



**World Customs
Organization**

HS - General rules for interpretation

Understanding the legal basis of classification

The General Interpretative Rules (GIRs)

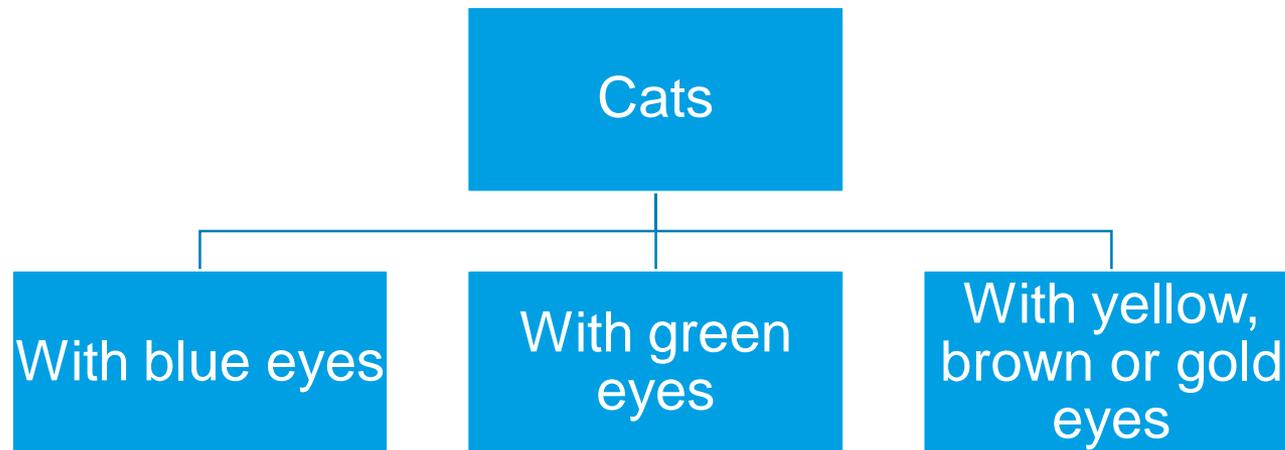


A major goal of the HS was to establish a global classification system that facilitated consistency and predictability in classification.

However, a nomenclature covering all possible goods is invariably a complex system with multiple possibilities for classifying many goods.

So a set of rules that give a compulsory method of classification is essential to facilitate consistency and predictability.

Rules on resolving ambiguity in classification are needed for consistent results in classification systems.



Six GIRs



GIR 1

Establishes the legal basis for classification (terms, Notes and other GIRs) and establishes the priority given to the terms of headings and Notes over the remaining GIRs.

GIR 2

Extension of the scope of the headings to cover mixtures, composites, unassembled, unfinished or incomplete goods

GIR 3

Resolution of classification when two or more headings are possible

Six GIRs



GIR 4

Provides for completely unforeseen goods that are not otherwise covered

GIR 5

Covers the treatment of packaging materials and containers

GIR 6

Provides that the same process is independently followed at each subheading level

GIR 1



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 :

GIR 1 – Main Points



- The titles of Sections, Chapters or Sub-Chapters are provided for ease of reference only (no legal value).
- Legal classification at heading level must be made according to:
 - the terms of headings (the wording) and any relative Section or Chapter Notes; and
 - **only if** the headings or Notes do not otherwise require, according to Rules 2 to 5.

GIR 1 fully resolves the heading classification

when:

- there is only one heading whose terms encompass the whole good; or
- the terms or Notes direct the classification to a specific heading; or
- the terms or Notes direct the method of classification

Under these circumstances, the headings or Notes “otherwise require” and GIRs 2, 3 and 4 are not usable at *heading* level.

Notes may “otherwise require” by dictating the place of classification

Surgical Catgut – Note 4 (a) to Chapter 30



“4.- Heading 30.06 applies only to the following, which are to be classified in that heading and in no other heading of the Nomenclature

- (a) Sterile surgical catgut, similar sterile suture materials (including sterile absorbable surgical or dental yarns) and sterile tissue adhesives for surgical wound closure;”

This Note directs the place of classification and hence it “otherwise requires”. GIR 3 **cannot** be used in classification. Classification at heading level is fully resolved by GIR 1.

