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(Information)

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Guidelines on the classification in the Combined Nomenclature of goods put up in sets for retail sale

(2013/C 105/01)

General Interpretative Rule (GIR) 3(b) also provides for the classification of 'goods put up in sets for retail sale'.

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;
- (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).

(See also the HSEN to General Interpretative Rule 3(b) and 6)

All the above conditions should be met.

The above rules do not apply to 'sets' which are to be classified by virtue of GIR 1 and 6 when the term 'set' is in the wording of a CN code, for example:

- 6308 00 00 — Sets consisting of woven fabric and yarn ... put up in packings for retail sale ...,
- 8206 00 00 — Tools of two or more headings ... put up in sets for retail sale,
- 9503 00 70 — Other toys, put up in sets or outfits,

or due to specific provisions, for example:

- Note 3 to Section VI,
- Note 1 to Section VII,
- Note 14 to Section XI,
- Notes 3 and 7 to Chapter 61,
- Notes 3 and 6 to Chapter 62.

PART A

‘... are, *prima facie*, classifiable in different headings ...’

- (1) According to the HSEN to GIR 3(b) the first condition for two or more different articles to be considered as ‘goods put up in sets for retail sale’ is that they must be classifiable in different headings.
- (2) Nevertheless, according to GIR 6 and the HSEN to the rule which states ‘Rules 1 to 5 above govern, *mutatis mutandis*, classification at subheading levels within the same heading’, two or more different articles classifiable in the same heading but in different subheadings can be considered as a set within the meaning of GIR 3(b), because they fulfil the abovementioned conditions.

Example:

Goods put up together for retail sale consisting of a bottle of shampoo (3305 10 00) and a bottle of hair lotion (3305 90 00) to be used for hair treatment are considered to be a set within heading 3305.

- (3) However, two or more different products which are classifiable in the same heading and also in the same subheading cannot be considered as a set within the meaning of GIR 3(b), because they do not fulfil the abovementioned conditions.

Example:

Goods put up together for retail sale consisting of a cleanser, toner and moisturiser. In this case all products are classified in subheading 3304 99 00, therefore, the articles do not constitute a set.

PART B (I)

‘... put up together to meet a particular need or carry out a specific activity ...’

- (1) For the purposes of classifying sets, the individual articles of the set are related to one another and are intended to be used together or in conjunction with one another to meet a particular need or to carry out a specific activity.
- (2) The term ‘particular need’ can be interpreted broadly, since in order to meet a particular need, the articles may be used either in a sequence (for example, a cosmetic skin care set consisting of several products) or randomly (for example, a drill and ‘rawl plug’ set (see also point B(I)(5)(d))).
- (3) The term ‘specific activity’ can be described as an action performed at a certain/specific occasion and the articles of the set are usually used during this occasion.
- (4) Situations when goods are considered/not considered as put up together to meet a particular need or specific activity:
 - (a) The fact that the articles are put up together as a gift/in a gift presentation (for example, for Christmas, Mother’s Day, Valentine’s Day, etc.) does not automatically mean that they are put up together to meet a particular need or to carry out a specific activity. It is still to be examined on case-by-case basis. Also, articles presented together and having the same design/decorative motifs (for example, each of them being decorated with pink flowers) are not to be classified as goods put up in sets for retail sale, unless they are put up together to meet a particular need or to carry out a specific activity. For example, a collection of articles consisting of a wrist-watch, a pocket-size electronic calculator and a ballpoint pen, all having the same decorative motifs, put up together for retail sale in a single box, do not constitute a set within the context of GIR 3(b), because these articles are not put up together to meet a particular need or to carry out a specific activity.
 - (b) Articles used in the same place/environment are not necessarily presumed to meet a particular need or to carry out a specific activity. For example, a ‘Beach set’, comprising a beach bag, a bathing towel and a frisbee, does not constitute a set within the context of GIR 3(b). Although the articles are being used at the beach, they are for completely different activities (bathing and playing) and are not related to one another.

