

*What Every Member of the
Trade Community Should Know About:*

Classification of Sets Under HTSUS



AN INFORMED COMPLIANCE PUBLICATION

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the Commercial Rulings Division, ORR, is part of a series of informed compliance publications relating to the tariff classification of imported merchandise. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Michael T. Schmitz,
Assistant Commissioner
Office of Regulations and Rulings

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INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving U.S. Customs and Border Protection. In almost all cases, the goods are required to be “entered,” that is, declared to Customs and Border Protection (CBP), and are subject to detention and examination by CBP officers to insure compliance with all laws and regulations enforced or administered by Customs and Border Protection. As part of the entry process, goods must be “classified” (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use “reasonable care” to “enter,” “classify” and “value” the goods and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, embargoes or other restrictions. The act of classifying goods is complex and requires an importer to be familiar with the *Harmonized Tariff Schedule of the United States* (HTSUS), its 99 chapters, rules of interpretation, and notes. A detailed discussion of the HTSUS may be found in a companion publication entitled, *What Every Member of the Trade Community Should Know about Tariff Classification*. Customs valuation requirements are separately discussed in a companion publication entitled, *What Every Member of the Trade Community Should Know about Customs Value*. Both of these publications are available from the CBP World Wide Web page on the Internet (see the Appendix for information on accessing these sources and obtaining additional CBP publications).

This publication concerns the interpretation, by Customs and Border Protection, of the General Rules of Interpretation (GRIs) of the Harmonized Tariff Schedule of the United States (HTSUS) as they relate to sets, specifically focusing on GRIs 1, 3(b), and 5. We will also discuss miscellaneous issues dealing with GRI 3(b) sets. However, with regard to GRI 3(b) sets, a detailed discussion of determining the essential character of a set will not be included. A brief review of the principles involved in sets determinations is provided, with illustrative examples from ruling letters, along with what we believe is our best guidance in addressing sets classification matters.

GRI 1 - SETS CLASSIFIABLE IN *EO NOMINE* PROVISIONS

GRI 1

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

In certain areas of the HTSUS, sets are specifically mentioned by name. The only requirements which are to be followed when dealing with a GRI 1 set are those mentioned in the particular HTSUS provisions describing the set, relevant chapter and section notes, and the relevant Explanatory Notes (ENs)¹. Sets may appear in the heading text, such as electric generating sets of heading 8502, HTSUS, or in a subheading text, such as sets of kitchenware of subheadings 8215.10 and 8215.20, HTSUS. For subheading sets, GRI 6 applies GRI 1 by requiring that only subheadings at the same level are comparable. Sets may appear in legal notes, as in chapter 62, note 3, HTSUS, in which are described sets of garments known as suits and ensembles, classified in headings 6203 and 6204, HTSUS. Sets may be mentioned only in the ENs to a particular heading. The rules with regard to GRI 3(b) sets, discussed below, do not apply to GRI 1 sets.

Taking the kitchenware example mentioned above, subheadings 8215.10.00 and 8215.20.00, HTSUS, provide for sets of assorted articles which are described by heading 8215, HTSUS. The relevant provisions are as follows:

Subheadings 8215.10.00 and 8215.20.00, HTSUS

- | | |
|-------------------|--|
| 8215 | Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof. |
| 8215.10.0 | Sets of assorted articles containing at least one article plated with precious metal. |
| 8215.20.00 | Other sets of assorted articles. |

¹ The Explanatory Notes (ENs) to the Harmonized Commodity Description & Coding System ("Harmonized System") represent the official interpretation of the World Customs Organization (officially known as the Customs Cooperation Council). Although they are neither binding nor considered dispositive, they should be consulted on the proper scope of the Harmonized System. They may provide guidance on the interpretation of the HTSUS and its General Rules of Interpretation (GRIs).