Notes may “otherwise require” by dictating a method of classification

Section XVI Note 2 gives a complete set of rules for classifying parts of machines of Section XVI, including precedence when there are multiple possibilities for their classification.

By directing the method of classification, Note 2 to Section XVI requires that GIR 3 is *not* used for the goods it covers.

Terms may “otherwise require” by making classification intent explicit in their coverage



“Travel sewing kit”

Heading 96.05 : Travel sets for personal toilet, sewing or shoe or clothes cleaning.

Heading 96.05 encompasses the entire set by name and is the **only** heading where the full set is covered. As such it clearly indicates the intent of coverage and “otherwise requires”, therefore GIR 3 cannot be invoked to classify it to a component.

It is classified by GIR 1 at heading level.



Terms may otherwise require by directing between headings

Heading 4601 reads as follows.

PLAITS AND SIMILAR PRODUCTS OF PLAITING MATERIALS, WHETHER OR NOT ASSEMBLED INTO STRIPS; PLAITING MATERIALS, PLAITS AND SIMILAR PRODUCTS OF PLAITING MATERIALS, BOUND TOGETHER IN PARALLEL STRANDS OR WOVEN, IN SHEET FORM, WHETHER OR NOT BEING FINISHED ARTICLES (FOR EXAMPLE, MATS, MATTING, SCREENS).

The phrase “whether or not being finished articles” directs that sheets of plating material processed as per the terms are included even if they have the character of finished articles. This heading otherwise requires and prevents the use of GIR (3) to send these articles to a finished article classification.

GIR 1



GIR 1 is the primary rule for classification.

On the face of it, it is quite simple. Just read the terms and any Notes to find the heading.

So we will look at how this might work in practice.

GIR 1 – three examples

Consider:

- an ignition wiring harness for a car;
- a side-view mirror for a car,
and
- a seat belt for a car



These items' only commercial use is as car parts.

GIR 1



Heading **87.08** reads:

- Parts and accessories of the motor vehicles of headings 87.01 to 87.05.

The ignition wiring harness, the rear-view mirror and the seat belt are all for vehicles of heading 87.03. So the terms fit the goods.

However, you also need to read the Notes and consider if there are any other headings that might also be relevant.

Notes and Terms are read together



GIR 1 gives equal status to terms and Notes.

There are two Notes relevant to heading 87.08 at Section level we need to consider.

(There are actually others as well, like the Note sitting in the metals Section which defines 'parts of general use' and various exclusion Notes to Chapters, but we will only look at two Notes in the transport Section for this example.)

Section XVII



2.- The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this Section :

- (a) Joints, washers or the like of any material (classified according to their constituent material or in heading 84.84) or other articles of vulcanised rubber other than hard rubber (heading 40.16);
- (b) Parts of general use, as defined in Note 2 to Section XV, of base metal (Section XV), or similar goods of plastics (Chapter 39);
- (c) Articles of Chapter 82 (tools);
- (d) Articles of heading 83.06;
- (e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof, other than the radiators for the articles of this Section; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;
- (f) Electrical machinery or equipment (Chapter 85);
- (g) Articles of Chapter 90;
- (h) Articles of Chapter 91;
- (ij) Arms (Chapter 93);
- (k) Lamps or lighting fittings of heading 94.05; or
- (l) Brushes of a kind used as parts of vehicles (heading 96.03).

For GIR 1, these must be to see if they affect our wiring harness, windscreen or seatbelt.

3.- References in Chapters 86 to 88 to “parts” or “accessories” do not apply to parts or accessories which are not suitable for use solely or principally with the articles of those Chapters. A part or accessory which answers to a description in two or more of the headings of those Chapters is to be classified under that heading which corresponds to the principal use of that part or accessory.

Section XVII Note 2 (f) excludes “Electrical machinery or equipment” from being covered by the term “parts” in Section XVII and directs such goods to Chapter 85.

So although the ignition wiring harness is a part, it is ***not*** a part for classification.