(c) The fact that the articles are used by a certain person or by a group of persons (children, persons having the same profession or hobby, etc.) does not automatically mean that they are considered to be goods put up in sets for retail sale. It is still to be examined if they are put together to meet a particular need or to carry out a specific activity.

(d) Combination of foodstuff and beverages is not allowed unless for a preparation of a single dish:

(i) foodstuff/beverages 'sets', the components of which are intended to be used together in the preparation of ready-to-eat dish, meal or a drink are to be classified by virtue of GIR 3(b);

(ii) the Rule does not, however, cover selections of products put up together and consisting of various foodstuff, spirits or beverages which are not intended to be used together to prepare a ready-to-eat dish or meal or a drink. If the articles do not interact with one another so as to comprise a ready-to-eat dish or meal or a drink, they are not considered to be a set and each item is to be classified separately in its own appropriate heading. For example, so-called 'Christmas baskets/gift baskets' consisting of different goods, for example: cheese, wine, champagne or liqueurs, tea, jam, olive oil, honey, pâté, spices, fruits, etc., are to be classified separately;

However, a combination of foodstuffs and beverages, intended for the preparation of a single dish or meal (for example, a 'tiramisu set' containing a relative proportion of Marsala wine which is to be used for the preparation of tiramisu), is to be classified by virtue of GIR 3(b) as a set.

On the other hand, if a combination is intended for both 'eating and drinking', even if the articles are put up together for retail sale, they are not considered to be a set within the meaning of GIR 3(b), because they do not meet a particular need or are not used to carry out a specific activity;

(iii) different kinds of beverages/foodstuff and household utensils are to be classified separately, for example, a 'coffee set' put up together for retail sale in plastic wrapping and comprising:

- flavoured (aromatic) instant coffee powder,
- cinnamon sticks,
- a small metal grater of stainless steel,
- a metal container with a lid (containing coffee powder),
- a ceramic mug

is to be classified according to the different products in headings 2101 (flavoured aromatic instant coffee powder), 0906 (cinnamon sticks), 8205 (small metal grater), 7323 (metal container with a lid), 6912 (ceramic mug).

These products cannot be considered as 'goods put up in sets for retail sale' within the meaning of GIR 3(b), because the articles do not meet a particular need or serve to carry out a specific activity (statement of the Customs Code Committee from June 2008).

However, a disposable/non-reusable plastic cup of a negligible value (see also part B (III) 'sets including a minor/negligible article') with a sachet containing coffee, and one sachet containing sugar put up together, for the preparation of one cup of coffee will be classified as a set.

(5) Examples of products or articles which can be classified as a set by reference to GIR 3(b):

(a) Bathroom/pamper sets consisting of various items such as shower gel, bubble bath, wash soap, body lotion or a combination of shampoo, face cream and hand cream, etc. and also of articles to be used with them such as a sponge or a flannel — the articles are to be used simultaneously, in a sequence

or randomly and are complementary. (However, see below under point B(I)(6)(a) sets consisting of wash items and other articles — separate classification. See also part (B)(III) 'sets including a minor/negligible article', example (ii).)

If the above articles are put up together for retail sale in a plastic bag with a zipper, the plastic bag is to be classified by virtue of GIR 5(b) as it is of a kind normally used for packing such goods.

- (b) Survival kit containing items of low value only, for example: two safety pins of steel, two fish-hooks of steel, one fishing line of textile materials (31 m), one small compass, one sewing needle of steel, two tinders (fire starter sticks), one copper wire (91 cm), one multi-purpose cord (3 m), four waterproof matches, one book of matches, one whistle of plastic, one strip of adhesive tape (30 cm), one razor blade, two alcohol swabs (for disinfecting wounds), two self-adhesive plasters, a re-sealable plastic bag, two steel nails, one mirror-effect piece of foil with adhesive backing, one pencil, one packet of dried soup, one piece of chewing gum. All the components of the set are housed in an aluminium pull-tab tin which measures 11 cm long, 7,7 cm wide and 2,3 cm deep, and are sold in a printed blister pack. The components are designed for one-off use in emergencies, for example, an unexpected stop-over in a remote area. They are serving for a particular need: surviving.
- (c) Patient packs for going into hospital/hygiene travel packs, including several articles of a low value, for example, surface wipes, a disposable pen, a toothbrush, toothpaste, shampoo, face and body wipes, hand sanitiser, fabric spray, lip balm, soap, a nail brush and a leaflet on hygiene; or

