



MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 1: Classification | Module 1: Explanatory Notes

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INTRODUCTION

The Trojan War
The American Revolution
World War I
Star Wars

Take a moment to consider what all these wars have in common....

Every one of these wars had trade-related beginnings and justifications.

- Troy controlled all trade routes to the Black Sea charging high tariffs. The Greeks wanted to break Troy's stranglehold.
- Taxation (via tariffs) without representation was the battle cry of the American Revolution.
- World War I was sparked by an assassination, but trade rivalries had been brewing for years.
- Then there's the Trade Federation blockade of Naboo in Star Wars.

Trade plays a significant and crucial role in global relationships. World War II falling so closely on the heels of World War I left Europe economically devastated and the world reeling from an estimated 110-125 million combined deaths. A number of steps were taken during the recovery process.



Two key advancements are relevant to this module:

- 1) The General Agreement on Tariffs and Trade (GATT) which went into effect January 1, 1948. Its primary purpose was to promote international trade by reducing or eliminating trade barriers such as tariffs or quota. This effort eventually became the World Trade Organization (WTO) which was established January 1, 1995.
- 2) The Customs Co-operation Council (CCC)—which was created by the Committee for European Economic Co-operation—which established one or more inter-European Customs Unions based on the principles of the General Agreement on Tariffs and Trade (GATT). Over time, the CCC became the World Customs Organization (WCO) of today.

The CCC began the critical work of unifying the various global tariffs into a single system now known as the Harmonized System (HS) which came into effect in January 1, 1988.

- The HS covers the first six-digits of a classification which is considered the “international level”
- Each country can add additional country-specific numbering after the first six digits.
- For the HS to be effective, the signatory countries must agree on what the language in the HS means. To do this, the CCC drafted the Explanatory Notes, originally known as the “Customs Cooperation Council Nomenclature”.

Let’s see how the Explanatory Notes fit into the WCO framework.

Lesson 1: World Customs Organization (WCO)

The WCO functions are:

- To study all questions relating to co-operation in Customs matters
- To examine the technical aspects, as well as the economic factors related thereto, of Customs systems with a view to proposing to its members practical means of attaining the highest possible degree of harmony and uniformity
- To prepare draft Conventions and amendments to Conventions and to recommend their adoption by interested governments
- To make recommendations to ensure the uniform interpretation and application of the Convention’s conclusions as a result of its work as well as those concerning the Nomenclature for the classification of goods in Customs tariffs and the valuation of goods for Custom’s purposes, and, to this end, to perform such functions as may be expressly assigned to it in those conventions in accordance with the provisions thereof



- To make recommendations, in a conciliatory capacity, for the settlement of disputes concerning the interpretation or application of the conventions referred to above
- To ensure the circulation of information regarding Customs regulations and procedures
- On its own initiative, or on request, to furnish to interested governments information or advice on customs matters within the general purposes of the present convention and to make recommendations thereon
- To co-operate with other inter-government organizations as regards matters within its competence

Lesson 2: The Explanatory Notes

The Explanatory Notes or ENs constitute the official interpretation of the Harmonized System at the international level.

The ENs are not legally binding and are, therefore, not dispositive. In other words, relying solely on the ENs does not guarantee that CBP, or any other global Customs organization, will automatically agree with you.

Because they are not binding, the ENs are not available on the CBP website. The ENs can be obtained through the WCO Online Bookshop or through a number of providers offering subscription services.

The ENs are the commentary on the scope of each heading of the Harmonized System. They are considered by CBP when making classification rulings and are helpful in determining the classification of merchandise under the HS. They cover six volumes and are too extensive to be included in the HS.

Extensive effort is exerted in developing the ENs and reaching consensus in how the HS should be applied.

The ENs are published in English and French, the official languages of the WCO. Like the HS, the ENs are updated every 5-6 years by the WCO.

Lesson 3: Reading the Explanatory Notes

The ENs are set out in the order of headings and subheadings of the Harmonized Commodity Description and Coding System (Harmonized System). This includes the General Rules of Interpretation (GRIs).



