28.11 cover some important acids, such as hydrochloric, sulphuric and nitric acids and important oxides, such as sulphur dioxide, carbon dioxide and silicon dioxide. This Sub-Chapter also includes some mixtures such as oleum (sulphuric acid charged with an excess of sulphur trioxide), sulphonitric acids (mixture in definite proportions of concentrated nitric and sulphuric acid).

9.2.3. Sub-Chapter III (headings 28.12 to 28.13)

This Sub-Chapter relates to the following three groups of non-metal compounds:

- Halogen compounds other than with oxygen or hydrogen : heading 28.12 (e.g., iodine trichloride)
- Halide oxides (halogen and oxygen) (no hydrogen): heading 28.12 (e.g., carbonyl chloride, phosgene)
- Sulphur compounds (no oxygen or hydrogen) : heading 28.13 (e.g., carbon disulphide)

9.2.4. Sub-Chapter IV (headings 28.14 to 28.25)

This Sub-Chapter relates to metal oxides and metal peroxides, metal hydroxides (bases) and to other bases which do not contain oxygen (e.g., ammonia (NH₃) of heading 28.14, hydrazine of heading 28.25) or no metal (e.g., hydroxylamine of heading 28.25); it further covers inorganic salts of hydrazine and hydroxylamine. The most important products classified here are sodium hydroxide, potassium hydroxide, barium hydroxide.

9.2.5. Sub-Chapter V (headings 28.26 to 28.42)

This Sub-Chapter covers metal salts which are obtained by replacing the hydrogen element in an acid by a metal or by ammonium ions. Chapter Note 5 defines the scope of these headings.

Certain salts of nitrogen (N), potassium (K) and phosphorus (P) even if chemically pure would be classified as fertilisers in Chapter 31.

9.2.6. Sub-Chapter VI (headings 28.43 to 28.53)

This last Sub-Chapter relates to several categories of compounds whose priority classification is provided for in Notes 1 (a) and (b) to Section VI, for example, inorganic or organic compounds of precious metals (heading 28.43), radioactive chemical elements are radioactive isotopes and their compounds (inorganic or organic).

Exercise

How would you classify

- (a) Potassium nitrate?
- (b) Sodium nitrate?
- (c) Ammonium nitrate?

Answer:

- (a) 2834.21
- (b) 3102.50 or 3105.10
- (c) 3102.30 or 3105.10

9.3 Chapter 29: Organic Chemicals

Products classified in this Chapter are;

- a. Separate chemically defined organic compounds
- b. Mixtures of two or more isomers of the same organic compound
- c. Certain products, even if not chemically defined organic compounds, for example;
 - vitamins (heading 29.36)
 - hormones (heading 29.37)
 - glycosides (heading 29.38)
 - vegetable alkaloids (heading 29.39)
 - sugar ethers, sugar acetals and sugar esters, and their salts (heading 29.40)
 - antibiotics (heading 29.41)
- d. The solutions of the above products in water

- e. The solutions of the above products in organic solvents, subject to certain restriction.

Note that certain separate chemically defined compounds having specific application or use are not classified on the basis of their structure or functional groups, for example;

- vitamins (heading 29.36)
- hormones (heading 29.37)
- glycosides (heading 29.38)
- alkaloids (heading 29.39)
- sugars(heading 29.40)
- antibiotics (heading 29.41)

Exclusions

Products which are excluded from this Chapter may be categorized into three group as follows;

1. Certain separate chemically defined organic compounds are excluded being products specified in other Chapters, for example:
 - glycerol (heading 15.20)
 - ethylic alcohol (headings 22.07 and 22.08)
 - methane and propane (heading 27.11)
 - Immunological products of heading 30.02
 - urea (heading 31.02 or 31.05)
 - colouring matter of vegetable or animal origin (heading 32.03)
 - synthetic organic colouring matters (heading 32.04)
 - enzymes (heading 35.07)
 - mercury compounds (28.52)
2. Certain separate chemically defined organic compounds are excluded when put up in measured doses or retail packing:
 - medicaments (heading 30.04)
 - dyes and other colouring matters (heading 32.12)
 - perfumery or toilet preparations (headings 33.03 or 33.07)
 - glues or adhesives (heading 35.06)
 - photographic chemicals (heading 37.07)
 - insecticides (heading 38.08)
3. Certain organic chemicals subjected to special treatment for specified purposes, for example,
 - luminophores (heading 32.04)
 - charges for fire-extinguishers(heading 38.13)
 - optical elements (heading 90.01)

Organic chemicals (i.e., chemical compounds containing carbon atoms with certain exceptions)

Structure of the Chapter

Chapter 29 is divided into 13 sub-chapters with 42 headings.

Exercise: List down these sub-chapters and identify some products classified in each sub-chapter.

9.4 Chapter 30: Pharmaceutical Products

This Chapter covers:

- Medicaments
- Immunological products
- Certain other substances or materials used for medical, surgical, dental or veterinary purposes.

There are two distinct categories of products in this Chapter:

- Products which have therapeutic or prophylactic value
- Products which do not themselves have therapeutic or prophylactic value, but which are used solely for medical, surgical, dental or veterinary purposes

Chapter 30 covers single material substances or products only where they have been specifically provided for or when they have been put up in measured doses or in forms or packing for retail sales.

