

KACT 2017

Tariff and Trade Affairs Track

Harmonized System

Day 3 – Friday, 23 June 2017

Session X: Section XVI

Session XI: Classification of articles in the high tech area

Session XII: Summary and closing remarks

Session X: Section XVI

Your facilitator

Izaak Wind

Session X: Section XVI

Section XVI (and Parts)

Scope, Structure and Stories

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What is covered?

Chapter 84 :

- *Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof*

Chapter 85 :

- *Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles*

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Chapter 84 vs 85 – is there a possible overlap?

Chapter 84 :

- *Machines and appliances may be electrically driven*

Chapter 85 :

- *Machinery and equipment may contain mechanical parts*

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Chapter 84 vs. Chapter 85

Excluded from Ch. 84 (Note 1):

- Vacuum cleaners of heading 85.08
- Electro-mechanical domestic appliances of heading 85.09
- Digital cameras of heading 85.25

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Chapter 84 vs. Chapter 85

Excluded from Chapter 85 (Note 1):

- Apparatus of heading 84.86

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Chapter 84 vs. Chapter 85
(Excluded from Chapter 85)

Note 9 (D) to Chapter 84 :

Subject to Note 1 to Section XVI and Note 1 to Chapter 84, machines and apparatus answering to the description in heading 84.86 *are to be classified in that heading and in no other heading of the Nomenclature.*

Remember: priority classification!

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Chapter 84 vs. Chapter 85

Note 9 (D):

- Restricted to “Machines and apparatus”
- “Parts” not included in the priority provision
- Classification of parts according to provisions of Note 2 to Section XVI

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Household type vs. industrial type

Note 4 (scope of heading 85.09) :

- Specific machines of any weight
- Other machines of a weight not exceeding 20 kg, but not listed in the exclusion paragraph
- For all machines : of the kind commonly used for domestic purposes

When **not** “of the kind commonly used for domestic purposes” : Chapter 84

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Structure of Chapter 84

- Headings 84.02 to 84.24 : Reference to function
- Headings 84.25 to 84.78 : Reference to field of industry

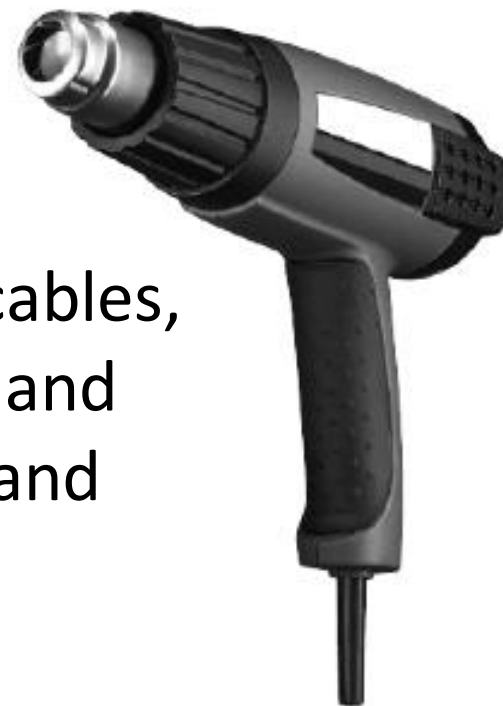
Any potential conflict?

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Structure of Chapter 84

Heading 84.19 or 84.67?

- “Electronic hot air blowing gun”
- Stripping paint, shrinking tubing on cables, forming PVC, soft soldering, welding and joining plastic, welding plastic pipes and rods and foil welding
- Heading 84.19



Structure of Chapter 84

Within Chapter 84 priority classification by virtue of:

Note 2 :

- ✓ Headings 84.01 to 84.24 priority over 84.25 through 84.80
- ✓ Exclusion from 84.19, 84.22 and 84.24 for some specific machines

Structure of Chapter 84

Also priority classification for machines and apparatus of 84.86 :

- Note 9 (subject to Note 1 to S. XVI and Note 1 to Ch. 84)
- Also priority over 84.01 to 84.24
- Applies to “whole nomenclature”
- Does **not** apply to “parts and accessories” of heading 84.86

