

Weerth, Carsten

Article — Published Version

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Global Trade and Customs Journal

Suggested Citation: Weerth, Carsten (2008) : Basic Principles of Customs Classifications under the Harmonized System, Global Trade and Customs Journal, ISSN 1569-755X, Wolters Kluwer International, Alphen aan den Rijn, Vol. 3, Iss. 2, pp. 61-67

This Version is available at:

<https://hdl.handle.net/10419/183147>

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Basic Principles of Customs Classifications under the Harmonized System

Carsten Weerth*

The fundamental rules for the classification of goods into a customs tariff that complies with the Harmonized System (HS) for the description and coding of goods, are six general rules that apply worldwide. This article examines the six basic rules of classification and explains their usage. Understanding these basic principles enables users around the globe to uniformly apply customs tariffs that are based on the HS nomenclature.

I. INTRODUCTION

A. Fundamentals of Customs Classification

The customs classification of goods into the tariff scheme of the HS nomenclature is complex and depending on numerous rules, for example the Common Customs Tariff of the European Community applies more than 16,500 legal rules in 2007: 380 notes, 56 subheading notes, 98 additional notes and about 1,221 HS headings (however, 34 HS headings are not in use¹), 5,052 HS subheadings and 9,720 CN subheadings.² The worldwide applicable HS nomenclature 2007 is consisting of at least about 6,750 legal rules: 380 notes, 56 subheading notes and about 1,221 HS headings and 5,052 HS subheadings (in most countries and customs unions there are further subdivisions, which result in many more legal rules for the customs classification of goods).

However, the process of placing a certain product into the nomenclature of the HS ruled by six General Rules applies worldwide (Weerth, 2001; pp. 434–439). This article examines all General Rules and explains their usage.

B. Production Principle

The HS and all nomenclatures based thereon consist of 21 sections and 96 chapters. These customs schemes are based on the so called 'production principle' – raw

materials are placed at the beginning, intermediate products in the middle and fully produced goods at the end of the nomenclature. However, this production principle is not applied throughout.

Examples

- | | |
|----------------------|---|
| • Chapter 01 | Live animals |
| • Chapter 02 | Meat and edible meat offal |
| • Chapter 16 | Preparations of meat, etc. |
| • Heading 4403 | Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared |
| • Heading 4412 | Plywood, veneered panels or similar laminated wood |
| • Heading 4419 | Tableware and kitchenware, of wood |
| • Subheading 9403 30 | Other furniture and parts; here wooden furniture of a kind used in offices. |

C. Description of Goods

For the customs classification of goods into a customs tariff, the goods must be fully described within the customs declaration with all the important measures. Basically, goods can be classified by material condition and by function or usage (combinations are possible).

Notes

* Dr. Carsten Weerth is legal expert in European customs law and works with Germanys Customs and Excise Service in Bremen. He is a frequent contributor to the journals *AW-Prax* (*Zeitschrift für Außenwirtschaft in Recht und Praxis*) und *ZfZ* (*Zeitschrift für Zölle und Verbrauchsteuern*), author of two textbooks on European customs law, co-author of two legal comments on European customs law and lecturer at the Hochschule für Öffentliche Verwaltung Bremen, University of applied sciences.

1 See Weerth (2008a).

2 See Weerth (2008b).

Examples

- A wooden chair could be classified according to material condition into heading 4421 'Other goods of wood' or according to its function as furniture into heading 9401 'Seats'.
- A ball pen out of plastic could be classified according to material condition into heading 3926 'Other goods of plastic' or according to its function as ball pen into heading 9608 'Ball pen'.
- A wooden spoon would be classified according to material condition *and* function into heading 4419 'Tableware and kitchenware, of wood'.

II. GENERAL RULES FOR THE CLASSIFICATION OF GOODS

For the classification of goods into a customs tariff there are six fundamental rules: the General Rules (GRs).³ The meaning of these GR is better understandable when explained by help of examples.

The GR are important for the customs classification of goods and are showing the difficulties of this technically difficult area of international law. The understanding of these problems is of fundamental meaning for this examination.