Chapter 82, note 3, HTSUS, and EN 82.15 describe the types of sets to be included in heading 8215, HTSUS. See HQ 959713, dated May 6, 1997, for an example of how we classify goods in the sets provisions of heading 8215, HTSUS. In that ruling, we held that barbecue utensils, consisting of a fork, spatula, tongs, and brush, constitute a GRI 1 set under subheading 8215.20.00, HTSUS, as other sets of kitchen or tableware articles.

GRI 3(B) SETS

The provisions involved in this discussion are as follows:

GRI 3(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.

EN (VIII) to GRI 3(b)

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

EN (X) to GRI 3(b)

For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

(a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The term therefore covers sets consisting, for example, of different foodstuffs intended to be used together in the preparation of a ready-to-eat dish or meal.

Examples of sets which can be classified by reference to Rule 3 (b) are:

- (1) (a) Sets consisting of a sandwich made of beef, with or without cheese, in a bun (heading 16.02), packaged with potato chips (French fries) (heading 20.04):

Classification in heading 16.02.

- (b) Sets, the components of which are intended to be used together in the preparation of a spaghetti meal, consisting of a packet of uncooked spaghetti (heading 19.02), a sachet of grated cheese (heading 04.06) and a small tin of tomato sauce (heading 21.03), put up in a carton:

Classification in heading 19.02.

The Rule does not, however, cover selections of products put up together and consisting, for example, of:

- a can of shrimps (heading 16.05), a can of pâté de foie (heading 16.02), a can of cheese (heading 04.06), a can of sliced bacon (heading 16.02), and a can of cocktail sausages (heading 16.01); or
- a bottle of spirits of heading 22.08 and a bottle of wine of heading 22.04.

In the case of these two examples and similar selections of products, each item is to be classified separately in its own appropriate heading.

- (2) Hairdressing sets consisting of a pair of electric hair clippers (heading 85.10), a comb (heading 96.15), a pair of scissors (heading 82.13), a brush (heading 96.03) and a towel of textile material (heading 63.02), put up in a leather case (heading 42.02):

Classification in heading 85.10.

- (3) Drawing kits comprising a ruler (heading 90.17), a disc calculator (heading 90.17), a drawing compass (heading 90.17), a pencil (heading 96.09) and a pencil-sharpener (heading 82.14), put up in a case of plastic sheeting (heading 42.02):

Classification in heading 90.17.

For the sets mentioned above, the classification is made according to the component, or components taken together, which can be regarded as conferring on the set as a whole its essential character.

As EN (X) to GRI 3(b) states, for a group of articles to qualify as a set under GRI 3(b), it must meet three requirements:

- (1) consist of at least two different articles which are, *prima facie*, classifiable in different headings;

- (2) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (3) be put up in a manner suitable for sale directly to users without repacking.

If these requirements are met, all articles in the set are classified in the provision for the article among them that gives the set its essential character. Because requirements (1) and (3) are more easily determined and success in finding a valid set under GRI 3(b) hinges to a large extent on application of requirement (2), we will limit our discussion to issues involving the language contained therein and not discuss requirements (1) and (3) in this publication.

APPLICATION OF “TO MEET A PARTICULAR NEED OR CARRY OUT A SPECIFIC ACTIVITY”

Although the courts have dealt with “sets” issues under the Tariff Schedules of the United States (TSUS), there appear to be no judicial cases under the HTSUS dealing specifically with the “to meet a particular need or carry out a specific activity” requirement.

HQ 953472, dated March 21, 1994 (footwear packaged with printed matter), discussed what constitutes a “particular need” or a “specific activity,” using the above-referenced examples in EN (X) to GRI 3(b):

In (1) [EN 3(b)(X)(1), the sandwich in bun packaged with potato chips, and the spaghetti meal] and (2) [EN 3(b)(X)(2), the hairdressing set], the examples referred to as “sets” share a common trait. The individual components in each example **are used together or in conjunction with another for a single purpose or activity**. In the “spaghetti meal” example, each component may be sold separately and used in a variety of recipes. However, sold together they are clearly intended to be used together for the specific purpose of preparing a single dish. Similarly, the “hairdressing set” is comprised of various articles that may be sold individually for many purposes. However, taken together they are designed to be used together for a single activity. [Emphasis supplied].