Chapter 30 does not cover food or beverages:

- Which contain only nutritional substances
- Which contain medicinal substances added solely to ensure a better dietetic balance or to increase the energy-giving or nutritional value of the product, but which retain the essential character of foods or beverages
- Which contain substances such as vitamins and are put up for the purpose of maintaining health or wellbeing but have no indication as to use for prevention or treatment of any disease or ailments

Learning Activity: Is colloidal silver put up in measured doses classifiable in heading 30.04?

Answer: No, in heading 28.43 if not mixed (see Note 1 (b) to Section VI); regarding mixtures, see HS ENs, p. VI-3003-1, Part (4), last sentence).

Learning Activity: Is blood albumin **not** prepared for therapeutic or prophylactic uses classifiable in Chapter 30?

Answer: No, in Chapter 35 (see Note 1 (g) to Chapter 30).

9.5 Chapter 31: Fertilizers

This Chapter covers the following products:

- Animal or vegetable fertilisers
- Mineral or chemical fertilisers
- Mixtures of animal or vegetable fertilisers with mineral or chemical fertilisers

Heading 31.01 covers:

- Animal or vegetable products which are fertilisers themselves (whether or not mixed together or chemically treated)
- fertilisers obtained by the mixing or chemical treatment of animal or vegetable products which are not fertilisers themselves

The mineral or chemical fertilisers of headings 31.02, 31.03 and 31.04 are those which contain one only of the fertilizing elements nitrogen, phosphorus and potassium. Moreover, the headings cover only the goods specified in Notes 2, 3 et 4 to Chapter 31. These three headings cover the products specified in Notes 2 (a), 3 (a) and 4 (a) to Chapter 31 even when they are clearly not to be used as fertilisers. On the other hand they do not cover products which are not specified in the relevant Chapter Notes, even if the products concerned are to be used as fertilisers. Note that the mixtures specified in Notes 2 (b), (c) and (d), 3 (b) and (c) and 4 (b) to Chapter 31 are classified in headings 31.02, 31.03 and 31.04 only if they are in fact of a kind used as fertilisers.

Heading 31.05 covers composite or complex fertilisers containing two or all three of the fertilising elements nitrogen, phosphorus and potassium. By virtue of Note 5 to Chapter 31, heading 31.05 also covers ammonium dihydrogen-orthophosphate and diammonium hydrogen-orthophosphate (whether or not pure) and intermixtures thereof (whether or not for use as fertilisers).

Exercise:

Are potassium nitrate and sodium nitrate classifiable as mineral or chemical fertilizers in Chapter 31?

Answer:

Whereas sodium nitrate is specifically mentioned in Note 2 (a) (i) to Chapter 31 and in subheading 3102.50, potassium nitrate is not mentioned in Note 4 to Chapter 31 and is therefore excluded from this Chapter (see HS ENs, p. VI-3105.1, heading 31.05 (A) 2nd para). It is classified in subheading 2834.21.

9.6 Chapter 32: Tanning or dyeing extracts; tannins and their derivatives; dyes, pigments and other colouring matter; paints and varnishes; putty and other mastics; inks

The main products covered by this Chapter are:

- tanning or dyeing extracts
- tannins and their derivatives
- dyes
- pigments and other colouring matter
- paints and varnishes
- putty and other mastics
- inks

Question: What is the difference between colour lakes of heading 32.05 and enamels of heading 32.08?

Answer: Heading 32.05 covers primary forms (usually powder) used for printing inks, paints etc., while heading 32.08 covers finished products.

Exclusions from this Chapter are identified by Note 1 (a) to Chapter 32.

9.7 Chapter 33 - Essential oils and resinoids; perfumery, cosmetic or toilet preparations

In general, this Chapter covers:

- Odoriferous substances (headings 33.01 and 33.02)
- Preparations containing odoriferous substances, which (in most cases) are designed to be applied to the human body with the object of making it more attractive (headings 33.03 to 33.07)

Heading 33.01 includes extracted oleoresins, also known in trade as prepared oleoresins or spice oleoresins. Aqueous distillates and aqueous solutions of essential oils remain in heading 33.01 even if suitable for medicinal use. Products of headings 33.03 to 33.07 remain in those headings even if they have therapeutic or prophylactic properties. Prepared room deodorisers remain in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

By virtue of Note 2 to Section VI, headings 33.03 to 33.07 as extended by Note 3 to Chapter 33 have priority over all other headings of the Nomenclature, except 28.43 to 28.46.