hygiene sets consisting, for example, of a soap bar, wrapped with plastic foil, a perfumed paper towel, some paper tissues and two paper seats for toilets (not reusable) presented together in a plastic envelope which is foldable.

However, similar sets — travel sets/airline sets including apart from the toilet articles as well slippers, pyjamas, etc. — are not to be classified as sets by virtue of GIR 3(b), as the slippers, pyjamas, etc. are not products for a personal toilet. (See also Regulation (EC) No 2855/2000 and 22nd HSC session.)

- (d) Drill and 'rawl plug' set consisting, for example, of high speed steel twist drill bits, wood twist drill bits, hard metal masonry drill bits, screwdriver bits with a magnetic holder and 'rawl plugs'. All the components are housed in a plastic case with a subdivided plastic compartment — even if the articles are usually not used together to carry out a specific activity and only some of them can be used at a certain occasion, they can be considered to be put up together to meet a particular need, for example, renovation, fixing or home improvement.
- (e) Renovation set or DIY (do-it-yourself) set consisting, for example, of items for removing wall papers and for painting, such as paintbrushes, carpenters pencils, paint rollers, special knives, scrapers, painters spatulas, tape measure, voltage tester, paint well, etc. The goods serve a common need of 'wall renovation'.
- (f) Set consisting of a book and a CD related to the book inserted in its cover (for example, the CD contains linguistic exercises linked to the book) is to be classified by virtue of GIR 3(b) as both articles are put up together to meet a particular need (for example, studying a foreign language).
- (6) Examples of product or articles which cannot be classified as a set by reference to GIR 3(b):
- (a) Bathroom sets/pamper sets consisting of wash items (such as shower gel, soap) and additional items which are to be used separately such as slippers, hand mirrors, hair brushes, decorative candles, etc. The different articles are not to be used together or in conjunction with one another. Although they can be used in the same place (bathroom), they are designed for different needs. The wash items are used for 'washing/body pampering treatment', while the other articles are used, for example, for 'getting dressed/clothing/hair treatment'. (However, see also point B(I)(5)(a), the example of a bathroom set classified as a set, and part B (III) 'sets including a minor/negligible article', example (ii).)

- (b) Multibox assortment (also known as 'starter sets') consisting, for example, of various nails of steel, partly coated various screw hooks and eyelets of steel, various hooks (including picture hooks) of steel, coated, thumbtacks of steel, coated, elastic bands made of rubber, plastic shelf supports with steel pins, rings made of rubber, drawing pins of steel and plastic, key rings comprising a steel ring, and plastic pendants, paper clips of steel, rawl plugs, various screws of steel, washers of rubber or paper. The components of the set are housed in five subdivided plastic containers, which in turn can be inserted into a portable plastic frame. As compared to, for example, the renovation set referred to under point B(I)(5)(e), the multibox assortment does not meet a particular need but instead has a variety of applications broader than renovation, fixing or home improvement. It contains articles such as elastic bands, key rings and paper clips ... which serve other purposes.

PART B (II)

'... failed sets ...'

- (1) If one or more of the articles of a 'set' do not meet the same particular need or are not designed to carry out the same specific activity as the other articles of a 'set' packaged together for retail sale, EACH one has to be classified separately. It is not possible to construct a set taken from a 'failed set' and to separate just some of the articles (see also the HSEN to GIR 3(b), (X)).
- (2) The articles can only be classified as a set, if ALL of them are related to one another and used together. In all other cases (that is, only some of the articles are related to one another and used together), EACH article must be classified separately.
- (3) For example, in the case of a bathroom set (see point B(I)(6)(a)) consisting of a shower gel, soap, body lotion and slippers, EACH article must be classified separately, as the slippers do not meet the same particular need.

