Identification:

The first step in classifying goods is to identify them as imported. This is a question of fact. This step must be undertaken prior to any review of the provisions of the tariff and is variously referred to as identifying the goods "on the customs house floor" or as being a "wharf side task". The point being that the goods should be identified in the condition in which they are imported and by considering their nature, their distinguishing features or characteristics and the function they serve because of those designed features or characteristics. This could include for example:

- **Type;**
- **Function;**
- **Composition;**
- **Colour;**
- **Decoration;**
- **Labelling;**
- **Packaging.**

The price of the goods and the intentions of the manufacturer or exporter or importer are not relevant to the consideration of the tariff classification. The question of the tariff classification is a question of law.

There are a number of leading cases in this area. Please read *Times Consultants Pty Ltd v Collector of Customs (Qld) (1987)* 76 ALR 313

This matter has also been discussed in cases such as ***Re Toy Centre Agencies Pty Ltd and Collector of Customs (1983)*** 5ALN N261; CAI 106: *The starting point in resolving questions of tariff classification must, of course, be to identify the goods in their condition as imported (Re Gissing and Collector of Customs (1977) 1 ALD 144; Re Sterns Playland Pty Ltd and Collector of Customs No.2 (1982) 4 ALD 562 and Re Tridon Pty Limited and Collector of Customs (1982) 4 ALD 615).".*

In ***Re Gissing and Collector of Customs (NSW) (1977)*** 1 ALD 144; 14 ALR 555; CAI3*: The identification of the relevant entity for classification is to be distinguished from the step which follows, namely, the enquiry whether one or more of the Tariff provisions applies to the entity which has been identified. The provisions of the Tariff do not determine the relevant entity; they determine whether the importation of the relevant entity attracts the charge. In attempting to identify the entity, the Tariff gives no assistance. Although it will frequently be possible to apply a descriptive word to the combination which is established as the entity, the naming of the entity is not an essential step in the process of identification. Identification is concerned with goods, not with the description of goods.*

Description is relevant to the next step, the application of the Tariff to the entity. In determining the relevant entity, regard is had to the imported goods themselves, in the condition in which they are imported (Chandler v. Collector of Customs 4 C.L.R. 1729, 1730; Worthington v. Robbins 139 U.S. 337, 341; U.S. v. Schoverling 146 U.S. 76, 82). They are not identified by reference to the use to which the goods may be put in the future, though their present suitability for that use may be a relevant factor.

In practical terms, the classifier can use further evidence such as IDM or "Illustrative Technical Material" to aid in this identification of the goods.

Rules of Identification:

In ***Re Tridon Pty Ltd and Collector of Customs (1982)*** 4 AD 615; CAI 74, the Administrative Appeals Tribunal attempted to formulate a set of guidelines often referred to as the "8 Rules" to aid in the task of identification.

Rule 1:

Identification must be objective, having regard to the characteristics which the goods, on informed inspection, present.

This has been discussed above. The term "informed inspection" should be taken to mean as by any person having sufficient information and/or relevant trade or industry experience.

Further reading: Re Sterns Playland Pty Ltd (supra); cf. Re Toyworld (Vic) Ltd and Collector of Customs (1979) 2 ALD 837; Re Azsco Overseas Sales Pty Ltd and Collector of Customs (NSW) (No. 2) (1981) 3 ALN N65;

Rule 2:

The identification of goods cannot be controlled by the descriptions of goods adopted in the nomenclature of the Tariff

This means that the goods should generally be identified in the condition in which they are imported (unless the Tariff otherwise requires) and then the Tariff should be consulted to determine in which heading they fall. This means that what the goods actually do is important, and not how they are described.

There are examples in the tariff which require consideration of design use. An example of classification requiring consideration of the design use is clothing which may be designed for use as

men's or women's and seats which may be designed for use as aircraft or automobile seats. In Re Gissing, the AAT said: *"Identification is concerned with goods, not with the description of goods"*

Further reading: Re Gissing and Collector of Customs (NSW) (1977) 1 ALD 144; 14 ALR 555; CAI3 *(supra);*

Rule 3:

Nevertheless in identifying goods it is necessary to be aware of the structure of the nomenclature, the basis on which goods are classified and the characteristics of goods which may be relevant to the frequently complex task of classification

This should be read in conjunction with Rule 2, that is, that it is the goods themselves which determine the classification and not the way in which they may be described on invoices, orders etc.