Note that the Chapter also excludes:

- Natural oleoresins (heading 13.01)
- Vegetable extracts of heading 13.02 or colouring matter of vegetable or animal origin of heading 32.03

9.8 Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing or scouring preparations, candles and similar articles, modelling pastes, “dental waxes” and dental preparations with a basis of plaster

This Chapter covers a variety of products whose common feature is that they are obtained mostly by the industrial treatment of fats, oils or waxes, for example:

- soap
- certain lubricating preparations
- prepared waxes
- certain polishing or scouring preparations
- candles

The Chapter also covers certain closely related products obtained by synthesis, for example;

- surface-active agents
- surface-active preparations
- artificial waxes

The first two headings of the Chapter cover goods that might be described as washing or cleaning products or preparations consisting of or based on:

- True soap as defined by Chapter Note 2

- Organic surface-active agents as defined by Chapter Note 3

Note that true soap of heading 34.01 may be in any form while the organic surface-active products and preparations of that heading must be in the form of bars, cakes or moulded pieces or shapes and organic surface-active products and preparations in the form of liquid or cream must be for washing the skin and put up for retail sale. Products of headings 34.01 and 34.02 may contain added substances such as medicaments, colouring matter, odoriferous substances or disinfectants.

Note 1 Chapter 34 described articles which are excluded from the Chapter, some of these goods are;

- Edible mixtures or preparations of animal or vegetable fats or oils of a kind used as mould release preparations in the bakery industry (heading 15.17)
- Shampoos, dentifrices, shaving creams or foams and bath preparations (containing soap or other organic surface-active agents) of headings 33.05, 33.06 and 33.07

Chapter 34 does not cover preparations containing surface-active agents where the surface-active function is subsidiary to the main function of the preparation (see headings 38.08, 38.09 and 38.24, for example). Further, you will notice that the Chapter does not include preparations containing, as their basic constituents, 70% or more by weight of petroleum oils or of oils obtained from Bituminous minerals (heading 27.10).

Exercise;

Explain why there is a semicolon after the word soap in heading 34.01 and not in the first one-dash subheading.

Answer: The heading covers all forms of soap and the first subheading only specified forms.

9.9 Chapter 35: Albuminoidal substances; modified starches; glues; enzymes

Chapter 35 covers the following products:

- Proteins, protein substances and protein derivatives
- Dextrins and other modified starches
- Glues and other prepared adhesives
- Enzymes and prepared enzymes

The first four headings of the Chapter cover, proteins, protein substances and protein derivatives. While these products have a wide range of functions, many are used in preparation of glues or are themselves used as glues. Heading 35.06 covers:

- Prepared glues and other prepared adhesives, not elsewhere specified or included
- Products suitable for use as glues or adhesives, put up for retail sale as glues or adhesives, not exceeding a weight of 1Kg.

Recall that Note 2 to Section VI gives the priority to heading 35.06 over all other headings of the Nomenclature (except 28.43 to 28.46 or 28.52). Heading 35.06 also covers glues of headings 35.01, 35.03 and 35.05 when put up for retail sale, not exceeding a net weight of 1 Kg.

By application of Note 1 to Chapter 35, the Chapter does not cover starch degradation products with a reducing sugar content exceeding 10% (heading 17.02). Chapter 35 does not also cover caseinates, albuminates or proteinates as these are covered in Chapter 28 headings 28.43 to 28.46.

9.10. Chapter 36 - Explosives; pyrotechnic products; matches; pyrophoric alloys; certain combustible preparations

This Chapter covers a range of products used as explosives and in such industries. The products of Chapter 36 are:

- Propellant powders and prepared explosives
- Certain accessory products required for the ignition of propellant powders and prepared explosives (e.g., fuses, detonating caps, detonators)
- Articles prepared from explosives pyrophoric, inflammable or combustible materials for producing light, sound, smoke, flame or sparks (e.g., pyrotechnic articles, matches, ferro-cerium and other pyrophoric alloys)

Please note that the expression **articles of combustible materials** in heading 36.06 is defined restrictively by Chapter Note 2.

The Chapter does not cover separate chemically defined compounds other than those articles of combustible materials specifically described in Chapter Notes 2 (a) and (b) (e.g., TNT of heading 29.04 is excluded). The Chapter also excludes, for example, Photographic flashlight materials (heading 37.07, Articles producing a lighting effect by the phenomenon of chemiluminescence (heading 38.24), Nitrocellulose (heading 39.12), Munitions of war, ammunition, etc. of heading 93.06.

Exercise

Where would you classify hexamethylenetetramine put up in crystals for use as fuel?

Answer: Heading 29.33; it would only be classifiable in heading 36.06 when put up in tablets, sticks or similar forms (see Note 2 (a) to Chapter 36).

9.11 Chapter 37 - Photographic or cinematographic goods

This Chapter covers the following articles:

- Photographic plates, film, paper, paper-board and textiles, whether sensitised and unexposed, exposed but not developed, or (in the case of plates and film only), exposed and developed
- Various chemical preparations and certain unmixed products for photographic use

According to Chapter Note 2 the term **photographic** is defined as "the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces".

Heading 37.07 covers both preparations and unmixed products for photographic use. The preparations are classified in heading 37.07 whether put up in bulk or small quantities and whether or not presented for retail sale. On the other hand, unmixed products must be put up in measured portions or put up for retail sale in a form ready for photographic use.

This Chapter does not however cover the following,

- waste or scrap materials (classified in their own appropriate heading on the basis of the composition)
- Prepared but unsensitised paper, paperboard and textiles (Chapter 48 or Section XI)
- paper, paperboard and textiles which have been exposed and developed (Chapter 49 or Section XI)
- Exposed and developed plates ready for use for printing purposes (heading 84.42).
- Sound track film produced solely by processes other than photoelectric (e.g., mechanical engraving or magnetic recording) (heading 85.24).