(Classified in heading 85.44 instead)

If the Notes for vehicle parts seem complex and daunting, that is because they are. It is an extremely difficult area of classification.



More than one heading



There is no Note on the inclusion or exclusion of mirrors as parts in heading 87.08.

So the rear-view mirror could be classified under “**Parts and accessories of the motor vehicles of headings 87.01 to 87.05 ...**

... however, it could also be covered by heading 70.09.

Glass mirrors, whether or not framed, including rear-view mirrors.

In this case, neither the terms or Notes direct the classification to a specific heading. This is a case where you need to consult the other GIRs as well. It cannot be classified to a heading by GIR 1 alone.



Finally a ‘simple’ classification ...



There is no Note on the inclusion or exclusion of seatbelts as parts in heading 87.08.

So the seat belt can be classified under “**Parts and accessories of the motor vehicles of headings 87.01 to 87.05 ...**

You have carefully read all possibly relevant Notes and checked the chapters relevant to textiles, metals, plastics, straps and clasps! There is no other heading that covers a made-up seatbelt.

It is classified, at heading level, to 87.08 by GIR 1.



Legal interpretation of the meaning of words is often not ‘simple’



Classifying by the **terms** (the wording of the headings) and **Notes** is often complex.

Usually the terms are construed by considering their “ordinary meaning” (an imprecise concept) or their trade meaning (also sometimes imprecise and whether the meaning encompasses a specific product: “does the product fall within the scope?”).

It is not unknown to find oneself considering deep philosophical questions, such as ...

... are mutants, or other people with super-human powers, actually human?



“to be properly classifiable as a “doll” under the HTSUS, a toy figure must clearly represent a human being”

“The task of the court is to ascertain which meaning the words “representing” and “only” were intended to carry in the phrase “dolls representing only human beings” in heading 9502 of the HTSUS” (Toy Biz v. US, CIT (2003) Slip Op. 03-2)

(Heading 95.02 was deleted in the 2007 edition.)



What about the other GIRs?



The next GIR, GIR 2, is different in that it does NOT direct the classification of goods.

- GIR 2 (a) and GIR 2 (b) only extend the scope of classifications to allow incomplete, unfinished, unassembled, disassembled, mixed, combined and multi-material goods coverage.
- GIR 2 does not direct which, if any, of the classifications opened by GIR 2 should be used.
- GIR2 is used *with* GIR 1 or *with* GIR 1 and 3

GIR 2 (a)



- (a) 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.

Important points in GIR 2 (a)



- Only extends references to articles in headings
- Applies to goods “as presented”, i.e. in the state they are presented at the border
- Has an “**essential character**” test
- Subject to the essential character test, it allows for a combination of an incomplete or unfinished condition with an unassembled or disassembled condition.

Essential character in GIR 2 (a)



- The “essential character” provision is aimed at separating goods that have acquired the essential character of the final good from parts or assemblies of parts.
- The essential character test (also used in GIR 3 (b)) is one of the most legally challenging aspects of classification.

Are these unfinished dolls ... or just parts or assemblies of parts?



Blanks



The Harmonized System Committee has applied the unfinished provision to blanks, defining a blank in the ENs as:

“an article, not ready for direct use, having the approximate shape or outline of the finished article or part, and which can only be used, other than in exceptional cases, for completion into the finished article or part (e.g., bottle preforms of plastics being intermediate products having tubular shape, with one closed end and one open end threaded to secure a screw type closure, the portion below the threaded end being intended to be expanded to a desired size and shape).”

Blanks

39.23 – Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics.



GIR 2 (b)



- (b) 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.

Example:



73.23 - Table, kitchen or other household articles and parts thereof, **of iron or steel**; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel.

74.18 - Table, kitchen or other household articles and parts thereof, **of copper**; pot scourers and scouring or polishing pads, gloves and the like, of copper; sanitary ware and parts thereof, of copper.

Under GIR 2 (b), heading 73.23 can cover kitchen articles of steel *and copper*, and heading 74.18 can cover kitchen articles of copper *and steel*.

Without GIR 2 (b) these steel and copper pans would not be covered.