For the customs classification of goods the following six general rules apply (the headings are not official; the numbers are showing the beginning of a new sentence).

A. GR 1 (Basic Rule)

GR 1 is the basic rule for the customs classification of goods into the tariff scheme. Sentence 1 states, that the headings of sections, chapters and subchapters are reference only. Sentence 2 emphasizes that for legal purposes the classification shall be determined solely by the terms of headings and notes.

Notes are placed in front of a chapter. Some notes are applicable for a whole section and are therefore placed in front of this section. There are nine different types of notes (Weerth, 2004). Notes and subheading notes (that concern subheadings only) are part of the

HS nomenclature and therefore applicable worldwide (Weerth, 2007). Furthermore, the European Community has created additional notes within their combined nomenclature (CN) that are only applicable within the EC (Weerth, 2008b).

For legal purposes, next to the notes the terms of the headings are the only legal text that is essential for the determination of a classification of a certain product. A semicolon within the term of a heading subdivides the term. The heading 'other goods' means other goods as listed before in a chapter. A heading often can only be applied as a result of reference to the notes. Since the notes are written collectively in front of a chapter or section, users sometimes fail to apply an essential note in the classification process. Therefore, a better inter-linkage of notes and the terms of headings should be arranged by the use of subtext notes or direct links in a database (Weerth, 2008b).

Example

- A chainsaw blade out of base metal is classified into heading 8202, because the term of the heading 'Handsaws' after the semicolon also contains 'blades for saws of all kinds'. Note 1 a) to chapter 82 places all goods into chapter 82, whose blade, working edge, working surface or other working part is constructed of base metal (metal carbides, cermets, precious or semi-precious stones on an above-mentioned material or abrasive material on a support of base metal, provided that the articles have a cutting teeth, etc., of base metal). Note 1 to section XV does not exclude chainsaw blades from this section.

B. GR 2 (Rule for Incomplete/Unfinished Goods and Mixtures)

1. GR 2a)

Sentence 1 of GR 2a) is expanding the terms of a heading towards incomplete or unfinished goods as long as the essential character of the complete or finished article is obvious. Sentence 2 of GR 2a) expands the terms of a heading towards unassembled or disassembled articles.

GR 1: (Basic Rule)

¹The titles of sections, chapters and sub-chapters are provided for ease of reference only; ² 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 note do not otherwise require, according to the following provisions.

Notes

3 See Wurzinger (1986).

GR 2: (Rule for Incomplete/Unfinished Goods and Mixtures)

a) ¹Any 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 unfinished article. ²It 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.

b) ¹Any 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 material or substances. ²Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such materials or substance. ³The classification of goods consisting of more than one material or substance shall be according to the principles of Rule 3.

Examples

- A woven shirt for men on which only the knots are missing is still classified as a shirt of heading 6203 according to GR 2a) sentence 1, because all essential traits of the finished product are there.
- A machining centre (under heading 8457) that was disassembled for transport reasons from Taiwan in two containers that are presented together shall be classified as a heading 8457 machining centre according to GR 2a) sentence 2.

2. GR 2b)

The GR 2b) concerns mixtures of materials or substances and goods that are produced from different materials or substances.

Sentence 1 of GR 2b) states that the term of a heading is applicable for a material or substance being pure, mixed or in combination with any other material or substance.

Sentence 2 of GR 2b) states that the term of a heading that uses a material or substance does also apply to any mixtures or combinations of this material or substance with any other material or substance.

Sentence 3 of GR 2b) states that those goods that consist of mixtures of different materials or substances, are classified according to GR 3.

Examples

- A mixture of rye and barley (50/50) can be included in heading 1002 (rye) but also in heading 1003 (barley) according to GR 2b) sentence 1 because the heading is also applicable for mixtures.
- A steel spoon with a wooden handle can be placed in heading 4419 and in heading 8215, because the terms of the headings are also applicable for goods which are made in part of a certain material.