9.12 Chapter 38 - Miscellaneous chemical products

Chapter 38 is the residual Chapter for products of the chemical or allied industries. It therefore covers a wide variety of products of chemical or related origin. Recall that heading 38.08 is the last of the Section VI headings which, by virtue of Note 2 to the Section, is given priority over all other headings of the Nomenclature (except for headings 28.43 to 28.46) insofar as goods of that heading put up in forms or packings for retail sale are concerned.

The chemical elements of heading 38.18 (for example, silicon or selenium) must be in the form of discs, wafers or similar forms, whereas the chemical compounds of that heading are not restricted as to form. Note 7 specifies that for the purposes of heading 38.26, the term "biodiesel" means mono-alkyl esters of fatty acids of a kind used as a fuel, derived from animal or vegetable fats and oils whether or not used.

Note also that heading 38.24 is the residual heading for products and preparations of the chemical or allied industries while regarding 38.25 is the heading for residual products of those industries and certain specific categories of waste defined in Notes 4, 5 and 6 to Chapter 38.

Exercise:

Read Note 1 to Chapter 38 and list down those products excluded from the Chapter.

9.13 Chapter 39 - Plastics and articles thereof

In general, this Chapter covers substances called polymers and semi-manufactures and articles thereof. The Chapter is divided into two Sub-Chapters: Sub-Chapter I covers polymers in primary forms and Sub-Chapter II covers waste, parings and scrap, semi-manufacturers and articles.

Some of the products excluded from Chapter 39 are;

- Synthetic rubber (Chapter 40)
- Trunks, suit-cases, handbags and other containers of chapter 42
- Plaits, wickerwork and other articles of Chapter 46
- Textiles (Section XI)
- Footwear, headgear, etc. (Section XII)
- Parts of aircraft or vehicles (Section XVII)
- Optical goods, clocks, and musical instruments (Section XVIII)
- Furniture, toys and miscellaneous articles (Section XX)

9.14 Chapter 40 - Rubber and articles thereof

The Chapter covers rubber in the raw or semi-manufactured state, whether or not vulcanised or hard, and articles wholly of rubber or whose essential character derives from rubber.

Exercise: Read the Notes to Chapter 40 and discuss the following terms:

- Natural rubber
- Synthetic rubber
- Vulcanised rubber
- Hard rubber
- Primary forms
- Plates, sheets and strips
- Cellular rubber

Chapter Note 5 provides criteria to distinguish rubber or mixtures of rubber in primary forms and plates, sheets or strip, which have not been compounded (headings 40.01 and 40.02) from those which have been compounded (heading 40.05).

Conveyor or transmission belts or belting, of vulcanised rubber, when presented with the machine or apparatus for which they are designed, belts and belting are excluded from heading 40.10.

Even though rubber and articles of rubber are covered in Chapter 40, some articles of rubber are excluded from this Section. Examples of articles excluded are;

- Foot ware and parts thereof (Chapter 64)
- Head gear or parts thereof (Chapter 65)
- Mechanical or electrical appliances or parts thereof of Section XVI including electrical goods of all kinds, of hard rubber.
- Articles of Chapters 90, 92, 94 or 96.

Summary of the Chapter

In this Chapter, we have looked at how to classify chemicals and their allied products, including medicaments. This is an important Section of the Harmonized System Nomenclature as it deals with the classification of these products, which to a large extent, have been grouped together. It is important to remember that a classifier does not necessarily have to be knowledgeable in Chemistry to be able to classify these products. However, it is highly encouraged to seek technical reach-back to laboratories should a classifier find it difficult to identify these products.

Chapter 10: Leather, Wood and Paper Sector

Learning Objectives

1. Identify types of goods classified in Chapters 41 to 49;
2. Properly classify these types of goods by applying appropriate GIRs and legal notes;
3. Identify goods which are excluded from these Chapters by virtue of legal notes.

10.0 Introduction

This Section covers Chapter 41-49. This Chapters of this Section are arranged according to material contents of the articles or the degree of processing. Wood and articles of wood is classified under chapter 44 while Chapter 45 deals with cork and articles of cork. Articles of plaiting material are classified in Chapter 46. Wood in the rough and processed wood is in chapter 44. Note that Chapter 46 covers only manufactured goods and not the raw materials from which those goods are made (unlike Chapters 44 and 45). It is important to note that to avoid discrepancies, it is recommended that customs administrations use International Organization for Standardization (ISO) test methods in determining the physical properties of paper and paperboard of Chapter 48.

10.1 Section IV

The Section is divided into raw hides and leather. Chapter 41- Raw hides and skins, Chapter 42- Articles of leather, Chapter 43- fur. The Chapters in this Section are arranged according to the degree of manufacture.

Note that the articles of leather are classified (with certain similar articles of other materials) in a separate Chapter, whereas articles of furskins or of artificial fur are classified in the same Chapter as the furskin or artificial fur from which they are made.

Three Notes within Section VIII provide definitions which apply “throughout the Nomenclature”. They are;

- Note 3 to Chapter 41, which defines “composition leather”
- Note 1 to Chapter 43, which defines “furskins” other than raw furskins of heading 43.01
- Note 5 to Chapter 43, which defines “artificial fur”

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Question: In which chapter would you classify edible hides and skins?