With GIR 2 (b), there is a choice of two headings for them.



Precedence of GIR 1 over GIR 2

The provisions of GIR 2 apply only in the absence of specific provisions in the Nomenclature covering goods consisting of more than one material or substance.

Example: heading 33.02 covers “Mixtures of odoriferous substances”. This “otherwise requires” and GIR 2 (b) is not used.



GIR 2 to GIR 3



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

GIR 2 (b) leads us into GIR 3.

3. 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 :

GIR 3 (a)



- (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.

Important points in GIR 3 (a)



- Has a “**most specific**” test
- Qualifies the test to stop it being used for mixtures, composite goods or sets ***unless*** candidate headings reference the ***whole*** mixture, composite good or set.

What is the “most specific” description of an object?

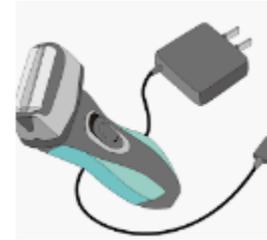


There is no definition of “most specific” in the Nomenclature. The Explanatory Notes (ENs) give some limited guidance.

Generally (but not always) accepted principles in practice:

- a description by name is taken as more specific than a description by class
- a description which more narrowly defines the goods or which covers more of the goods characteristics is generally taken as more specific than a broader description or one which covers fewer characteristics.

An example from the ENs: Least specific to most specific for an electric shaver



84.67 - Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or non-electric motor.

85.09 - Electro-mechanical domestic appliances, with self-contained electric motor, other than vacuum cleaners of heading 85.08.

85.10 - Shavers, hair clippers and hair-removing appliances, with self-contained electric motor.

Back to our side-mirror ...



We noted two possible headings for the side-mirror:

87.08 - Parts and accessories of the motor vehicles of headings 87.01 to 87.05 ...

70.09 - Glass mirrors, whether or not framed, including rear-view mirrors.



“Glass mirrors, whether or not framed” is considered to be more specific than parts of motor vehicles. So the side-mirror is classified in heading 70.09 vide GIR 1 and 3 (a).

GIR 3 (b)



- (b) 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, insofar as this criterion is applicable.

Important points in GIR 3 (b)



- **Only** for:
 - mixtures;
 - composite goods consisting of different materials or made up of different components; and
 - goods put up in sets for retail sale
- Sets under this rule must be “put up” for retail sale

Important points in GIR 3 (b) cont.



- Has an “**essential character**” test which requires that the “essential character” of the whole can be identified as provided by a material in or a component of the goods
- Has an undefined rider “insofar as this criterion is applicable”

GIR 3 (b) : Essential character



“The factor determining the essential character will vary as between different kinds of goods.”

The Explanatory Notes mention:

- nature of the material,
- nature of the component,
- bulk,
- quantity,
- weight or value,
- role of a constituent material in relation to use of the goods.

GIR 3 (b) : Essential character



The question to ask is what gives the goods their identity, their character?

What gives the character may vary widely between goods.

GIR 3 (b) : Essential character

Consider a pair of gloves made of leather and textiles.

Most of the palm, the lower side of the fingers and almost all of the thumb and index finger are of leather. Everything else is textile.

There are headings for leather gloves and textile gloves, but each of these covers only part of the materials, so under GIR 3 (a) are equally specific.

As composite goods, they can be classified under GIR 3 (b), but does the leather or textile give the essential character?



GIR 3 (b) : Essential character

Brush, mirror and comb set put up for retail sale.

Which component gives the essential character?

Essential character is not an easy test.



GIR 3 (c)



(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.

Important points in GIR 3 (c)



- **Only** used when GIR 3 (a) and (b) cannot be used.
- Resolves the deadlock between headings mechanically (last occurring).
- Has an undefined rider “those which equally merit consideration”

GIR 3 (c): last occurring

Do you remember the brush, mirror and comb set put up for retail sale?

If none of the items gives the set its essential character, then GIR 3(c) would rule classification to the item classified *last* in the HS. In this case, the comb.



**The remaining rules are just as vital,
but as we have limited time, we will go
even quicker over these!**

GIR 4



4. 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.

