

**KACT, WCO Headquarters, Brussels, Belgium**  
**June, 24 – 26, 2015**

**Module 4**

**Harmonized System**

**Sets, composite goods, HS 2017 and some food for thought**

**Facilitator: Izaak Wind**

## Ground Rules

- Be on time
- No PCs or mobile phones
- Respect
- There is no such thing as a stupid question
- Support
- Team Work
- Active participation
- Have fun

# Introductions

- Who is who?
- I make a living by . . . ?
- What do I expect from the Academy?

# **Session I: Programme Overview & Positioning**

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## Session II

# General Interpretative Rule 3

## Session II

# Mechanics of classification

**The mechanics of classification involve two separate stages:**

- identification of the goods**
- the use of the Interpretative Rules**

## Session II

The process of classification can be broken down into a series of steps, as follows:

Step 1 : identify the goods → **WII**

Step 2 : Identify the possible Chapters

Step 3 : Locate the appropriate heading(s)

Step 4 : Consider the relative Section and Chapter Notes

Step 5 : Classify at the 6-digit level

## Session II

GIR 2 (b):

The classification of goods **consisting of more than one material or substance** shall be **according to the principles of Rule 3.**



## Session II

### RULE 3

#### CLASSIFICATION OF GOODS CLASSIFIABLE UNDER TWO OR MORE HEADINGS

Three methods of classification:

- (a) Most specific description Rule 3 (a)
- (b) Essential character Rule 3 (b)
- (c) Heading which occurs last in numerical order Rule 3 (c)

To be operated in order: (a), (b), (c)

# Session II

## EXPLANATORY NOTE

- (I) This Rule provides three methods of classifying goods which, *prima facie*, fall under two or more headings, either under the terms of Rule 2 (b) or for any other reason.

These methods operate in the order in which they are set out in the Rule. Thus Rule 3 (b) operates only if Rule 3 (a) fails in classification, and if both Rules 3 (a) and (b) fail, Rule 3 (c) will apply.

The order of priority is therefore (a) specific description; (b) essential character; (c) heading which occurs last in numerical order.

- (II) The Rule can only take effect **provided the terms of headings or Section or Chapter Notes do not otherwise require.**

## Session II

Rule 3 can only be applied if the **terms of headings or Section or Chapter Notes** do not otherwise require.

Examples:

- Sets of textile garments – Note 14 to Section XI: separate classification (with a view exclusions)
- Composite machines – Note 3 to Section XVI: classification according to principal function
- Sets consisting of a microphone and one or more loudspeakers (heading 85.18)

## Session II

### GIR 3 (a): Explanatory Note – Most specific

- ✓ Hard and fast rules?
- ✓ Description by name more specific than by class (generic – EU Court ruling C-297/13)
- ✓ Clear identification vs less complete identification

## Session II

### RULE 3 (a) - specific description

- Most specific description preferred to a more general description
- Examples:
  - ✓ **Tufted textile carpet**, identifiable as for use in a car:  
57.03 (“carpets”) more specific than 87.08 (“accessories”)
  - ✓ **Unframed safety glass** identifiable as part of aeroplanes:  
70.07 (“safety glass”) more specific than 88.03 (“parts”)

## Session II

### RULE 3 (a) - specific description

When two or more headings **each** refer to:

- ✓ **part only of the materials or substances** contained in mixed or composite goods; or
- ✓ **part only of the items in a set put up for retail sale**
- ✓ headings are as **equally specific** in relation to those goods, even if one of them gives a more complete or precise description of the goods

## Session II

### Due to this language :

- **Mixtures, sets and composite goods** are excluded from the provisions of GIR 3 (a)

Consequently:

- Classification according to GIR 3 (b) or 3 (c)

## Session II

GIR 3 (b) relates only to :

- i. Mixtures
- ii. Composite goods consisting of different materials
- iii. Composite goods consisting of different components
- iv. Goods put up in sets for retail sale



## Session II

### GIR 3 (b):

- Classification according to **essential character**
- Classified as if they consisted of the material or component which gives them their essential character