On the other hand, (1) [EN 3(b)(X)(1)] contains two examples where articles put up together are not regarded as “sets,” despite the fact that they are related to one another and can be used at the same time. In the “canned goods” example, each can is related by the fact that they all contain food. In addition, it is possible to serve them on the same occasion. One could argue that they meet the specific need of “eating a meal.” However, they do not interact with one another so as to comprise a single dish. Therefore, they do not comprise a set.

In the “spirits” example, the two articles are related as they both contain alcohol. Moreover, the wine and liquor may be served together at dinner or at a party. It

is possible to argue that they have been packaged together for the specific activity of "social drinking." However, they are not used in conjunction with one another so as to be suitable for a single drink or for use on a specific occasion. Hence, they are not classified as a set.

Therefore, for goods put up together to meet the "particular need" or "specific activity" requirement and thereby be deemed a set, they must be so related as to be **clearly intended for use together** or in conjunction with one another for a single purpose or activity. Applying this language to the merchandise in HQ 953472, we stated that:

In this case, you reason that the shoes and the accompanying literature satisfy the particular need of "having shoes to wear." The individual component articles arguably serve this purpose as they are each related to footwear. However, the shoes and literature do not result in a combination that meets a single need or activity. Rather, the literature serves a promotional or advertising function, while the shoes serve a separate practical purpose. Therefore, these items do not comprise a set.

See HQ 084760, dated October 4, 1989, for a discussion of another example of a collection of items not considered to constitute a set. The article in that ruling, marketed as a Christmas stocking for dogs, contained four types of food products for dogs and a reindeer antler headpiece designed with an elastic strap for attachment to a dog's head. We held that, although packaged together in a sealed stocking, the items were not dedicated to a specific function or a particular need. The dog food, reindeer antlers, and Christmas stocking performed diverse functions. The function of the dog food, feeding canines, was unrelated to the novelty function of the reindeer antlers. Accordingly, the subject merchandise was not properly classifiable as a set under GRI 3(b). Each item was classifiable separately under GRI 1.

HQ 086281, dated March 2, 1990, dealt with the classification of a travel bag containing a wallet, mirror, pen, raincoat, memo pad, umbrella, comb, and calculator with battery. The articles were packaged together for retail sale, and may all have been useful when traveling. However, we stated that the articles were multi-dimensional, used for very different purposes, and not traditionally used together to meet a particular need or carry out a specific activity. Thus, the items did not constitute a set under GRI 3(b). We note that HQ 086281 was modified by HQ 086890, dated April 16, 1990; however, the modification was unrelated to the GRI 3(b) issue.

As we have stated, there must be a relationship between the articles contained in a group, and such relationship must establish that the articles are clearly intended for use together for a single purpose or activity to comprise a set under GRI 3(b). In HQ 960620, dated August 26, 1997, we classified a glass cake plate attached to a silver-plated steel base and a silver-plated steel trowel as a set. The articles were packaged together in a specifically printed box and were designed to be used together to carry out the specific activity of serving cake.

HQ 081785, dated March 17, 1989, discussed a sauna belt and shorts, made of the same material, designed to promote loss of weight and inches when worn during physical activity. The garments, though of a type sometimes sold by themselves, were put up together to provide a coordinated outfit to be worn during work or play, and were considered to comprise a set.

With regard to the classification of sets using a GRI 3(b) analysis, the reasoning and specific language used in HQ 953472 is straightforward and concise in creating a test for uniformly classifying a group of articles as a set. That ruling emphasized the examples in EN 3(b)(X) to demonstrate the required relationship between the articles of a group. Before it is determined that certain articles meet a particular need or carry out a specific activity and are deemed a set, there must be evidence that they are used together or in conjunction with one another for a single purpose or activity. Although the classification of sets will continue to involve a degree of subjectivity, the requirement that there be compelling evidence of use together will add objectivity to the process and provide greater consistency, and predictability, in the analysis of sets.