Answer; Chapter 16.

Administration

10.1.1. Chapter 41 - Raw hides and skins (other than furskins) and leather

Some of the products covered in this Chapter are;

- Raw hides and skins (headings 41.01 – 41.03)
- Leather (i.e., tanned or crusted but not further prepared hides and skins) (headings 41.04 to 41.06)
- Leather further prepared after tanning or crusting (headings 41.07, 41.12 and 41.13)
- Chamois leather and patent leather and patent laminated leather, metallised leather (heading 41.14)

- Composition leather and parings and other waste of leather or of composition leather (heading 41.15)

Hides and skins of headings 41.01 to 41.03 may have been treated for preservation, cleaned, split or scraped, or may have undergone a tanning (including pre-tanning) process which is reversible, but not further prepared. Scrap pieces of leather and worn leather articles for the manufacture of leather articles can not be classified in heading 41.15 and must be classified in its appropriate heading (41.07 or 41.12 to 41.14).

Explanatory Notes to Section VIII, provides a description in relation to Full grains, unsplit; Grain splits. These notes define splitting as the process to horizontally divide hides and skins into more than one layer and may be carried out either before or after tanning. The object in splitting is to obtain a more even thickness for processing and a more uniform final leather. The outer or grain layer of a hide, known as the “grain split”, is levelled by passing the hide across an endless band-knife to an accuracy of a few millimetres; the bottom layer, known as the “flesh split”, is of irregular shape and thickness.

All hides and skins without hair or wool or dehaired (raw, tanned, crusted or further prepared) are classified in Chapter 41. All hides and skins tanned or dressed with the hair or wool on are classified in Chapter 43. All hides and skins tanned or dressed with the hair or wool on are classified in Chapter 43. It is only the raw hides and skins with hair or wool on which are divided between Chapters 41 and 43.

10.1.2 Chapter 42 - Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)

Chapter 42 covers essentially:

- Articles of leather or of composition leather (headings 42.01 to 42.03, 42.05)
- Articles of animal gut, of bladders or of tendons (heading 42.06)

It is important to note that headings 42.01 and 42.02 also cover articles made from materials other than leather or composition leather. The articles of heading 42.01 may be of any material. The articles of the second part of heading 42.02 must, in principle, be made from the materials specified in that part of the heading text.

The first part of heading 42.02 does not cover articles of the materials specified in Notes 3 (A)(b) and 3 (A)(b) to Chapter 42. Both the first and second parts of heading 42.02 do, however, cover articles having parts or accessories of the precious or semi-precious materials of Chapter 71.

Some articles of leather are excluded from this Section especially Chapter 42. They are:

- Sterile surgical catgut or similar suture materials (They are classified under Chapter 30)
- Footwear – Chapter 64
- Headgear- Chapter 65

- Whips and riding crops- Chapter 66
- Furniture- Chapter 94
- Toys- Chapter 95

Note that watch straps and various other articles made wholly or partly of leather or of composition leather are excluded from this Chapter. The expression “animal” in heading 42.01 does not cover humans; thus, harness for children or adults is not covered by this heading and is classified in headings 39.26, 42.05, 63.07 or elsewhere.

10.1.3 Chapter 43 - Furskins and artificial fur; manufactures thereof

Chapter 43 covers :

- Raw furskins (heading 43.01)
- Tanned or dressed furskins, including certain assemblies (heading 43.02)
- Articles of furskin (heading 43.03)
- Artificial fur and articles of artificial fur (heading 43.04)

Note that the wording of the heading texts themselves gives priority to heading 43.03 for all goods which are capable of being classified in that heading as articles therefore, heading 43.03 covers, inter alia:

- All furskins or parts of furskins assembled with the addition of other materials (provided the resulting assembly retains the essential character of furskin)
- All furskins or parts of furskins sewn together in the form (including the rough form) of garments, parts or accessories of garments, or other articles
- All furskins or parts of furskins cut to shape or otherwise processed for specific uses (i.e., to the form of articles or parts of articles, including trimmings).

Question: Where are leather coats lined with furskin classified?

Answer: Heading 43.03 (subheading 4303.10)

Further, some articles of furskin are excluded from this Chapter.

Examples include:

- Bird skins or parts of bird skin with their feathers or down. These are classified under heading 05.05 or 67.01.
- Raw furskin waste not suitable for furrier’s use (Chapter 5).
- Various articles of furskin or artificial fur classified elsewhere (e.g., in Chapter 64, 65 or 95).

Learning Activity 10.1 Classify the following articles to the subheading level;

Fresh potatoes
 Chilled tomatoes
 Shelled Brazil Nuts
 Conveyor belts reinforced with metal

Perforated corrugated paper

10.2 Section IX: Wood and articles of wood; wood charcoal, cork and articles of cork, manufactures of straw, of esparto or of other plaiting materials; basket-ware and wickerwork.