## Session II

### Essential character (Explanatory Note):

- Nature of the material or component
- Bulk
- Quantity
- Weight
- Value
- Role in relation to use of the goods
- Function

## Session II

Essential character (example):

- Mosquito net of a warp knitted fabric composed of polyester multifilaments (100 %), impregnated with an insecticide (55 mg/m<sup>2</sup> of deltamethrin), which repels or kills mosquitos and other insects
- 38.08: insecticides
- 63.04: other furnishing articles, of textile materials

## Session II

Essential character (example):

Function of the mosquito net provides the whole its essential character:

- Provides protection and shields user from any contact with insects
- No protection possible without the net
- Marketed as mosquito net, not as insecticide

## Session II

If GIR 3 (a) and 3 (b) cannot be applied:

Goods shall be classified under the heading which occurs **last in numerical order** among those which equally merit consideration

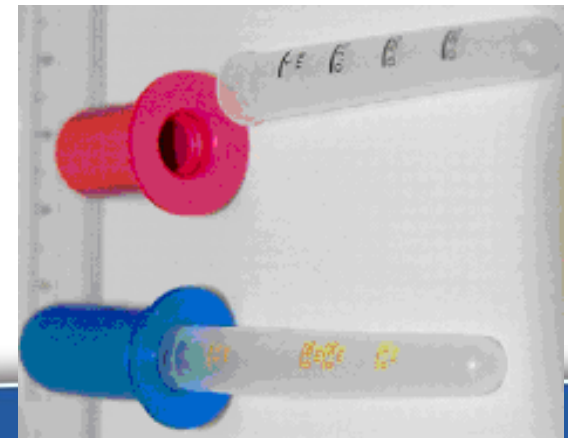
## Session II

### Example

Graduated dropper tubes, made up of:

- a tubular dosage measure of transparent plastic material; and
- a cylindrical teat of vulcanised rubber other than hard rubber

Classification according to GIR 3 (c): 40.14



## Session III

# Classification of composite goods

## Session III

GIR 3 (b) refers to :

- Mixtures
- **Composite goods**
- Goods put up in sets

What are composite goods?



## Session III

### GIR 3 (b)

Composite goods are goods consisting of:

- Different materials; or
- Made up of different components

This is the legal frame work!

## Session III

### The Explanatory Note to GIR 3 (b)

Composite goods are:

- Goods in which the components are attached to each other **to form a practically inseparable whole**; and

Note : The Explanatory Notes are not part of the legal frame work!

## Session III

Practically inseparable:

- Mosquito net of warp knitted fabric impregnated with an insecticide: 63.04
- Cartridge for an electronic cigarette consisting of a plastic mouthpiece and a plastic tube containing an absorbing material saturated with a solution consisting of propylene glycol, glycerol, nicotine and ethyl alcohol: 38.24



## Session III

### The Explanatory Note to GIR 3 (b)

Composite goods are:

- Those with **separable components**, provided:
  - ✓ these components are adapted one to the other;
  - ✓ are mutually complementary;
  - ✓ together they form a whole which would not normally be offered for sale in separate parts

Note : The Explanatory Notes are not part of the legal frame work!