APPLICATION OF “TO MEET A PARTICULAR NEED OR CARRY OUT A SPECIFIC ACTIVITY” TO PROPOSED GRI 3(B) SETS WHICH INCLUDE HOLDERS, CONTAINERS, ETC.

Based upon an examination of Example 2 in EN (X) to GRI 3(b), it appears that cases, holders, etc., used to store items of a set are not intended to be excluded from the set. Example 2 consists of a pair of electric hair clippers, a comb, a pair of scissors, a brush and a towel of textile material, all of the items put up in a leather case. The example states that the set, including the leather case, is classifiable in heading 8510, HTSUS. However, a review of previous OR&R rulings indicates that, generally, Customs has treated the classification of holders, cases, etc., which were presented as parts of sets, in two ways. In most cases, the holder, case, or other container is included with other articles which clearly meet a particular need or carry out a specific activity; in those cases, the concern has been directed to the propriety of the container and whether it detracts from the classification of all of the articles, including the container, as a set. In other cases, however, only the container and one other article are presented for consideration as a set; in these cases, the concern has been focused squarely on the role of the container, jointly with its contents, in meeting a particular need or carrying out a specific activity.

In HQ 084717, dated September 13, 1989 (assorted tools and electrical items in a steel tool box), we stated that:

The third criterion, that the goods consist of articles put up together to meet a particular need or carry out a specific activity, also appears to be satisfied. The tool and connector assortments can be utilized to perform a variety of electrical work. The tool box/cabinet provides convenient storage for the electrician/mechanic. The latching feature and the handle, allow an individual to

carry the tool box anywhere he or she may require the use of its contents, whether it be within the home or elsewhere.

HQ 084717 considered the tool box to be a part of the set because it was intended to hold the tools when they are not being used. This ruling is consistent with the conclusion of Example 2 in EN (X) to GRI 3(b) because, as with the relationship between the leather case and the hairdressing components, the tool box has little to do with the tools performing their specific functions, but stores the tools until they are again used. See HQ 082049, dated June 20, 1989, wherein we held that a vinyl carry bag and aluminum cookware constituted a set.

It is clear from the examples of sets in EN (X) to GRI 3(b) that holders, cases, containers, etc. may be included as components of sets. The question to consider is under what circumstances they may be considered components of sets.

With regard to the rulings just discussed and others holding similarly, it should be noted that the holders, cases, etc., were intended to hold the objects that were part of the set. What may be inferred from this is that a holder, case, etc. imported with a set **should be designed to hold or carry the items which are a part of the set**. In addition, following the reasoning in HQ 953472, the tool box and assorted tools in HQ 084717 were considered to be **intended for use together** to meet the particular need of providing tools to a user in an efficient manner.

Groups of articles with containers which fail to meet both of the criteria emphasized above generally are not classified as sets. For example:

In HQ 957960, dated February 5, 1996 (flavored hard candies packed in glass jars), we stated that:

There is no affinity between the candy and the jar. Although the jar in this instance acts as a holder for the candy, its normal function is to act as an all purpose general household storage jar.

In HQ 087113, dated July 26, 1990 (optical items stored in a carrying case), we stated that:

The carrying case at issue is capable of carrying additional items, so it is not clear whether the case contributes to the specific activity of the merchandise. Therefore, the goods at issue do not constitute a set put up for retail sale and thus must be classified separately.

In HQ 082213, dated February 13, 1990 (drain cleaning system stored in a tool box), we stated that:

The components packed inside the tool box are put together to carry out a specific activity, i.e., to use water pressure from the faucet to clear sink drains

that are blocked. However, the tool box does not contribute to this activity. While the tool box functions as a container for the drain cleaning system, it can also be used for holding other items. This is so because the size of the tool box is larger than would be necessary to serve only as a holder for the drain cleaning system.

