

CHAPTER 7

CLASSIFICATION

7.1 Introduction

In this chapter we are going to learn about how goods are classified. However, before we go into the detailed rules, a quick reminder about why classification is important.

Illustration 1

Imagine you are an importer of vitamins from America. The classification code of a product determines the rate of duty applicable to it. Perhaps we think our vitamins should be classified as a medicament, which attracts a 0% rate. But if this code is wrong you could be paying too little duty. In this case, Customs can claim back duty from an importer for up to 3 years, in accordance with Article 221(3) of the Code and you could face **criminal penalties**, which include going to **prison** if there is intent to defraud them. Other criminal penalties include facing a **fine of up to 3 times the value of the goods**.

[Art 221\(3\)
2913/92](#)

These criminal penalty provisions can be found in Section 50 or 167 of CEMA 1979. You may already be familiar with these penalties and the **civil ones** that Customs could invoke, if you've looked at the chapter on 'Prohibitions, Restrictions & Penalties'.

[s. 50 & 167
CEMA 1979](#)

The other side of the coin is that you could be **paying too much duty**, eg perhaps we think our vitamins should be classified as a food supplement, which might attract duty of more than 12%.

In this case, your boss is not going to be thrilled if the code is wrong and you are over paying duty. And remember not only does the code determine the rate of duty that applies, but it also determines other things such as **licensing requirements, excise duties and preferences**. Some of these you will learn about in later chapters. Therefore, at this stage you can see why it is really important that you import your goods using the correct code.

7.2 Classification codes

Now that we know why classification is so important we need to look at the legislation which will tell us how we classify our goods. Just before we do that we need to explain some terminology.

We've said that most classification codes in the UK are **10 digits** in length. The codes are all contained in the **Tariff** and there are approximately 150,000 classification codes covering every single type of product you can import.

Goods are categorised in one of the **21 sections of the Tariff**, the numbers of which are expressed as roman numerals.

Illustration 2

Section VI covers 'products of the chemical and allied industries'. Sections are then further sub divided into chapters. Section VI includes Chapter 30, which covers 'pharmaceutical products'. The **chapter number** gives us the **first two digits** of our classification code.

Chapters are then subdivided further into **headings**, which give us the first **four digits**. For example, heading 30 01, covers 'glands and other organs'. Note that the first four digits are called the '**Tariff heading**'.

7.3 Harmonised System

Each heading is then divided further still to turn our four digit code into a **six digit** code. These codes are known as the '**harmonised system**' codes. You will learn more about the harmonised system in the chapter on 'International Administration and the World Customs Organisation'.

In brief, a number of countries across the World use the harmonised system. This means that if you import products into - say America, as well as the EU, your product will have the same first 6 digit classification code. This helps to facilitate the movement of trade.

7.4 Taric and Tariff codes

Once we have ascertained the first six digits, the next two digits make up the EU wide eight digit classification code, or **Taric** code. The remaining two digits are used where imports of certain products need distinguishing. For example, where imports may benefit from a **Tariff Quota**, or be subject to **licensing** or other measures. Where a further breakdown is not necessary, the last two digits will be shown as a double zero. For most imports in the UK, codes are generally **ten digits** in length.

Each section and chapter of the Tariff have notes at the beginning of them, which detail the goods that they contain. We'll look at these in a minute.

To put all of this into context, the opposite page contains a sample page from the Tariff for Chapter 30. Study it and identify the **Chapter**, the **heading**, the **harmonised system** codes, the **Taric** codes and the **final ten digits**.