The comments of the Tribunal are instructive in *Re Sterns Playland Pty Ltd and Collector of Customs (No 2) (1982)* 4 ALD 562:

As always in tariff classification matters, the first step is to identify the imported goods (see Re Gissing and Collector of Customs (1977) 1 ALD 144; but cf. Re Renault Wholesale Pty Ltd and Collector of Customs (No. 3) (1978) 2 ALD 111 at 115). Although the question of identification can often be resolved fairly readily by asking the question _ what is it? _ anyone with knowledge of the Tariff will be aware that in addition to the answer produced in response to that question, other matters may also need to be considered before one turns to the next task, namely classification in accordance with the Tariff. All the characteristics which goods present on informed inspection or even, in some cases, on scientific analysis, may have a relevance to this frequently complex task _ particularly in those cases where the goods as identified do not conform to a description in the nomenclature which the Tariff employs (see, for example, Re Freudenberg (Aust) Pty Ltd and Department of Business and Consumer Affairs (1978) 1 ALD 295; cf. Re Hexham Textiles Pty Ltd and Collector of Customs (1978) 1 ALD 518). As the Tariff recognises, imported goods, because of their diverse characteristics or components and because of their capacity for being identified by informed minds in a variety of ways, may well 'fall' within two or more items in the Tariff. Indeed, most goods are capable of being identified specifically (as a particular article of commerce) or generically by reference to the materials or substances from which they are made. It is one of the important functions of the Rules for the Interpretation of Schedule 1 (in Part I of that Schedule to the Tariff) to provide mechanisms for resolving, in those circumstances, which of the various items etc, into which the goods may 'fall' is the item etc that 'applies' to the imported goods (cf. Re Toner Distributors of Australia Pty Ltd and Collector of Customs (1980) 3 ALD 234 at 246).
Further reading: Re Renault (Wholesale) Pty Ltd and Collector of Customs (No. 3) (1978) 2 ALD 111 at 115; Re Sterns Playland Pty Ltd (supra);

Rule 4:

In the identification of goods, knowledge of how those who trade in the goods describe them will usually be relevant, but not necessarily conclusive.

In law, the plain English meaning of a word should first be used in interpreting legislation and therefore in construing the words of the Tariff. If, however, there are trade meanings attached to certain words or phrases they may be admissible where the plain English meaning is insufficient.

Rule 5:

All the descriptive terms, both specific and generic, by which the goods may fairly be identified may be relevant to the classification of the goods within the Tariff.

Reference should be made to Rule 4 and the quotation from Re Sterns Playland above.
Interpretative Rule 3 also has relevance and the topic is further discussed there under.
Further reading: Re Sterns Playland Pty Ltd

Rule 6:

Descriptive terms may be of varying degrees of specificity (e.g. .windscreen wiper blade refills, parts for a windscreen wiper or parts for a motor vehicle). Generic descriptions may be by reference to the materials or substances from which the goods are manufactured.

The Interpretative Rules and Section and Chapter Notes provide assistance in this circumstance

Further reading: Re Hexham Textiles Pty Ltd and Collector of Customs (1978) 1 ALD 518, or by reference to the method of manufacture: Re Freudenberg (Aust) Pty Ltd and Department of Business and Consumer Affairs (1978) 1 ALD 295;

Rule 7:

Identification will frequently extend to characterisation of goods by reference to their design features or by reference to their suitability for a particular use where those characteristics emerge from informed inspection of the goods as imported. The extent to which these characteristics may be relevant to the ultimate classification of the goods and whether evidence of the use to which goods are put after importation is relevant, will depend upon the language of the Tariff Nomenclature.

Further reading: Re Tubemakers of Australia Pty Ltd and Collector of Customs (1980) 3 ALD 199; Re Gissing; Re Beautiful Day Pty Ltd and Collector of Customs (Q'land) (1978) 1 ALN 206

Rule 8:

Composite goods, notwithstanding that they have components which are separately identifiable, may nevertheless be identifiable in combination as a new entity if the identity of the separate units is subordinated to the identity of the combination.

For example, brush and comb sets; a mixing machine with an input conveyor.

Further reading: Re Gissing (supra); Re Toner Distributors of Australia Pty Ltd and Collector of Customs (1980) 3 ALD 234.

Please also obtain and read the decision of the Full Federal Court of Australia in *Chinese Food and Wine Supplies Pty Ltd v Collector of Customs (1987)* 72 ALR 591