These three rulings demonstrate that if a holder or container is not sufficiently related to the items they are holding or storing - that is, neither designed to carry the items nor intended for use with them - then the "particular need" or "specific activity" test of EN (X) to GRI 3(b) is not met and the goods do not constitute sets.

If Customs determines that a holder or container included with other articles is **specifically designed to hold or contain** those articles, such a determination will support the further conclusion that the articles and the holder or container are **intended to be used together**, or in conjunction with one another, to meet a particular need or carry out a specific activity. Characteristics used in determining whether a holder or container is specifically designed to hold or contain the other articles of a claimed set include a comparison between the articles and their holder or container of size, shape, construction, color combination, use, etc. The burden will be on the importer to provide evidence of design characteristics which link the articles to the holder or container. The holder or container need not be form-fitted or otherwise dedicated specifically to holding or carrying the articles imported with it, but it must be a particularly appropriate container and its capacity not appreciably larger than that required to hold or carry the accompanying articles.

For instance, in the rulings just discussed, the glass jar in HQ 957960 was not specifically designed to hold the candies packed inside. The jar was a general purpose jar which was intended to survive the consumption of its contents and which would be subject to numerous uses after importation. In HQs 087113 and 082213, the containers were too large for the items they were to carry and could easily carry additional items. This was evidence that the containers were not specifically designed to hold or contain those articles imported in them.

In HQ 959713, referenced above, covering the golf bag-shaped container with the set of barbecue utensils, we stated that:

*** the golf bag, which is not specially fitted to hold the barbecue utensils and does not possess any features lending itself to the activity of cooking, may be used for a number of activities, such as the storage of items or as an ornament for a den or sports room. The barbecue utensils, which are so loosely placed in the golf bag, could easily be taken out of the bag once purchased and stored elsewhere.

Thus, caution must be used with an article or collection of articles placed in a container not of a kind normally sold with the set. Even if the container is an appropriate size for the article or articles placed therein, it does not form a set with the contents when those

contents would generally be removed from the container or case, and the container or case would be used separately.

Utilizing a strict interpretation of EN (VIII) and (X) to GRI 3(b) where a potential set includes a container is paramount. Looking to whether the container is designed to hold or contain or is intended to be used with the other set components is instructive. Guidance can be drawn from the EN examples classified as sets, and importers should insure that the three EN requirements of a set are met. Moreover, the essential character criteria should be considered and reasonable care shown in deciding which article provides the essential character of the set.

RELATION OF GRI 5 TO CLASSIFICATION OF SETS

The provisions involved in this discussion are as follows:

GRI 5

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

- (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 entered 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;
- (b) Subject to the provisions of rule 5(a) above, packing materials and packing containers entered 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.

GRI 5 may appear to be relevant to the classification of sets including holders, cases, and other containers. However, based upon the examples in EN (X) to GRI 3(b), holders, cases, containers, etc., may be included as components of GRI 3(b) sets without resort to GRI 5. As has been demonstrated in the rulings listed above, such holders or containers are deemed to merit equal consideration among the items of a proposed set in determining whether the items constitute a set using a GRI 3(b) analysis. Nowhere in GRI 3(b) or in the corresponding ENs does it state that GRI 5 should apply to any holders, containers, etc. of a proposed set. Therefore, with regard to determining whether a proposed set which includes a holder, case or other container constitutes a set, we do not believe that the use of GRI 5, or its embodied principles, is appropriate.