The ENs are the “go-to” source to determine the “intent” of the framers of the HS. Again, they’re not legally binding but often quoted by CBP and given strong consideration when issuing binding rulings. As such, these notes can add strength to an argument you may be making or to help cement a decision as to a proper classification.

Like the Section and Chapter Notes of the HS, the ENs provide information including:

1. Products included in a heading
2. Products excluded from a heading
3. Definitions that govern a heading (or group of headings)

Let’s look at how the HS and EN work together.

Lesson 4: Using the Explanatory Notes

The GRIs provide the agreed upon rules for classifying within the HS and are deceptively short, easily fitting on one page. The ENs for the GRIs, however, cover eight pages. Let’s take a look at the most used GRI—GRI 1—and see what we can glean from its EN.

GENERAL RULES FOR THE INTERPRETATION OF THE HARMONIZED SYSTEM

Classification of goods in the nomenclature shall be governed by the following principles:

RULE 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...

EXPLANATORY NOTE

- (I) The Nomenclature sets out in systematic form the goods handled in international trade. It groups these goods in Sections, Chapters and sub-Chapters which have been given titles indicating as concisely as possible the categories or types of goods they cover. In many cases, however, the variety and number of goods classified in a Section or Chapter are such that it is impossible to cover them all or to cite them specifically in the titles.
- (II) Rule 1 begins therefore by establishing that the titles are provided “for ease of reference only”. They accordingly have no legal bearing on classification.
- (III) The second part of this Rule provides that classification shall be determined:
 - (a) according to the terms of the headings and any relative Section or Chapter Notes, and



- (b) where appropriate, **provided the headings or Notes do not otherwise require**, according to the provisions of Rules 2, 3, 4, and 5.
- (IV) Provision (III) (a) is self-evident, and many goods are classified in the Nomenclature without recourse to any further consideration of the Interpretative Rules (e.g., live horses (heading 01.01), pharmaceutical goods specified in Note 4 to Chapter 30 (heading 30.06)).

Just reading GRI 1 aloud, it can be cumbersome. The EN attempts to provide clarification.

The EN divides Rule 1 into two parts:

Part 1: Structure and Reference Disclaimer

The EN explains that the HS needed a structure, which it calls the “systematic form”. It then goes on to say that, as part of this structure, items were grouped together. Then they added titles to these groups and tried, as concisely as possible, to convey what each group included.

However, there is a lot of variety in these headings and it is impossible to include everything in a title. As such, they are just references to help you identify the group that may be relevant.

Part 2: Classify by Headings AND Subsequent Rules

Part 2 is divided into two parts as well – A and B.

- A. Tells you to classify based on the information in the heading first. This is why GRI 1 is so often used. Many items are specifically listed in a heading.
- B. If you can't classify based on the heading, classify based on the following rules.

EXPLANATORY NOTE EXAMPLE 1

Let's look at examples of ENs compared to their HS counterpart to gain experience in reading and evaluating an EN.

We will use **Chapter 1 – Live Animals** for our initial example.



CHAPTER 1
LIVE ANIMALS

I
1-1

Note

1. This chapter covers all live animals except:
 - (a) Fish and crustaceans, molluscs and other aquatic invertebrates, of heading 0301, 0306, 0307 or 0308;
 - (b) Cultures of microorganisms and other products of heading 3002; and
 - (c) Animals of heading 9508.

Additional U.S. Notes

1. The expression "purebred breeding animals" covers only animals certified to the U.S. Customs Service by the Department of Agriculture as being purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, imported specially for breeding purposes, whether intended to be used by the importer himself or for sale for such purposes. 1/
2. Certain special provisions applying to live animals are in chapter 98.

The Note contains one note divided into three parts. This note is an exclusion note in that it says the chapter covers all live animals "**except:**"

The EN for this note re-states the note then adds:

GENERAL

This Chapter covers all living creatures (for food or other purposes) **except:**

- (1) Fish and crustaceans, molluscs and other aquatic invertebrates.
- (2) Cultures of micro-organisms and other products of **heading 30.02**.
- (3) Animals forming part of circuses, menageries or other similar travelling animal shows (**heading 95.08**).