## Session III

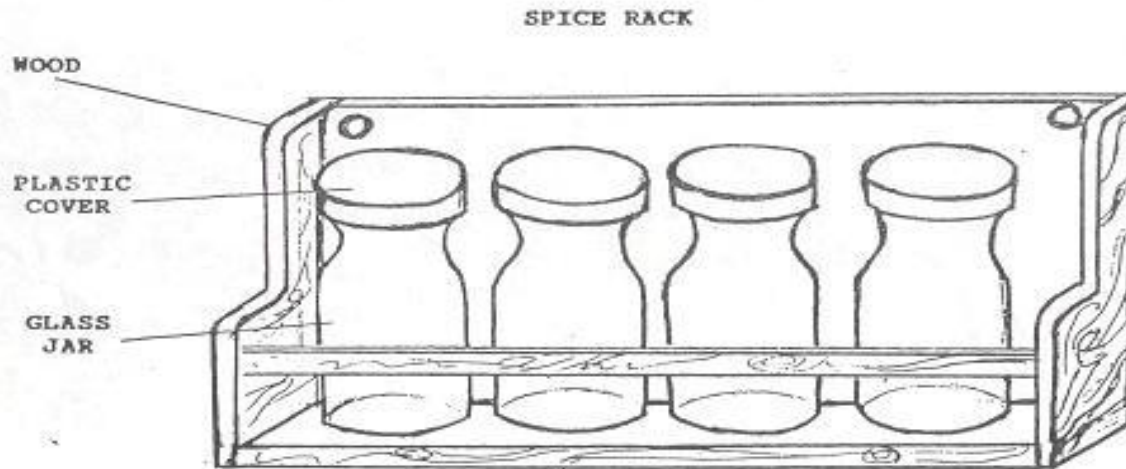
### Some examples of separable goods

- (1) Ashtrays consisting of a stand incorporating a removable ash bowl.
- (2) Household spice racks consisting of a specially designed frame (usually of wood) and an appropriate number of empty spice jars of suitable shape and size.

As a general rule, the components of these composite goods are put up in a common packing.

# Session III

Annex GER/N



**EXAMPLE OF COMPOSITE GOODS**

x x x

## Session III

A good consisting of a selection of spices, seeds, herbs, fruit, salt and seasonings, put up in hourglass-shaped glass bottles, each containing two different products



## Session III

- 63.04: insecticides?
- 38.24: articles of plastic?



## Session III

The answer: Rule 2 (b)

**Reference in a heading to a material or substance** includes a **reference to mixtures or combinations** of that material or substance with other materials or substances

## Session III

Consequently:

44.12 : Plywood, (...) and similar laminated wood => covered with plastic

42.05 : Other articles of leather => parts of textile or plastic

68.10 : Articles of cement => reinforced with metal bars

## Session III

What about references in Notes?

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

## Session III

Example – Note 1 (a) to Section XVI:

This Section does not cover articles (...) of vulcanised rubber

The term “rubber” includes any article made of a combination of rubber and another material **AS LONG AS THE RUBBER GIVES THE WHOLE ITS ESSENTIAL CHARACTER**

A grooved pulley wheel (of **cast iron**) joined concentrically between a flexible ring of **rubber** with a **cast iron** outer hub (vibration damper) → 84.83

(Picture for reference only)



## Session III

The classification of goods **consisting of more than one material or substance** shall be according to the principles of Rule 3.

Note : this provision does not apply when Rule 1 is applicable!

>>>>>>>>>

## Session III

Some situations where Rule 1 applies :

- sheet of steel coated with plastic => heading 72.10
- nails, etc. of steel with heads of copper => heading 74.15
- And → → →

## Session III

### References to mixtures and composite goods at Section, Chapter or heading level

- Mixtures of nuts or dried fruits (08.13)
- Note 1 to Chapter 9 (mixtures)
- Note 2 to Chapter 16 (preparations containing meat, fish, etc.)
- Heading 27.10 (preparations containing petroleum oils)
- Note 3 to Chapter 56 (felt and nonwovens combined with plastics or rubber)
- Note 2 to Chapter 59 (textile fabrics combined with plastics)

## Session III

Typical example at Section level

Note 7 to Section XV (classification of composite articles)  
(base metals and articles of base metals)

- articles of base metal containing two or more base metals
- are to be treated as articles of the base metal **predominating by weight** over each of the other metals
- including articles of mixed materials treated as base metal under the GIRs



## Session III

If there is no Rule 1 application:

Classification according to the principles of Rule 3 (a), (b) or (c)

## Session III

Rule 3 (a) does not apply to composite goods :

*'(...) when two or more headings each refer to part only of the materials or substances (...) headings are equally specific'*

Therefore : → → →

## Session III

- According to the principles of Rule 3 (b) or (c) (if (b) does not apply)
- Classification as **if the good consists of the material or component** which gives the whole its essential character

## Session III

Essential character :

- Nature of the material or component
- Bulk
- Quantity
- Weight
- Value
- Role of constituent material