However, it is clear that, where articles imported with a holder, case, or other container have been found to not constitute a set under GRI 3(b), recourse to GRI 5 is proper to determine whether its provisions apply to the container. For instance, in HQ 959713, discussed above, after finding that a miniature golf bag and a set of barbecue utensils (the golf bag serving as a container for the utensils) did not qualify as a GRI 3(b) set, we next performed a GRI 5 analysis concerning the golf bag. In the ruling, we stated that:

It is our position that the golf bag, as it relates to the barbecue utensil set, does not meet the requirements of GRI 5, and therefore may not be classifiable with the barbecue utensil set. Because the golf bag is definitely not specially shaped or fitted to hold the barbecue utensil set, it fails to meet the requirements of GRI 5(a). Also, based upon the design and manufacture of the golf bag, it is obviously suitable for repetitive use. Therefore, the golf bag fails to meet the requirements of GRI 5(b).

Also, we note that the phrase “set of articles” in GRI 5(a) does not refer to GRI 3(b) goods put up in sets for retail sale. Such an interpretation is contradictory to our policy towards GRI 3(b) as discussed above.

MISCELLANEOUS ISSUES

APPLICATION OF *DE MINIMIS* RULE TO GRI 3(b) SETS

Under the *de minimis* rule, the presence of an extremely minor article may be disregarded in determining whether a group of articles constitutes a set. The *de minimis* rule is not explicitly provided for in GRI 3(b) or in the ENs for GRI 3(b). However, we have dealt with the application of the rule to GRI 3(b) sets in HQ 950466, dated January 6, 1992, and HQ 953472. In HQ 950466, which dealt with, in part, whether a sticker disqualified elastic cord laces (used as a replacement for regular shoe laces to secure athletic shoes about the foot) from constituting a GRI 3(b) set, we stated that:

Under the *de minimis* rule, a component which is merely an incidental or immaterial element of an entire article, does not enhance its value, and has no commercial purpose, is disregarded for classification purposes. Tuscany Fabrics, Inc. v. United States, 65 Cust. Ct. 182, 317 F. Supp. 741 (1970), aff'd, 59 C.C.P.A. 77, C.A.D. 1043, 454 F.2d 1188 (1972), cert. denied, 409 U.S. 845, 34 L.Ed 2d 85, 93 S.Ct 47 (1972). Examining the specific commercial purposes toward which the laces and clips are packaged together as a set, supra, it is clear that the addition of the sticker (1) does not enhance the value of the set, (2) is merely incidental to the set, and (3) has no viable commercial purpose legitimately connected to the set. The sticker is considered *de minimis*; therefore, it is ignored when determining that the entire package is a set for retail sale.

However, in HQ 962073, dated August 19, 1998, which dealt with whether two sewing kits, one containing a key chain and the other containing an emery board, qualified as GRI 3(b) sets, we applied the language in HQ 950466 and stated that:

Unlike the sticker in HQ 950466, the key chain and the emery board contained within the respective sewing kits are not incidental to the kits. Both items possess a utilitarian purpose which is no less useful than any of the remaining items of the kits. Although the key chain and emery board do not contribute to the function of sewing, they do possess other unrelated commercial purposes (i.e., holding keys, nail manicure). Therefore, we find that the *de minimis* rule is inapplicable in determining whether the subject sewing kits constitute GRI 3(b) sets.

Based upon the above analysis, it is our position that the sewing kits fail requirement (b) of Explanatory Note 3(b)(X), and therefore do not constitute GRI 3(b) sets.

Therefore, for a good to qualify as *de minimis* when determining if a group of articles qualify as a GRI 3(b) set, the following test must be met: the addition of the good (1) does not enhance the value of the set, (2) is merely incidental to the set, and (3) has no viable commercial purpose legitimately connected to the set. If this test is not met, an extraneous article will detract from the specific need or particular activity addressed by the group of articles, thereby disqualifying the articles as a set.

SETS INCLUDING ONE OR MORE TEXTILE ARTICLES

As stated in our GRI 1 discussion, some textile sets are specifically mentioned in particular headings. They must be imported together. See HQ 956298, dated March 9, 1995, which dealt with two-piece garment sets determined to be track suits classifiable pursuant to GRI 1. However, other sets of textile garments, which are not provided for as GRI 1 sets, must be individually classified in their respective headings even if put up in sets for retail sale. This principle is stated in section XI, note 13, HTSUS, and discussed in HQ rulings such as HQ 955332, dated March 9, 1994.