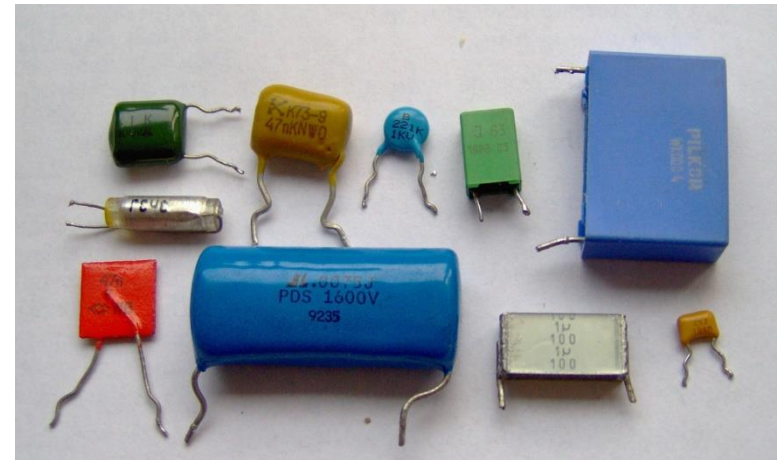
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Structure of Chapter 85

Two main categories:

- Electrical or electronic components (in many cases to be used in or with other goods)

And



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Structure of Chapter 85

- (Consumer) goods :
 - ✓ 85.08 – 85.10
 - ✓ 85.13 – 85.31
 - ✓ 85.39



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Structure of Chapter 85

Any potential conflicts?

Note 2 - priority classification

- 85.01 to 85.04 do not apply to goods described in 85.11, 85.12, 85.40, 85.41 or 85.42
- No need to refer to GIR 3!

Note 9 to Ch. 85: 85.41 and 85.42 take precedence over any other heading (except 85.23)

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Structure of Chapter 85

Any potential conflicts?

Descriptions (definitions/restrictions) :

- Note 5: memory or storage cards, and smart cards
- Note 6: printed circuits
- Note 7: connectors for optical fibres
- Note 9: semiconductor devices and electronic integrated circuits
- Note 10: spent primary cells, batteries and accumulators

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Parts provisions

- Many articles of Ch. 84 and 85 to be used in the further production process, i.e., “parts”
- “Parts” mentioned in separate headings or classified with the parent article
- Potential conflict?
- Any provision?

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Parts provisions

Example: compressor used in refrigerating equipment

- 84.14 - gas compressor?

Or

- 84.18 – “part of refrigerating equipment?”



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Classification of parts in Section XVI: Note 2 to Section XVI

Subject to Note 1 to Section XVI, Note 1 to Chapter 84 and Note 1 to Chapter 85, parts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) 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 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) 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 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17.

(c) **All other parts** are to be classified in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or, failing that, in heading 84.87 or 85.48.

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“Subject to Note 1 to Section XVI”

List of main articles excluded

- Any article of the following **materials** :
 - ✓ Vulcanised rubber, other than hard rubber
 - ✓ Leather or composition leather
 - ✓ Furskin
 - ✓ Textile material
 - ✓ Precious or semi-precious stones except unmounted worked sapphires and diamonds for styli (heading 85.22)

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“Subject to Note 1 to Section XVI” (Contd.)

- Transmission or conveyor belts or belting, of plastics, or endless belts of metal wire or strip
- Bobbins, spools, cops, cones, cores, reels or similar supports, of any material
- Parts of general use of base metal, or similar goods of plastics
- Drill pipe
- Articles of Chapters 82, 83, 90, 91 or 95 or of Section XVII

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“Subject to Note 1 to Chapter 84”

- Millstones, grindstones or other articles of Chapter 68
- Machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material
- Laboratory glassware and other articles for technical uses or parts thereof, of glass
- Articles of heading 73.21 (*stoves, ranges, etc.*) or 73.22 (*non-electric radiators for central heating*) or similar articles of other base metals

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“Subject to Note 1 to Chapter 85”

- Articles of glass, of heading 70.11 (envelopes, open, without fittings, for electric lamps, etc.)