*But also : the individual functions of the components*

## Session III

Some examples (1):

- Clothes hangers of wood with metal hook → wood = function
- Article of wood: 44.21



# Session III

Some examples (2):

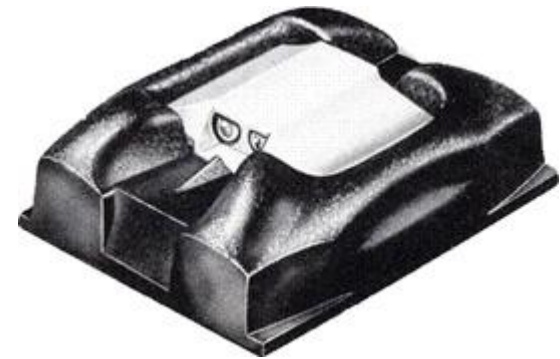
- Hollow profile of plastics or rubber with magnetic strip inside  
→ magnetic strip = role
- Permanent magnet: 85.05



## Session III

Some examples (3):

- Cat's eyes (road reflectors) consisting of a rubber block with glass reflectors on opposite sides → glass reflectors
- Article of glass: 70.14



## Session III

What about the following?

Article consisting of:

- a plastic lavatory seat with cover
- an electro-mechanical movable sprayer
- an electrothermic device



The product performs several functions such as heating water, spraying water and drying the area

(Picture for reference only)



## Session III

- In many cases not possible to determine the “essential character”
- Application of Rule 3 (c):
  - ✓ Last heading in numerical order
  - ✓ Meriting equal consideration

## Session III

An example :

- Concentrate of anti-freezing liquid, consisting essentially of:
  - ✓ ethyl alcohol; and
  - ✓ water mixed with small amounts of:
    - a. anionic surface-active agent
    - b. methyl ethyl ketone
    - c. colouring matter and
    - d. depending upon the formulation, monoethylene glycol
- Intended for windscreen defrosting or windscreen cleaning after dilution with water
- 22.08 or 38.20 → 38.20 (anti-freezing preparation)

## Session III

# Composite goods

Any questions?

# Session IV



## Classification of sets

Guest speaker: Mr. Ed De Jong, Senior Technical Officer WCO

# Session V



## The HS 2017 amendments

Guest speaker: Mr. Ed De Jong, Senior Technical Officer WCO

# Session VI

Sweeter than sugar?

Food for thought

## Description

Spray-dried green apple juice concentrate with added malto-dextrin (57% by weight of the product)

Presented in powder form

Entirely soluble in water

Intended to be used in foodstuffs, e.g., flavoured milk

## Headings involved

Headings for consideration are:

20.09

Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter

And

21.06

Food preparations not elsewhere specified or included



## Heading 20.09

Explanatory Note to heading 20.09 (1):

- The juices may be **concentrated** (whether or not frozen) or
- In the form of **crystals or powder** provided, in the latter case, that they are entirely or almost entirely soluble in water

## Heading 20.09

Explanatory Note to heading 20.09 (2):

- **Provided** they retain their original character, the juices may contain substances of the kinds listed below, whether these result from the manufacturing process or have been added separately:
  - (1) sugar;
  - (2) (...).
- Malto-dextrin = sugar?

## Heading 17.02

Heading 17.02:

Other sugars

Explanatory Note to heading 17.02, Item (A) (6):

- malto-dextrins
- chiefly used:
  - ✓ in the manufacture of baby food and low-calorie dietetic foods
  - ✓ as extenders for flavouring substances or food colouring agents
  - ✓ in the pharmaceutical industry as carriers

## Technical information

- Spray-drying widely used to produce fruit juice powders
- Some problems: stickiness, hygroscopic and solubility
- Solved by adding carrier agents
- Malto-dextrin, common carrier for fruit juices

Conclusion: heading 20.09 (or not?) => => =>

## Technical information

### Arguments contra 20.09:

- Malto-dextrin not natural constituent
- Not covered by substances mentioned in Explanatory Note to heading 20.09
- Mixed with concentrated juices before spray-drying (carrier agent)
- Therefore: loss of original character of the juice?