1	Purified lysate of the Human Immunodeficiency Virus, obtained from							
2	human T-cells infected with the Gallo HTLV-IIIb strain		10		Kg	Free		S
3	Other		90	DTI Lic (!)	Kg	Free		S
4	30 03							
5	MEDICAMENTS (EXCLUDING GOODS OF HEADING NO. 30.02, 30.05							
6	OR 30.06) CONSISTING OF TWO OR MORE CONSTITUENTS WHICH							
7	HAVE BEEN MIXED TOGETHER FOR THERAPEUTIC OR							
8	PROPHYLACTIC USES, NOT PUT UP IN MEASURED DOSES OR IN							
9	FORMS OR PACKINGS FOR RETAIL SALE:							
10	Containing penicillins or derivatives thereof, with a penicillanic acid							
11	structure, or streptomycins or their derivatives	300310	00		Kg			S
12	Mixture of piperacillin (INN) and tazobactam (INN), or of their sodium salts		10		Kg	Free		S
13	Other		90		Kg	Free		S
14	Containing other antibiotics	300320	00	00	Kg	Free		S
15	Containing hormones or other products of heading No. 29.37 but not							
16	containing antibiotics:							
17	Containing insulin	300331	00	00	1.Kg	Free		S
18					2,100 Intl			
19					units			
20	Other	300339	00		Kg			S
21	Mixtures of oestrogens of equine origin, in powder form		10		Kg	Free		S
22	Other		90		Kg	Free		S
23	Containing alkaloids or derivatives thereof but not containing hormones							
24	or other products of heading No.29.37 or antibiotics	300340	00		Kg			S
25	Granules containing by weight 40% or more but not more than 50% of							
26	theophylline		10		Kg	Free		S
27	Other		90		Kg	Free		S
28	Other:							
29	Containing iodine or iodine compounds	300390	10	00	Kg	Free		S
30	Other	300390	90		Kg			S
31	Granules containing by weight 0.7% or more but not more than 1.2%							
32	of glycerol trinitrate		10		Kg	Free		S
33	Preparation of lansoprazole (INN)		20		Kg	Free		S
34	Preparation of tacrolimus (INN)		30		Kg	Free		S
35	Other		90		Kg	Free		S
36	30 04							
37	MEDICAMENTS (EXCLUDING GOODS OF HEADING NO. 30.02, 30.05							
38	OR 30.06) CONSISTING OF MIXED OR UNMIXED PRODUCTS FOR							
39	THERAPEUTIC OR PROPHYLACTIC USES, PUT UP IN MEASURED							
40	DOSES OR IN FORMS OR PACKINGS FOR RETAIL SALE:							
41	Containing penicillins or derivatives thereof, with a penicillanic acid							
42	structure, or streptomycins or their derivatives:							
43	Containing, as active substances, only penicillins or derivatives thereof wit							
44	a penicillanic acid structure	300410	10		Kg			S

7.5 General Interpretative Rules (GIRs)

Open up the Tolley's Red book at Council Regulation 2658/87 and the relevant bit is Annex 1.

[Annex I
Council Reg"
2658/87](#)

There are **6 rules** to use when classifying your goods. They are called **General Interpretative Rules** or **GIRs** for short, and we'll go through them in order. Follow them in your legislation as we work through each of them.

7.6 Rule 1

This says:

"The title of sections, chapters and sub-chapters are provided for ease of reference only. For legal purposes classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided such headings or notes do not otherwise require, according to the following provisions."

Rule 1 is basically there to tell you to **look at the detailed notes** in the Tariff, and not to rely on titles to provide all the information you need.

Illustration 3

Chapter 95 includes the following:

"Toys, games and sports requisites, parts and accessories thereof."

From the title we don't know if children's bicycles are included in this chapter. Just because they are not in the title it does not mean that they are not covered within this chapter. What we need to do is look in detail at the notes to the chapter. The notes say:

"This chapter does not cover children's bicycles; heading 8712."

Bicycles are not included in chapter 95 by virtue of the chapter notes.

7.7 Rule 2(a)

Rule 2 is split into part a) and part b).

Rule 2(a) says:

"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."

The important phrases are:

- the **article is incomplete or unfinished**, and
- has the **essential character of the complete or finished article**.

Rule 2(a), carries on to say:

"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".

There are two points raised by this rule.

Illustration 4

Take a bike. If it is completely finished it is classified as a bike, but what if we remove the saddle and remove the handlebars, do we still have a bike? Or, do we have bike parts? To encourage production to take place in the EU and thus give jobs to EU workers, parts can generally be imported at lower duty rates than the finished articles. A complete bike does not require any factory or workers, whereas parts that need assembling would provide jobs within the EU.

If our bike in the above example was classified as parts the rate might be around **3%** whereas the finished bike might incur a customs duty of around **15%**. So the classification of it is very important. But what do we classify the bike without the saddle and handlebars as?

What we need to do is decide, what constitutes "**essential character**"? Is the bike without saddle and handlebars still essentially a bike?

Historically, this was considered a subjective matter, with importers arguing one-way and Customs the other! Because of this uncertainty, Explanatory Notes were written to clarify when an unassembled bike has the "essential character" of the finished item.

Where it has the frame, the fork and at least two of the following components present, it has the essential character of a finished bike:

- a set of wheels;
- crank gear;
- steering unit and
- brake system.

You can see from this that the rules could cause Customs to disagree with a classification code you have picked! Because of this, you might want to obtain a binding ruling. You'll learn about this in a little while.

Illustration 5

The second part of the rule talked about **disassembled** or **unassembled** articles. Carrying on with our previous illustration you are unlikely to ship a bike in finished, as it would take up too much room on the plane or ship and would increase your freight costs.

You are more likely to disassemble the bike and then ship it in, in a box of parts. According to this rule, it is still classified as a bike, even though it is disassembled.

Therefore, articles presented either **incomplete** or **unfinished** which have the **essential character of the finished article** are classified as that finished article, and **complete articles** that are **presented unassembled or disassembled** are also classified as the finished article itself.