However:

85.46: Electrical insulators of **any material**

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Note 2 to Section XVI:

[P]arts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified *according to the following rules* :

(a)

(b)

(c)

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Note 2 to Section XVI:

[P]arts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) 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 84.09, 84.31, 84.48, 84.66, 84.73, 84.87, 85.03, 85.22, 85.29, 85.38 and 85.48) are *in all cases to be classified in their respective headings*;

(b)

(c)

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Note 2 (a) to Section XVI

- Parts which are goods included in any of the headings of Chapter 84 or 85:
 - ✓ Liquid pump for car engine (heading 84.13)
 - ✓ Compressor for freezing equipment (heading 84.14)
 - ✓ Fan for air conditioner (heading 84.14)
 - ✓ Electric motor for dvd-player (heading 85.01)
 - ✓ Battery pack for cellular telephone (heading 85.07)



“Battery packs” – Note 3 to Chapter 85 :

Electric accumulators include:

- Those presented with *ancillary components*:
 - Contributing to the accumulator’s function of storing and supplying energy or protect it from damage
 - Including electrical connectors, temperature control devices (for example, thermistors) and circuit protection devices
- They may also include a portion of the protective housing of the goods in which they are to be used

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Note 2 to Section XVI:

[P]arts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified **according to the following rules** :

(a)

(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 84.79 or 85.43) are to be classified with the machines of that kind or in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 85.17 and 85.25 to 85.28 are to be classified in heading 85.17;

(c)

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(b) Other parts, if **suitable for use solely or principally** (...) are **to be classified with the machines** of that kind (...)

Some examples (pictures for reference only):

- ✓ Wind turbine blades (part of wind engine – 84.12)



- ✓ Heatsink with fan (part of ADP machine – 84.73)



- ✓ Flexible keyboard (part of cellular telephone – 85.17)

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Note 2 to Section XVI:

[P]arts of machines (not being parts of the articles of heading 84.84, 85.44, 85.45, 85.46 or 85.47) are to be classified **according to the following rules** :

(a)

(b)

(c) All other parts are to be classified in heading 84.09, 84.31, 84.48, 84.66, 84.73, 85.03, 85.22, 85.29 or 85.38 as appropriate or, failing that, in heading 84.87 or 85.48.

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Question referred to the EU Court (case C-297/13):

‘Is note 2 (a) to Section XVI to be interpreted as meaning that goods that *fulfil the conditions both* for classification *as a part within the meaning of heading 8473* and for classification *as individual goods under another heading of Chapter 84 or a heading of Chapter 85*, are to be classified under the other heading because **heading 8473 does not take precedence** over the other headings of Chapter 84 and the headings of Chapter 85?’

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EU Case C-297/13

Products, *being parts of ADP machines*, potentially classifiable in one of the following headings:

- 84.22
- 84.56
- 85.01
- 85.04
- 85.43
- 85.44

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EU Case C-297/13

Court:

- no definition of the term “part”
- “part” implies a whole for the operation of which the part is essential
- mechanical or electrical functioning of the machine depends on that article (i.e., the “part”)

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EU Case C-297/13

Court:

- Note 2 (a) to Section: classification of the goods according to their characteristics
- however, reference to heading 84.73 (and other headings) in parenthesis
- what is the meaning of these parenthesis?
 - ✓ reflects content of GIR 3 (a): more specific heading
 - ✓ heading 84.73 is generic heading
 - ✓ classification in that heading not possible, as the other headings of Ch. 84 and 85 are more specific

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EU Case C-297/13

Court's conclusions on heading 84.73:

- residual heading
- subsidiary vis-à-vis headings covering parts of machines as individual goods
- goods at issue to be classified as individual goods in their respective headings
- Note 2 (a) to Section XVI applies

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Thank you

Any questions?

Coffee/Tea

Networking Break

Session XI: High-Tech

Mr. Tom Beris – Senior Technical Officer WCO