## Technical information

### Conclusion:

- Malto-dextrin ratio too high
- Upsetting the balance
- Heading 21.06

# Fruit juice powders

## Any questions?

# Session VII



## The HS and Customs duties



## The HS and Customs duties

- International agreements
- Relationship and consequences

# HS Convention

## Preamble of the HS Convention :

- intended to be used for international trade negotiations
- desirability of meeting the specified needs through a combined tariff/statistical nomenclature

# HS Convention



First: Article 9:

- The Contracting Parties do **not** assume by this Convention any obligation in relation to rates of Customs duty

# HS Convention

## Article 3:

- Customs tariff nomenclature in conformity with Harmonized System

## Article 1:

- Customs tariff nomenclature = nomenclature established under legislation of CP for levying duties on imported goods



# HS and International Agreements

- Any applicable Customs tariff to be reflected in the national Customs tariff nomenclature
- Including such tariffs coming from (multilateral) agreements

# HS and International Agreements



International agreements dealing with Customs duties  
(sectorial agreements)

- ITA (WTO)
- Pharmaceuticals (WTO)

# HS and ITA

- WTO instrument (Ministerial Declaration), concluded at the Singapore Ministerial Conference – 1996
- Tariff cutting mechanism
- To become ITA participant :
  - ✓ All products listed in the agreement must be covered
  - ✓ All must be reduced to a zero level
- MFN basis

# HS and ITA

## Product coverage (1)

- Attachment A :
  - HS headings or parts thereof ('ex')
  
- Attachment B :
  - Specific products (no reference to HS classification)



# HS and ITA

## Product coverage (2)

### Attachment A - Example

ex 8472.90 – Automatic teller machines

#### EU :

8472 90 30 - - Automatic teller machines	... Free
8472 90 70 - - Other	... 2.2%

#### USA :

8472 90 10 - - Automatic teller machines	... 0%
8472 90 90 - - Other	... 1.8%

# HS and ITA

## Product coverage (3)

### Attachment A - Example

ex 8504.40 – Static converters for adp machines

EU :

8504 40 30	- - Of a kind used (..)	. . . Free
8504 40 55/90	- - [Other]	. . . 3.3%

USA :

8504 40 60/70	- - Power supplies (...)	. . . 0%
8504 40 95	- - Other	. . . 1.5%



# HS and ITA

## Product coverage (4) Attachment B - Example

**Set top boxes which have a communication function: a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange**

**EU :**

	– Reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus:	
8528 71	– – Not designed to incorporate a video display or screen:	
	– – – Video tuners:	
8528 71 11	– – – – Electronic assemblies for incorporation into automatic data-processing machines . . .	Free
8528 71 15	– – – – Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange, capable of receiving television signals (so-called 'set-top boxes which have a communication function', including those incorporating a device performing a recording or reproducing function, provided that they retain the essential character of a set top box which has a communication function) . . . . .	Free
8528 71 19	– – – – Other . . . . .	14
	– – – Other:	
8528 71 91	– – – – Apparatus with a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange, capable of receiving television signals (so-called 'set-top boxes which have a communication function', including those incorporating a device performing a recording or reproducing function, provided that they retain the essential character of a set top box which has a communication function) . . . . .	Free
8528 71 99	– – – – Other . . . . .	14



# HS and ITA

## Product coverage (4) Attachment B - Example

**Set top boxes which have a communication function: a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange**

USA :	HS Code	Description	ITA	Rate
	8528.71	Not designed to incorporate a video display or screen:		
	8528.71.10	Incorporating video recording or reproducing apparatus	No.	3.9%
	8528.71.20	Other: Set top boxes which have a communications function	No.	Free
	8528.71.30	Printed circuit assemblies incorporating a tuner, of a kind used with data processing machines of heading 8471	No.	Free
		Other:		



# HS and ITA

## Product coverage (4) Attachment B - Example

Set top boxes which have a communication function: a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange

<b>USA :</b>	8528.71		Not designed to incorporate a video display or screen:		
	8528.71.10	00	Incorporating video recording or reproducing apparatus	No.	3.9%
	8528.71.20	00	Other: Set top boxes which have a communications function	No.	Free
	8528.71.30	00	Printed circuit assemblies		

**What about set top boxes with built-in recording apparatus?**

Other.