7.8 Rule 2(b)

Rule 2(b) says:

"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".

Illustration 6

A top made of cotton, which has a fur collar, could potentially be classified in two places, either with cotton garments or fur garments. Rule 2(b) says that the fur does not preclude it from being a garment of cotton and the cotton does not preclude it from being a garment of fur. So where do we classify it? Let's continue with the rest of rule 2b. It says:

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

We need to look at rule 3 to decide where this garment will be classified.

Illustration 7

Another example of this rule would be the following.

Imagine you import a Christmas gift set, which contains a teddy bear, a book and a badge. The problem that we have is that there may not be a specific code for a 'set' of this type. Therefore, we have a product that contains a mixture of goods, which are each potentially classified separately in different codes. How do we classify the set then? - According to the teddy bear? Or do we classify it according to the book? Or do we classify it according to the badge? We, again, need to look at Rule 3.

7.9 Rule 3(a)

Rule 3 is quite long. It is split into rules (a), (b) and (c). We will take each of them in turn.

Rule 3(a) says the following:

"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."

To pull out the most important phrase in 3(a):

Specific descriptions take precedence over general descriptions.

However, where sets of goods or combinations of goods are concerned; each potential heading is equally specific. This rule then does not help with our top composed of cotton and fur, or our set comprising the teddy bear, book and badge, because the second part of the rule says that **if each of the headings refers to part only of the goods, or to part of the items contained in a set, then each heading is to be regarded as equally specific**. We now have to move on to rule 3(b).

7.10 Rule 3(b)

Rule 3(b) tells us:

"mixtures, composite goods consisting of 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".

Again, to paraphrase this rule; in order to classify our fur trimmed top, we need to decide what gives it its **essential character**. This is likely to be the cotton, as it makes up the majority of the item. Think - would you go out just wearing the fur without the cotton top - probably not! Whereas, you would go out wearing the cotton part without the fur!

However, we might have trouble in deciding this for our set consisting of the teddy, the book and the badge. It is hard to say that one of the items predominates over any of the others.

If we have failed to classify our goods under Rule 3(b), because we believe that none of the items in the set give it its 'essential character' then we need to move on to Rule 3(c).

7.11 Rule 3(c)

This rule says:

"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."

Therefore, if we haven't been able to classify the goods yet, we will choose the heading that occurs **last in numerical order** in the Tariff. The reason for this rule is that the Tariff is set out so that raw materials appear first and the more processed the goods are the further on in the Tariff they appear. As a result the highest duty rates tend to be towards the end!

Example 1

You need to insert the correct rule number for each of the descriptions below:

Description	Rule number
Mixtures and combinations	
Last in numerical order	
Chapter and Section Notes	
Mixed/composite/goods in sets - "Essential Character"	
Incomplete/unassembled articles	
Specific rather than general	

7.12 Rule 4

It says:

"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".

The most important word out of this sentence is "**akin**". This is probably the least helpful out of all of the rules because if you have had trouble with classifying them according to the first three rules the word "akin" does not really help us any further. Therefore, although this rule exists it is very rarely used!

7.13 Rule 5(a)

Rule 5 is split into two. Rule 5(a) states the following:

"Camera 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. This rule does not, however, apply to containers which give the whole its essential character".

Illustration 8

When importing a camera within a camera case, the case is not classified separately, but will be classified according to the heading for the camera it contains.

You will note in the last sentence of Rule 5(a) that it says it does not apply to containers **which give the whole its essential character**.

Illustration 9

This could apply where a distinctive cookie jar, in the shape of an animal, is imported containing a few cookies. It could be argued that the cookie jar itself gives the whole its essential character, and therefore would not be classified as the cookies, but may be classified as an article made of china. Again we can see the words "**essential character**", which we would have to decide based on the features of the particular product.

7.14 Rule 5(b)

Rule 5(b) talks about other packing materials and containers. This says:

"Subject to the provisions of rule 5(a), 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."

Illustration 10

Imagine a bottle of fizzy pop. The container housing the fizzy pop is of a kind **normally used for packing this type of product**. In addition, the packaging is **clearly not suitable for repetitive use** and therefore will be classified along with the fizzy pop.

7.15 Rule 6

Rule 6 is the last of our general interpretive rules or GIRs. The rule says the following:

"For legal purposes, the classification of goods in the sub headings of a heading shall be determined according to the terms of those sub headings, and any related sub heading notes and mutatis mutandis to the above rules on the understanding that only sub headings 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."

This rule has two points. The first one is that when looking at sub-headings you still use GIR rules 1-5.

The second part of the rule means is that you **compare like with like**.