This section covers Chapters 44-46. The Section is arranged according to material contents of the articles. Wood and articles of wood is classified under chapter 44 while Chapter 45 deals with cork and articles of cork. Articles of plaiting material are classified in Chapter 46. Wood in the rough and processed wood is in chapter 44. Note that Chapter 46 covers only manufactured goods and not the raw materials from which those goods are made (unlike Chapters 44 and 45).

In the unmanufactured state, bamboo (or bamboos) and certain other materials of a woody nature (e.g., osier) are not regarded as wood but as materials of a kind used primarily for plaiting. Section IX does not cover manufactures of such materials more specifically provided for elsewhere in the Nomenclature (e.g., the products excluded from the Section by virtue of Notes 1 to Chapter 44 and 2 to Chapter 46).

Section IX does not cover the following articles:

- Most plaiting materials (Chapters 14, 39, 48 and Section XI) (but note that two kinds of plaiting materials fall within Chapter 44, i.e., chipwood and drawn wood of headings 44.04 and 44.09 respectively).
- Loofah (Chapter 14)
- Certain kind of woods, viz.:
 - Wood in chips, in shavings, crushed, ground or powdered, of a kind used primarily for certain purposes (Chapters 12 and 14).
 - Bark of a kind used primarily for certain purposes (Chapters 12 and 14)
- Certain wood or charcoal based products (Chapters 30, 33, 36, 38, 39 and 68).
- Articles (and article parts) of the kind mentioned in Notes 1 (e), (g), (h) and (k) to (r) to Chapter 44, Notes 1 to Chapter 45 and 2 to Chapter 46 and also in various ENs within the Section

10.3 Chapter 44 - Wood and articles of wood; wood charcoal

Chapter 44 covers the following broad categories:

- Wood in the rough and wood simply processed (headings 44.01 – 44.06)
- Wood sawn, chipped lengthwise, sliced, peeled or continuously shaped (headings 44.07 to 44.09)
- Boards and panels of wood or of other ligneous materials, and densified wood (headings 44.10 to 44.13)
- Articles of wood (heading 44.14 to 44.21)

Note that subheadings 4403.11, 4403.12, 4406.91 and 4406.92 cover only products treated for long term preservation. Certain tree stumps and roots are classified in heading 44.03 and not in heading 44.01.

Question: Classify dining table made of wood

Answer: Chapter 94

Questions: Classify a varnished decorative beer mug (diameter 10 cm) made from a single piece of bamboo to which a bamboo handle has also been fitted.

Answer: Heading 44.20 (subheading 4420.10).

10.4 Chapter 45 - Cork and articles of cork

Chapter 45 covers the following articles:

- Raw or simply prepared natural cork (and also cork waste and crushed, granulated or ground cork) (heading 45.01)
- Semi-manufactured natural cork (heading 45.02)
- Articles of natural cork (heading 45.03)
- Agglomerated cork and articles of agglomerated cork (heading 45.04)

Note that three separate headings (distinguished by degree of processing) are provided for natural cork, whereas agglomerated cork and articles of agglomerated cork are classified within a single heading.

In addition to the exclusions already mentioned by Note 1, Chapter 45 does not cover articles of natural or of agglomerated cork more specifically provided for or included elsewhere in the Nomenclature (e.g., those mentioned in Note 1 to the Chapter and in the EN to heading 45.03). For example, cork floats for fishing nets remain classified in heading 45.03 or 45.04, whereas fishing line floats (being line fishing tackle) are classified in Chapter 95.

10.5 Chapter 46 - Manufactures of straw, of esparto or of other plaiting materials; basketware and wickerwork

Chapter 46 covers the following articles:

- Semi-manufactures of plaiting materials (and also certain articles of such materials) (heading 46.01)
- Other articles of plaiting materials and articles of loofah (heading 46.02)

Exercise: List down principle plaiting materials as identified by Note 1 to Chapter 46.

Note that bamboo (or bamboos), rattans and other materials of a woody nature (for example, osier) (mentioned in the inclusion list) can only be regarded as plaiting materials when in a state or form suitable for plaiting, etc. (general definition). Heading 46.01 covers only a limited range of finished articles in sheet form obtained solely by the processes specified in the second part of the heading text.

Note that other products of Chapter 46 assembled, bound, woven, reinforced, backed, lined, covered or fitted with materials other than plaiting materials (e.g., textile yarns, fabric, etc.) are classified in Chapter 46 by application of GIRs 2 (b) and 3. Note also that, by virtue of Note 3 to the Chapter, the expression “parallel” in heading 46.01 means simply “placed side by side”.

10.6 Section X: Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard and articles thereof

This Section contains three Chapters that are arranged according to the degree of processing of wood. The Section cover Chapters 47-49. Chapter 47 is used to classify pulp obtained from various vegetable materials or from the waste of textile of vegetable origin. The pulp of Chapter 47 may be used for

purposes other than making paper (e.g., as a cellulose source for artificial textile materials, plastics, varnishes, explosives and also as a cattle fodder). Paper and paper board is classified under Chapter 48. A reference to paper and paperboard also includes references to paperboards irrespective of thickness or weight.

It is important to note that to avoid discrepancies, it is recommended that customs administrations use International Organization for Standardization (ISO) test methods in determining the physical properties of paper and paperboard of Chapter 48.