# HS and ITA

## Potential conflicts

- **Covered :**
  - **Digital still image video cameras (ex 8525.80)**
  - **Displays for ADP machines (8528.51)**
- **Not covered :**
  - **Video camera recorders (ex 8525.80)**
  - **Video monitors (8528.59)**

# HS and ITA

## Discussion point

Composite machine having the following functions:

- Personal computer;
- Colour television receiver; and
- Sound reproducing.

# HS and International Agreements

## Pharmaceuticals

- WTO agreement
- Elimination of Customs duties
- Coverage:
  - ✓ particular areas of the HS
  - ✓ pharmaceutical ingredients as designated by WHO



# HS and International Agreements

## Particular areas of the HS

All items classified in:

- Chapter 30
- Headings 29.36, 29.37, 29.39 and 29.41 (with some exception)

# HS and International Agreements

## Ingredients as designated by WHO

- Ingredients that bear INN from WHO
- Salts, esters and hydrates with particular prefix or suffix, classified in the same HS code as the INN product
- Salts, esters and hydrates of INN ingredients contained in Annex III, not classified in the same HD code as the INN product
- Additional products designated in Annex IV

# HS and International Agreements



## INN (WHO)

- INN: International Nonproprietary Names
- identify pharmaceutical substances or active pharmaceutical ingredients
- each INN is a unique name that is globally recognized and public property

# HS and International Agreements

## INN products (WHO)

- Request from WHO, HS Committee, assisted by the Scientific Sub-Committee provides information on the HS classification
- More than 3,300 products identified and classified by WCO so far
- WCO has published the list with INN products and their HS classification

# HS and International Agreements

## Sectorial agreements – potential conflicts

- Classification in particular Chapter or heading
- Description of the product coverage not always unambiguous
- Disputes between:
  - ✓ Importer and Customs
  - ✓ HS Contracting Parties

# HS and International Agreements

## Sectorial agreements – potential conflicts

Parts: part of the agreement?

- ITA, Attachment A: list of HS headings or parts thereof to be covered
- ITA, Attachment B:
  - ✓ List of specific products
  - ✓ Where parts are specified, they are to be covered in accordance with HS Notes 2 (b) to Section XVI and Chapter 90, respectively.

# HS and International Agreements

## Sectorial agreements – potential conflicts

Parts: part of the agreement?

- Both Attachments include parts, but only by application of Note 2 (b) to Section XVI or Chapter 90
- Parts which are to be classified by application of Note 2 (a) or 2 (c) are not covered

# HS and International Agreements

## Sectorial agreements – potential conflicts

Parts: part of the agreement?

- Ruling C-297/13 of the EU Court: classification according to Note 2 (b) only if classification under Note 2 (a) fails
- Consequently, many parts of machines covered by ITA do not have the same tariff treatment as the parent machine
- Next review of ITA?



# HS and International Agreements

## Non-fiscal agreements

### Monitoring commodities:

- UNEP (environmental goods)
- CITES (endangered species)
- OPCW (chemical weapons)
- Rotterdam Convention (hazardous chemicals)

# HS and International Agreements

## Non-fiscal agreements

Specific headings or subheadings (example):

- Montreal Protocol: 2903.71 - - Chlorodifluoromethane

Or => => =>

# HS and International Agreements

## Non-fiscal agreements

When no specific HS entry:

Recommendation to implement at national level (example):

- OPCW: 2811.19 - - - Hydrogen cyanide

EU:

2811 19		- - - Other:
2811 19 10		- - - Hydrogen bromide (hydrobromic acid) .
2811 19 20		- - - Hydrogen cyanide (hydrocyanic acid) . .
2811 19 80		- - - Other . . . . .

# HS and International Agreements



**Thank you**

**Any questions?**

# Session VIII



Summary and closing remarks

**THAT'S ALL !**  
(for this year)