C. GR 3 (Deciding Rule)

The GR 3 is the rule by which decisions are made. Decisions according to GR 3 are sometimes difficult to understand because within the customs service different officers make decisions and therefore differences may arise. However, there are legal bodies that help determine a similar application of the customs tariff.

GR 3: (Deciding Rule)

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

a) ¹The heading which provides the most specific description shall be preferred to headings providing a more general description. ²However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

b) Mixtures, composite goods consisting of different materials or made up of different compounds, 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 material or component which gives them their essential character, insofar as this criterion is applicable.

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

1. GR 3a)

Sentence 1 of GR 3a) indicates that the heading with a more specific description of goods is preferred to a heading with a more general description of goods.

Sentence 2 of GR 3a) indicates that 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 gives a more complete or precise description of the goods.

The decision will be made according to GR 3b) or GR 3c).

Examples

- A wooden fork should be to classify into heading 4419 as 'Tableware and kitchenware, of wood', since this exact term of heading is preferable to the general term of heading 4421 'Other articles of wood'.
- In the case of a steel spoon with a wooden handle both possible headings (4419 and 8215) should be regarded as equally specific. The decision will be made according to GR 3b) or GR 3c).

2. GR 3b)

The GR 3b) concerns the decision for mixtures and goods that consist of different materials or components and for goods put up in sets for retail sale, which cannot be classified by reference to 3a). The classification shall be determined by the material, substance or component that gives them their essential character, insofar as this criterion is applicable.

At this point one has to apply a good reasoning in particular. Rather helpful are the Explanatory notes to the HS.⁴

The criterion that gives goods the essential character differs according to the type of goods. The material or substance, its contents, its amount, its weight, its value or the meaning of a material for its usage can determine this.

Examples

- In the case of the steel spoon with a wooden handle, one could argue that the spoon part of steel determines the character because of its weight, its value and its intended use. Therefore, the decision according to GR 3b) is classification under heading 8215.
- With a rye–barely (50/50) mixture, the character-determining part cannot be investigated. Therefore, a classification with the help of GR 3b) is not possible.

3. GR 3c)

The GR 3c) is applicable only when a classification according to GR 3a) and GR 3b) was not possible. Consequently, the goods are placed under the last possible heading within the nomenclature.

Example

- Since the rye–barley (50/50) mixture cannot be classified according to GR 3a) and GR 3b), GR 3c) shall be used. The classification is therefore determined by GR 3c) under the heading appropriate to the goods to which they are most like – which means the heading that is named as the last possible – (possibilities are headings 1002 and 1003), therefore the decision is the classification under heading 1003.

D. GR 4 (Catch-all Rule)

The GR 4 is not in normal use because the classification of goods can be performed sufficiently by help of GR 1 to GR 3. The GR 4 is a so-called 'catch-all rule' that was created to classify all future goods and to prevent gaps of classification (Bleihauer, 2007: p. 443). It is very rarely used in decisions of national courts, the council of the harmonized system or the WCO council. Some scholars argue that it is of no use at all⁵; however, the HS committee used it in the 26th session in November 2000.⁶ It should be used very carefully because it can only be applied when GR 1

GR 4: (Catch-all Rule)

Goods that cannot be classified in accordance with the above Rules shall be classified under the heading appropriate to the goods to which they are most like.

Notes

4 See Erl. KN (HS) GR 3b No. 19.1.

5 See S. Alexander (2006), in P. Witte (ed.), *Zollkodex, Commentary, Article 20* (4th edn), p. 283.

6 See WCO, *Classification Decisions of the 26th session*, November 2000.

GR 5: (Rule for Cases and Packing Materials)

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

a) ¹Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. ²This Rule does not, however, apply to containers which give the whole its essential character;

b) ¹Subject 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. ²However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

to GR 3 are not usable – otherwise GR 1 to GR 3 will not be regarded sufficient.

E. GR 5 (Rule for Cases and Packing Materials)

The GR 5 rules the classification of cases and packing materials.

1. GR 5a)

According to GR 5a) sentence 1 cases or containers, that are 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.