Virtually all textiles and apparel are subject to quota and/or visa restrictions, under a program administered through the Department of Commerce with the assistance of CBP. Exec. Order. Nos. 11651, 37 F.R. 4699 (1972), and 12475, 49 F.R. 19955 (1984). Where a textile article is part of a set found to be a GRI 3(b) set put up for retail sale, the textile article remains subject to quota and/or visa requirements, regardless of where the set is classified. 54 F.R. 35223 (1989). See e.g., HQ 087180, dated January 11, 1991, covering a hand-held sewing device ("Mini Mender") packaged with a spool of thread, extra needle, needle threader, and set of instructions. Even though the items were held to constitute a set, and the spool of thread was a constituent part of this set for classification and duty purposes, the thread nevertheless fell within a textile category designation and was subject to visa and quota requirements.

Where classification as a set is substantiated, and the set contains an article of textile or apparel, there are two instances where such article is not subject to quota and/or visa requirements: GRI 1 sets of heading 9605, HTSUS, or sets of chapter 95, HTSUS.

As to sets of heading 9605, HTSUS, HQ 952195, dated December 3, 1992, dealt with two types of sewing kits. Each kit consisted of various colors of polyester thread, needles, buttons, and safety pins. One kit was presented inside a hard plastic case or matchbook suitable for travel. The other kit was placed inside a travel case after importation. The kit imported in the travel case was classifiable as a GRI 1 set in heading 9605, HTSUS, which provides for travel sets for personal toilet, sewing, or shoe or clothes cleaning. In that case, the thread was not subject to quota and visa requirements. The sewing kit imported without the case was not eligible for classification as a GRI 1 set of heading 9605, HTSUS. It was held to be a GRI 3 set, with the essential character imparted by the sewing thread, classifiable in subheading 5508.10.00, HTSUS, with the thread subject to quota and visa requirements. HQ 954815, dated January 31, 1994, confirmed that:

Any component of a GRI 3(b) set that would require a visa if imported alone still requires a visa even though it is merely a component of a proper set. This is not the case where a component requiring a visa if imported alone is a component of a traveling set under heading 9605, HTSUS.

For sets of chapter 95, HTSUS, in HQ 086297, dated January 26, 1990, a bedtime doll set, consisting of a doll and various accessories including a cotton terry cloth towel, was classified in subheading 9502.10.40, HTSUS, as a GRI 3(b) set put up for retail sale, with the essential character imparted by the doll. The cotton towel in the doll set, because it was considered to be a toy, was not subject to separate visa or quota requirements. See HQ 088663, dated June 3, 1991, in which a toy wrestling set, including a textile headband, was treated in a similar manner.

SETS CLASSIFIED IN SPECIFIC OR COMPOUND RATE OF DUTY PROVISIONS

There may be a variety of articles in a given set, which individually classified, would take various duty rates, *ad valorem*, specific or compound. When classified as a set, those articles fall in the provision where the article providing the set's essential character is classified. In general, Customs believes that where a specific or compound rate is thus applied to a set, each article rather than each set counts as one item receiving a specific or compound rate of duty. In HQ 088521, dated May 13, 1991, certain crayons, an eraser and sharpener were imported together in one box. They were found to be a set under GRI 3(b), and the crayons provided the set's essential character. The applicable duty rate was 5.5 cents per gross plus three-fourths percent *ad valorem*. Customs found that this compound rate should be applied to each crayon, eraser and sharpener in the box to reach the 144 items in a gross. It is important to check the relevant General Notes, Additional U.S. Notes, and Statistical Notes in the

HTSUS when calculating duty rates and reporting the number of sets or pieces in a set for entry purposes.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>