Important points in GIR 4



- **Only** used when:
 - there is **no heading** which is able to cover the goods through its terms or notes (GIR 1); and
 - GIR 2 is not able to expand references to allow coverage of the goods.
- Requires a “**most akin**” test

GIR 5



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

GIR 5 (a)



- (a) 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 ;

Important points in GIR 5 (a)



- The containers must be presented with the goods (the goods do not have to be in the container)
- The container must be shaped or fitted to contain the article or set of articles it is presented with
- The container must be suitable for long-term use, so of a similar durability to the goods
- The container must be of a kind normally sold with the goods it is presented with

Important points in GIR 5 (a) (cont.)



- GIR 5 (a) is **not applicable** to containers which are the component providing the essential character to the “whole” (that is, to the combination of the container and its intended contents).



GIR 5 (b)



- (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.

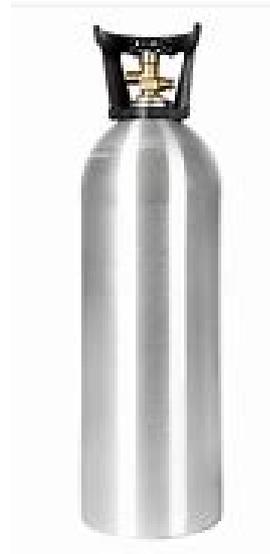
Important points in GIR 5 (b)



- The packing materials or packing containers must **contain** the goods when presented at the border
- The packing materials or containers are of a kind normally used to pack the type of goods they contain
- For packing materials or packing containers that are suitable for reuse as packing materials or packing containers for international trade, countries can choose whether or not to apply GIR 5 (b)

Suitable for repetitive use

Countries are free to choose how to treat containers that are for repetitive use in the transport of goods.



Last but far from least ...

There is one final rule.

You have hopefully noticed that in the GIRs so far, we have talked about **headings**.

But a heading is only four digits and an international classification is six digits ... so ...

6. 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.

Important points in GIR 6



- Classification at subheading level is based on the *terms of the subheadings* and related Subheading Notes
- GIRs 1 to 5 can be used with the required changes, e.g. changing heading to subheading
- *Each level* of subheadings is considered separately, that is **all** the five digit subheadings that fall under the chosen heading are examined first, without consideration of any six digit subheadings

Important points in GIR 6 cont.



- The procedures outlined in GIR 6 are applied at each applicable level
- Relevant Section and Chapter Notes also apply unless the context prevents them doing so

Sections and Chapter Notes with GIR 6



Note 2 to Chapter 8: Chilled fruits and nuts are to be classified in the same headings as the corresponding fresh fruits and nuts.

There is no context to “otherwise require”, so Note 2 to Chapter 8 also applies at subheading level.

Note 3 to Chapter 29: “Goods which could be included in two or more of the headings of this Chapter are to be classified in that one of those headings which occurs last in numerical order.”

Subheading Note 2 to Chapter 29: “Note 3 to Chapter 29 does not apply to the subheadings of this Chapter.”

Subheading Note 2 to Chapter 29 provides the context that “otherwise requires” and Note 3 to Chapter 29 does not apply to subheadings.

Note 4 (B) to Chapter 71: “The expression “platinum” means platinum, iridium, osmium, palladium, rhodium and ruthenium.”

Subheading Note 2 to Chapter 71: “Notwithstanding the provisions of Chapter Note 4(B), for the purposes of subheadings 7110.11 and 7110.19, the expression “platinum” does not include iridium, osmium, palladium, rhodium or ruthenium.”

Note 4 (B) to Chapter 71 applies to **all subheadings of the Chapter except 7110.11 and 7110.19**

The purpose of GIR 6



So what GIR 6 actually does, is it tells you to go through the whole process you used for the heading again to find the correct 5-digit subheading ...

... and then go through it again to find the correct 6-digit subheading.

A brief introduction only



This has been a very brief introduction that has covered only a few of the interesting aspects of the General Rules of Interpretation.

I hope that your further journeys into the HS Rules will give you a better appreciation of the complexities and importance of this single page of Customs' law!



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