Sentence 2 of GR 5a) excludes a common classification of cases and containers with goods contained, when these cases or containers give the whole its essential character.

Examples

- A camera from Taiwan is presented to customs while packed in an artificial leather case. This case is specially shaped to contain the camera and suitable for long-term use. Cameras are usually sold with camera cases. A common classification within the heading of the camera is possible according to GR 5a) sentence 1.

- If the camera case is produced from high-quality leather, sentence 2 of GR 5a) would apply, because this case gives the whole its essential character. Therefore the classification should be done separately.

2. GR 5b)

According to GR 5b) sentence 1, packing material must be classified as the goods contained therein, when they are of a kind normally used for packing such goods.

Sentence 2 of GR 5b) denies a common classification of packing material when this material is obviously applicable for numerous uses and transport cycles.

Examples

- Textiles from China are placed in paperboard containers. Paperboard containers are packing materials or packing containers that are normally used for packing such goods. Therefore, the packing materials shall be classified as are the goods according to GR 5b) sentence 1.
- However, if the textiles are placed in metal boxes, which can be reused for further transports of goods, the classification of these boxes would have to be made according to sentence 2 of GR 5b) – the metal boxes are suitable for numerous cycles of transport. The classification of packing material and goods must be done differently.

GR 6: (Subheading Rule)

¹For 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. ²For the purposes of this Rule the relevant sections and chapter notes also apply, unless the context otherwise requires.

F. GR 6 (Subheading Rule)

Sentence 1 of GR 6 expands GR 1 for all subheadings. Sentence 2 of GR 6 rules that only subheadings of similar stages are identical? Sentence 3 of GR 6 states that next to the notes of sections and chapters are also the notes and for the sections and chapters shall apply for the subheadings, as long as there is nothing else ruled.

III. CONCLUSION

The HS nomenclature and all customs tariffs relying thereon are designed according to the so-called 'production principle', which means that raw materials are placed at the beginning of the nomenclature and produced goods are placed at the end of the tariff scheme. In customs declarations, the goods must be described as detailed as possible in order to enable customs officers to determine the correct customs classification.

The customs classification of goods under the HS nomenclature is performed by the help of six General Rules that are placed in front of the nomenclature:

- GR 1: Basic rule – classification shall be determined according to the terms of the headings and notes.
- GR 2: Rule for incomplete/unfinished goods and mixtures – two rules (a and b) determine how incomplete or unfinished goods and mixtures are classified.
- GR 3: Deciding rule – three rules (a to c) determine basic decision making when concurrences between headings occur.
- GR 4: Catch-all rule – is not normally used, because rule 3 is sufficient for decisions.
- GR 5: Rule for packing material – rules if cases, containers or other packing material are classified as the goods contained or not.
- GR 6: Subheading rule – all five rules apply at subheading level.

Customs classification of goods may result in different headings due to different ways of argumentation or views. This regularly leads to appeals, court cases

and international conflicts that are often resolved before the HS committee or the HS council⁷ and have been subject to WTO dispute-settlement cases: WT/DS62, WT/DS67, WT/DS68, WT/DS269, WT/DS286, WT/DS315 and WT/DS329 (WTO 1998; WTO 2004; WTO 2005; WTO 2006).⁸

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Notes

- 7 See WCO (2002), *HS Dispute Settlement*, available at: <www.wcoomd.org/ie/en/Topics_Issues/HarmonizedSystem/HS%20dispute%20settlement.html> (visited 2 July 2007); and WCO (2004), *Overview of the actual HS reservation process*, available at: <www.wcoomd.org/ie/en/Topics_Issues/HarmonizedSystem/Reservation%20Procedure-Overview-E.pdf> (visited 2 July 2007).
- 8 See Weerth *Einheitliche Anwendung des Gemeinsamen Zollltarifs beim Zugang zum Europäischen Binnenmarkt?* (Dissertation, Universität Oldenburg), *Uniform application of the Common Customs Tariff at market entry to the EC-Common Market?* (PhD thesis, accepted 23 August 2007) (Göttingen, Sierke Verlag, 2007).

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