Printed books, newspapers, pictures and other products of printing industry, manuscripts, typescripts and plans are classified under this Section at Chapter 49. Chapter 49 includes products which may be executed on materials other than paper. However, this Section does not cover articles in which printing is merely incidental to their primary use. For example, printed textiles such as scarves or handkerchiefs in which printing is merely for decorative purposes, does not affect the essential character of that article. Therefore, handkerchiefs whether printed or not are classified under Section XI.

Some of the products excluded from this Section include;

- Cotton linters, as such or merely compressed in the form of sheets or slabs (Chapter 14)
- Synthetic paper pulps, consisting of very short fibres of plastics (Chapter 39)
- Fibreboard, a product whose basic composition and appearance may be similar to that of sheets of paper pulp or paperboard (Chapter 44)
- Nonwovens consisting of a mixture of cellulose fibres and of textile fibres, the latter predominating by weight (Chapter 56)
- Various products on a base (or support) of cellulose wadding, paper or paperboard (Chapters 30, 33, 37, 39, 44, 59, 68 and 76, for example)
- Paper yarn and textile articles of paper yarn (Section XI)
- Various other articles of cellulose wadding, paper or paperboard (Chapters 30, 42, 46, 66, 90, 91, 93, and 94, for example).
- Certain kind of printed matter (Chapters 37, 39, 90-92, 95 and 97, for example)

10.6 Chapter 47 - Pulp of wood or of other fibrous cellulosic material; recovered (waste and scrap) paper or paperboard

Chapter 47 covers:

- Pulp of wood (headings 47.01 to 47.05)
- Pulps of fibres derived from recovered (waste and scrap) paper or paperboard or of other fibrous cellulosic material (e.g., cotton linters, rags, old rope, straw, esparto, bamboo, etc.) (heading 47.06)
- Recovered (waste and scrap) paper or paperboard (heading 47.07)

Note that method of manufacture provides the essential distinction between the wood pulps of headings 47.01 to 47.05. Note also that woodpulp of heading 47.02 is distinguished from that of headings 47.03 and 47.04 on the basis of the quality criteria set out in Note 1 to the Chapter.

10.4.2. Chapter 48 - Paper and paperboard; articles of paper pulp, of paper or of paperboard

Chapter 48 covers the following articles:

- Paper Paperboard Cellulose wadding and webs of cellulose fibres
- Articles of those materials
- Articles of paper pulp

Also note that Note 1 to Chapter 48 clarifies the references to “paper”. For the purposes of Chapter 48, except where the context otherwise requires, a reference to “paper” includes references to paperboard (irrespective of thickness or weight per m²)

General categories of products of Chapter 48

a) Products in bulk form

With regards to the products in bulk form (headings 48.01 to 48.11), the following criteria must be followed during classification of products of Chapter 48.

1. Size (dimensional criteria)

Minimum size criteria have been specified for the products of headings 48.01 and 48.03 to 48.09)

2. Degree of processing.

Headings 48.01 – 48.05 are restricted to products which have **not** been further worked or processed than as specified in the first sentence of Note 3 to the Chapter. However, by virtue of the exception in Note 3 (and the text of heading 48.03), certain goods which have been further worked or processed (i.e., goods which have been creped, crinkled, etc.) do nevertheless remain in heading 48.03.

Goods other than those of heading 48.03 which have been further worked or processed than as specified in the first sentence of Note 3 are classified in headings 48.06 to 48.11

3. Quality specifications

Newsprint of heading 48.01 Heading 48.01 is restricted to paper which satisfies the definition in Note 4 to the Chapter.

Machine-made paper and paperboard of heading 48.02 The first part of heading 48.02 is restricted to machine-made paper and paperboard which satisfies one or other of the definitions in Note 5 to the Chapter.

(By virtue of the last paragraph of Note 5, heading 48.02 does not cover filter paper or paperboard (including tea-bag paper) or felt paper or paperboard : classified in heading 48.05)

Kraft paper and paperboard The expression "kraft paper and paperboard" (generally, headings 48.04, 48.08 mutatis mutandis and 48.10) is restricted to paper and paperboard which satisfies the definition in Note 6 to the Chapter.

(4) Heading priority

By virtue of Note 7 to Chapter 48 (and except where the texts of the headings otherwise requires), priority is given to the latest applicable heading within the group 48.01-48.11. This means a classifier is required to consider these headings before other headings of Chapter 48.

Exercise: Identify five products that are excluded from Chapter 48

10.7 Chapter 49 - Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans

Chapter 49 covers:

- Products of the printing industry (such as books, leaflets, newspapers, periodicals, printed music, maps, charts, plans, stamps, banknotes, cheque forms, transfers (decalcomanias), printed cards, calendars, pictures and photographs) (headings 49.01 – 49.05 and 49.07 – 49.11)
- Hand-drawn or hand-written originals (such as manuscript type, hand-written texts and hand-drawn maps, charts, plans or drawings) (headings 49.04 (part) and 49.06)

Remember that it is the printing, writing or drawing itself (and not the supporting material) which determines the classification for the purposes of this Chapter. The products of this Chapter may be executed on materials other than paper.