Animals which die during transport are classified in headings **02.01 to 02.05, 02.07 or 02.08** if they are edible animals fit for human consumption. In other cases, they are classified in **heading 05.11**.

You likely noticed that the EN only discussed items in the Note heading. It did not discuss anything related to the Additional U.S. Notes. That is because the EN only covers the international level (6-digits) and related interpretations. Each country can add their own notes to further clarify their individual tariffs based on the HS.

Let's look at the EN for sub-heading 0101.



Subheading Explanatory Note.

Subheading 0101.21

For the purposes of subheading 0101.21, the expression “pure-bred breeding animals” covers only those breeding animals which are regarded as “pure-bred” by the competent national authorities.

When we look at this EN, it includes a definition for “pure-bred breeding animals” and says that it must be the definition of “pure-bred” as defined by the competent national authorities.

This gives rise to Additional U.S. Note (1) for this chapter where the U.S. further defines what the competent national authorities for the U.S. consider to be “pure-bred”. It goes further to clarify the definition of a breeding animal which was not included in the EN to 0101.21.

Additional U.S. Note (1)

The expression "purebred breeding animals" covers only animals certified to the U.S. Customs Service by the Department of Agriculture as being purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed, imported specially for breeding purposes, whether intended to be used by the importer himself or for sale for such purposes.

EXPLANATORY NOTE EXAMPLE 2

HTSUS heading 7112 provides the description:

“Waste and scrap of precious metal or of metal clad with precious metal; other waste and scrap containing precious metal or precious metal compounds, or a kind used principally for the recovery of precious metal.”

The **Explanatory Note** under heading 7112 states:

“This heading covers waste and scrap in metallic form **fit only** for the recovery of the precious metal, or for use as a basis for the manufacture of chemicals.”

This heading also covers waste and scrap of any material containing precious metal or precious metal compounds, of a kind used principally for the recovery of precious metal.

It includes, in particular:

- Ash containing precious metal or precious metal compounds, arising from the incineration of photographic films, printed circuit boards, etc.
- Waste and residues derived from the mechanical working of precious metal or of metal clad with precious metal, in mints, goldsmiths', silversmiths', jewelers' workshops, etc.,



for example sweepings, dust, lemel, shavings, etc., resulting from shaping, drilling, working, etc.

- Scrap of worn-out or broken articles (tableware, goldsmiths' or silversmiths' wares, catalysts in the form of woven gauze, etc.) no longer fit for their original use. It **does not extend** to those which, with or without repair or renovation, can be reused for their former purposes, or which can be converted for other uses without being subjected to processes for the recovery of precious metals.
- Waste and scrap of photographic plates, film, paper, paperboard, or textiles, containing precious metal in metallic form or in the form of compounds (e.g., silver halides).
- Waste and scrap of electronic circuit boards and similar carriers containing precious metal (e.g., gold or silver).
- Residues of metallurgical, electrolytic, or chemical processes, containing precious metal (e.g., slags, sludges from electrolytic refining and plating, silver residues from photographic fixing baths).

This EN provides inclusion language and states a number of possible types of products that would be classified in this heading. It is often helpful to identify products that are like the stated products.

For example, electronic circuit boards are not classified in Chapter 71. However, if they are waste/scrap, the board is no longer considered a circuit board but is considered a carrier for the precious metal to be reclaimed.

EXPLANATORY NOTE EXAMPLE 3

HS Section XVI Note 2—This Section covers Chapter 84 and 85.

We will review the parts discussion in the Section Notes and compare them to the EN.