Illustration 11

Imagine that we have a bicycle. You need to compare sub headings at the same level, when deciding on the classification of a product. So for instance you may look at Heading 87 12 which includes 'bicycles and other cycles.' You might also look at Heading 95 01, which includes 'wheeled toys designed to be ridden by children.'

You will note that we are **comparing the same sub heading in both chapters**, i.e. each of them has 4 digits. Note 6 also told us that we need to **look at the terms of Chapter Notes** when comparing our headings and the Chapter Notes for Chapter 95 says that they exclude bicycles, which are classified in Chapter 87. Therefore, 95 01 is no longer applicable.

Example 2

You need to match the correct rule number to its description.

Description	Rule number
Compare like with like	
Packaging not for repetitive use	
Akin	
Case specially shaped (e.g. camera cases)	

7.16 Explanatory Notes to the Harmonised System & Combined Nomenclature

Our final look in this chapter is at what other aids to classification there are.

One aid is the '**Explanatory Notes to the Harmonised System**'. These are **issued by the WCO**. We've already mentioned that the first 6 digits of a Tariff code are common to a number of countries across the world in addition to the EU.

The Explanatory Notes give further details about where goods are classified, to the **first 6 digits**, and can be useful to look at, if you are unsure about the classification of your product. One problem with them is that they don't tend to keep pace with changing technology, so **can be a bit outdated**.

For more information about the role of the WCO, see the chapter on International admin and the WCO.

Explanatory Notes are also issued to the Combined Nomenclature. Remember the **CN classifies products to 8 digits**. Both of these Explanatory Notes are not legally binding.

7.17 People

Other aids to the correct classification of a product, are people! Use the **manufacturer** of the product so you know the **technical specifications**, and get **samples** and **photos** from them if you can.

You can use the services of a **customs consultant** and you could use your **freight agent**. However, do be aware that the freight agent may not know the exact specifications of the products that they are importing on your behalf.

7.18 Tribunal & Court decisions

Another aid to classifying a product is to look at previous tribunal and Court decisions. These can be obtained from the web at www.bailii.org.

If Customs disagree with the code you have chosen, they might issue you with an **assessment to recover back duty for 3 years**. You can appeal this assessment and the tribunal will issue a ruling as to where the product should be classified. Tribunal decisions are freely available and can assist importers in classifying their products.

Sometimes a tribunal decision is appealed, so an importer might also need to check decisions of other courts, such as those of the Upper Tribunal, Court of Appeal, etc.

7.19 ECJ cases and rulings

They are available on the web at <http://europa.eu>. In addition, the Official Journals detail amendments to the Explanatory Notes of the Combined Nomenclature and provide details of classification codes for specific products.

7.20 Binding Tariff Information (BTI) rulings

We have already mentioned the wide ranging penalties that Customs could invoke if your classification code is incorrect. Therefore, how can you be legally certain that the code you have chosen is going to be accepted by them? One way of doing this is to obtain a binding ruling from them. The type of binding ruling you can get is called a **BTI** or **Binding Tariff Information**.

The relevant legislation is Article 12 onwards of the Code and Article 5 onwards of the Implementing Regs. BTI's can now be applied for **electronically**, the so-called **eBTI**. This replaced the paper application form, the **C103**.

[Art 12
2913/92](#)
[Art 5
2454/93](#)

The advantage of a BTI is that it is currently **legally binding on all EU member states** for **6 years**. The Commission intends to reduce this to 3 years under its re-write of the Code. In addition, if it is no longer compatible with the law, for instance if a **regulation** is adopted, or it is **revoked** then you may be able to continue relying on it for a specified period of time. This is provided that you have **secured binding contracts to import those goods**. If it is **revoked the time is 6 months**. If a regulation is adopted, the **regulation will lay down the period** for which you can continue using it. In order to see whether a BTI has already been obtained for a product the same as yours there is an EU database showing all BTIs issued by each member state. This is available at the moment from the European Union's online web site at <http://europa.eu>.

However, a BTI can only be relied upon by the holder of it - so you will still need to apply for your own if you want legal certainty that the code you are using is correct.

Example 3

How long is a BTI ruling valid for?

- A 3 years
- B 1 year
- C 6 years or
- D 4 years

Example 4

How long can a BTI be relied on if it is revoked?

- A 6 months
- B 3 months
- C One year or
- D For no time

Answer 1

Description	Rule number
Mixtures and combinations	2(b)
Last in numerical order	3(c)
Chapter and Section Notes	1
Mixed/composite/goods in sets - "Essential Character"	3(b)
Incomplete/unassembled articles	2(a)
Specific rather than general	3(a)

Answer 2

Description	Rule number
Compare like with like	6
Packaging not for repetitive use	5(b)
Akin	4
Case specially shaped (e.g. camera cases)	5(a)

Answer 3

The correct answer was C - they are valid for 6 years.

Answer 4

The correct answer was A - 6 months.