PART B (III)

'... sets including a minor/negligible article ...'

- (1) Goods put up in sets for retail sale may be combined with a minor/negligible article (in certain cases even more than one article) of a negligible value which does not have any relation to the other articles of the set (i.e. it is not for the same particular need or specific activity) and would normally be classified separately.
- (2) The presence of the minor/negligible article may be disregarded in determining whether a group of articles constitutes a set (*'de minimis rule'*) and all the articles are to be classified together provided that all the following conditions are met:
 - (a) the article is merely an incidental/immaterial element of the whole set, for example, it is just referred to as 'surprise article';
 - (b) it does not alter the character of the set;
 - (c) the value of the article is negligible compared to the total value of the goods put up in the set;and
 - (d) the article has usually minor/insignificant practical use on its own or it has limited use (for example, it cannot be used repetitively or its durability is limited).

Examples:

- (i) 'Creativity set' consisting of various articles for a creative activity (small triangular woven denim head scarf, a braid trim, artificial rhinestone and glue to decorate the scarf) and one small surprise article — eraser, with no relation to the activity, put up for retail sale in a cardboard box. These goods would be classified as a set, i.e. the eraser would be classified together with the other articles of the set.

- (ii) 'Bathroom set' — containing various toilet preparations (for example, shower gel, soap, bath salt and body lotion) and a tea light candle of a negligible value, put up for retail sale in a paper box. The tea light candle would be classified together with the other articles of the set. However, articles of a similar 'bathroom set' containing a decorative candle which is not of a negligible value would be classified separately, as the candle enhances the value of the set, its durability may exceed that of the toilet articles and it is of a higher value (see point B(I)(6)(a)).
 - (iii) Drawing set comprising a ruler, a drawing compass, a pencil and a pencil-sharpener, presented together with small stickers — the stickers are to be classified together with the set as they are an immaterial element, which is to be used just once, has a negligible value, etc.
 - (iv) Textile articles set consisting of a scarf of heading 6117 and matching gloves of heading 6116 presented together with earrings of base metal of heading 7117. All articles are to be classified separately, as the earrings are more than an immaterial element, they have a practical use and their value is not negligible.
- (3) The above rule may be — on case-by-case basis — applied also when one 'main article' is presented together with a minor/negligible article.

For example, a box of cereals containing a small surprise article of a negligible value such as a plastic figure/toy or stickers would not be classified separately. However, if the box of cereals contains a CD with music, software or PC games, the articles are to be classified separately, as the CD is more than an immaterial element of a negligible value, it possesses an unrelated significant function.

PART C

'... are put up in a manner suitable for sale directly to users without repacking ...'

- (1) According to this note and in order to be considered as a 'set', it is necessary to fulfil ALL the following conditions:
- (a) all the items of the 'set' are presented at the same time and in the same declaration;
 - (b) all the items are presented in the same package such as a carrying case, plastic bag, box, netting around, or (whether or not packed) bound together using for instance filament reinforced tape, etc.;
 - (c) all the items are put up in a manner suitable for sale directly to users without repacking.
- (2) However, as an exception to point (1)(b), goods put up in sets for retail sale could be presented in separate packages when justified, for example, due to the composition of the articles (for instance, size, weight, shape, chemical composition), for reasons of transport or for safety reasons, provided that they are suitable for sale directly to users without repacking.

This situation can only be accepted if:

- (a) the goods are presented in 'relative proportions', for example, one dining table (dimensions suitable for four persons), and four dining chairs; as opposed to 'non-relative proportions' such as three dining tables (dimensions suitable for four persons), and one dining chair;

and

- (b) the goods are put up in a form clearly indicating they belong together, for example:
 - (i) the packages clearly have to refer to each other (numbered, with pictures, commercial denomination, etc.); or
 - (ii) the documents mention that the goods at issue are in separate packages but belong together.