HS Section XVI Note 2

2. Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally



suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

- (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

Explanatory Note Section XVI Note 2

(II) PARTS (Section Note 2)

In general, parts which are suitable for use solely or principally with particular machines or apparatus (including those of heading 84.79 or heading 85.43), or with a group of machines or apparatus falling in the same heading, are classified in the same heading as those machines or apparatus subject, of course, to the exclusions mentioned in Part (I) above. Separate headings are, however, provided for:

- (A) Parts of the engines of heading 84.07 or 84.08 (heading 84.09).
- (B) Parts of the machinery of headings 84.25 to 84.30 (heading 84.31).
- (C) Parts of the textile machines of headings 84.44 to 84.47 (heading 84.48).
- (D) Parts of the machines of headings 84.56 to 84.65 (heading 84.66).
- (E) Parts of the office machines of headings 84.70 to 84.72 (heading 84.73).
- (F) Parts of the machines of heading 85.01 or 85.02 (heading 85.03).
- (G) Parts of apparatus of headings 85.19 or 85.21 (heading 85.22).
- (H) Parts of apparatus of headings 85.25 to 85.28 (heading 85.29).
- (I) Parts of apparatus of heading 85.35, 85.36 or 85.37 (heading 85.38).

The above rules do not apply to parts which in themselves constitute an article covered by a heading of this Section (other than headings 84.87 and 85.48); these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine. This applies in particular to:

- (1) Pumps and compressors (headings 84.13 and 84.14).
- (2) Filtering machinery and apparatus of heading 84.21.
- (3) Lifting and handling machinery (heading 84.25, 84.26, 84.28 or 84.86).
- (4) Taps, cocks, valves, etc. (heading 84.81).
- (5) Ball or roller bearings, and polished steel balls of a tolerance not exceeding 1 % or 0.05 mm, whichever is less (heading 84.82).
- (6) Transmission shafts, cranks, bearing housings, plain shaft bearings, gears and gearing (including friction gears and gear-boxes and other speed changers), flywheels, pulleys and pulley blocks, clutches and shaft couplings (heading 84.83).
- (7) Gaskets and similar joints of heading 84.84.
- (8) Electric motors of heading 85.01.
- (9) Electrical transformers and other machines and apparatus of heading 85.04.
- (10) Electric accumulators assembled into battery packs (heading 85.07).
- (11) Electric heating resistors (heading 85.16).



- (12) Electrical capacitors (heading 85.32).
- (13) Electrical apparatus for switching, protecting, etc., electrical circuits (switches, fuses, junction boxes, etc.) (headings 85.35 and 85.36).
- (14) Boards, panels, consoles, desks, cabinets and other apparatus for electric control or the distribution of electricity (heading 85.37).
- (15) Lamps of heading 85.39.
- (16) Valves and tubes of heading 85.40 and diodes, transistors, etc., of heading 85.41.
- (17) Electrical carbons (e.g., arc lamp carbons, carbon electrodes and carbon brushes) (heading 85.45).
- (18) Insulators of any material (heading 85.46).
- (19) Insulating fittings for electrical machines, etc., of heading 85.47.

Other parts which are recognisable as such, but are not suitable for use solely or principally with a particular machine or class of machine (i.e., which may be common to a number of machines falling in different headings), are classified in heading 84.87 (if not electrical) or in heading 85.48 (if electrical), unless they are excluded by the provisions set out above.

The above provisions for the classification of parts do not apply to parts of the goods falling in heading 84.84 (gaskets, etc.), 85.44 (insulated wire), 85.45 (electrical carbons), 85.46 (insulators) or 85.47 (conduit tubing); in general, such parts are classified in the appropriate materials Chapter.

Machinery parts remain classified in this Section whether or not finished ready for use. However, rough forgings of iron or steel are classified in heading 72.07.

Going from one page to three pages of explanation can be painful and a bit mind-blowing. But there are a number of things you can learn from this example:

1. While the Section and Chapter Notes are legally binding, the information in the HS is minimal compared to the EN. You can better understand the intent of the legally binding note by reviewing the EN associated with it.
2. Parts under this Section can be complex to classify. Just because it is used in a machine, it is not necessarily classified as part of that machine.



CONCLUSION

The Explanatory Notes are extremely helpful when classifying products or advising clients. While not legally binding, it answers many questions and communicates the intent of headings and sub-headings in the tariff.

For extra practice, spend time in the Explanatory Notes reviewing the heading for the top ten headings/sub-headings with which you work. Is there anything that raises questions in how you work or approach classification? Consider how you can include the Explanatory Note insights into your current classification process.