Typescripts are covered by the term “printed” and must therefore be regarded as products of the printing industry, notwithstanding the implications of the Chapter title (a non-legal text by virtue of GIR 1). Photographic reproductions (whether or not on sensitised paper) are also covered by the term “printed”. However, by application of the text of heading 49.06 and also of GIRs 3 (a) and 3 (c), photographic reproductions (on sensitised paper only) of the original plans and drawings of heading 49.06 are classified in that heading and not in heading 49.05 (maps, charts and topographical plans) or 49.11 (other plans and drawings). Photographic reproductions on non-sensitised paper and other printed reproductions of the original plans and drawings of heading 49.06 are classified as printed matter in heading 49.05 or 49.11 as appropriate.

Photographic reproductions of the hand-written texts of heading 49.06 are similarly classified in heading 49.06 (if reproduces on sensitised paper) or in heading 49.01 or 49.11 as appropriate (if reproduces on non-sensitised paper). Carbon copies are always classified in the heading appropriate to the original (normally typescripts, manuscripts or hand-drawn maps, charts, plans and drawings)

Note also that the term “printed” covers any kind of letter, figure, sign, symbol, picture or diagram, but does not include coloration or decorative or repetitive design printing.

Scope of Heading 49.01

In principle, heading 49.01 covers both reading matter of all kinds (whether or not illustrated) and pictorial matter, in the form of complete printed books, brochures, leaflets, etc., as specified in the heading text. The scope of heading 49.01 is extended by virtue of Note 3 and also Notes 4 (a), (b) and (c) to the Chapter, to include the products specified in those Notes.

However, heading 49.01 does not include products more specifically covered by other headings of the Chapter (e.g., headings 49.02, 49.03 or 49.04). The scope of heading 49.01 is restricted by virtue of the last paragraph of Note 4 and also Note 5 to the Chapter, to exclude the products specified in those Notes.

Exclusions from Chapter 49

Chapter 49 does not cover,

- The products mentioned in Note 1 to the Chapter
- All printed goods of headings 39.18, 39.19, 48.14 and 48.21
- Letters, numbers, sign-plates, etc. bearing a printed picture or text, of ceramics, glass, base metal, etc. (heading 69.14, 70.20, 83.10 or 94.05)
- Printed dials for instruments and apparatus of Chapter 90 or 91
- Cards, discs or rolls for mechanical musical instruments (heading 92.09)

Chapter 49 does not cover printed products (either of Chapter 48 or of any other Chapter of the Nomenclature) where the printing is merely incidental to the primary use of the goods concerned.

Exercise: Identify printed products excluded from Chapter 49 because the printing is “merely incidental”.

Summary of the Chapter

In this Chapter, we have looked at how to classify leather, wood, paper and related products. We have seen that Chapters in this Section of the HS are to some extent arranged according to the degree of processing, which is an important element in the structure of the HS. Also, we have seen that there are international standards that are applied when identifying and classifying paper products. Even though some goods might appear to be classifiable in this Section of the HS, we have seen that such goods may be subject to Legal Notes which end up excluding them and this means it is extremely important to have regards to such Notes.

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Administration**

About the author



Mr. Kimani Kang'ethe, is an international customs policy, reform and administration expert with advanced specialized training and experience in trade facilitation and enforcement, regulatory compliance management and customs reform processes. A holder of a **Master of International Customs Law and Administration degree from the University of Canberra, Australia, a Post-Graduate Diploma in Tax Administration from Jomo Kenyatta University of Agriculture and Technology (JKUAT) and a Bachelors' degree in Education and Linguistics from the University of Nairobi**, Mr. Kang'ethe has extensive experience in processes related to customs administration, trade facilitation and capacity building. He is a change management expert with the ability to lead and facilitate the development of strategic plans and their associated monitoring and evaluation tools in relation to Customs reform projects as well as working with senior management teams to develop a common vision and commitment to reform.

He has worked with the Kenya Revenue Authority (KRA) for more than 14 years in Customs and Border Control Department and the training school. **A World Customs Organization Accredited Trade Facilitation Mercator Program Advisor**, Mr. Kang'ethe is a specialist in Trade Facilitation Implementation programs, Customs enforcement and administration, risk and compliance management, co-ordinated border management, World Trade Organization law and trade facilitation tools such as the WCO Time Release Study, Revised Kyoto Convention and the SAFE Framework of Standards.

From 2006 to 2010, Mr. Kang'ethe worked at the Port of Mombasa where he was involved with customs operational activities at the Container Terminal. In August 2010, he was transferred to Nairobi Inland Container Depot where he worked at the Scanner facility enforcing Customs regulations. During his tenure at the Scanner facility, 685 pieces of elephant ivory were intercepted. He was further deployed to the Jomo Kenyatta International Airport where he worked in various cargo sheds until July 2017 when he joined full-time faculty at the Kenya School of Revenue Administration (KESRA), a capacity building arm of the Kenya Revenue Authority.

He is very articulate in the use of the latest technology, international standards and best practices in border management, enforcement and trade facilitation principles. He has the competence, experience, networks and capacity to deliver state of the art, customs and trade facilitation services. He also knows how to adjust and translate international standards and global best practices into the environment of a specific country, and how to integrate already existing systems with new solutions.