T.D. 91-7 January 8, 1991 TARIFF TREATMENT AND COUNTRY OF ORIGIN MARKING OF SETS, MIXTURES, ANDCOMPOSITE GOODS

UNITED STATES CUSTOMS SERVICE

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TARIFF TREATMENT AND COUNTRY OF ORIGIN MARKING OF SETS, MIXTURES, AND COMPOSITE GOODS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interpretative rule.

SUMMARY: This document sets forth the position of the U.S. Customs Service regarding certain issues that have arisen concerning the tariff treatment and country of origin marking of sets, mixtures, and composite goods. Specifically, these issues are: (1) the dutiable status of such collections where a portion of the goods consists of American-made goods returned to the U.S. and/or articles assembled abroad in whole or in part of U.S. components; (2) the manner in which eligibility for the special tariff treatment programs (e.g., Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI)) is determined for sets, mixtures and composite goods; and (3) the proper application of country of origin marking requirements to such collections.

FOR FURTHER INFORMATION CONTACT:

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Regarding issue 3, Lorrie Rodbart of the same office.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The classification of imported merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is governed by the General Rules of Interpretation (GRI's) of the HTSUS, taken in order. The principles set forth in the GRI's determine whether merchandise, consisting of two or more materials or components which are shipped together, is classifiable in a single tariff provision, or whether each of the materials or components comprising the merchandise is separately classifiable.

This ruling concerns the tariff treatment and country of origin marking of imported sets, mixtures and composite goods which are classifiable under one provision of the HTSUS pursuant to the GRI's. Consideration of the issues discussed below first requires an understanding of the relevant GRI's. GRI 1

provides that:

* * * 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 [GRI's 2 through 6].

The Explanatory Notes, which constitute the official interpretation of the HTSUS at the international level, state in regard to GRI 1 that the phrase "provided such headings or notes do not otherwise require" is "intended to make quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount, i.e., they are the first consideration in determining classification." Thus, sets or mixed or composite goods which are specifically described in a single heading are classifiable in that heading pursuant to GRI 1.

GRI 3(a) states that the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or components contained in a set put up for retail sale or mixed or composite goods, those headings shall be regarded as equally specific and GRI 3(b) shall be used.

GRI 3(b) governs the classification of mixtures, composite goods consisting of different materials or components, and goods put up in sets for retail sale that are not classifiable by reference to one of the preceding GRI's. According to GRI 3(b), sets or mixed or composite goods are classified as if they consisted of the material or component that imparts the essential character to the goods. The meaning of the term "composite goods" and "goods put up in sets for retail sale" is set forth in the Explanatory Notes relating

to GRI 3(b). If a collection of components or items does not meet the criteria in the Explanatory Notes for "composite goods" or "goods put up in sets for retail sale," each component or item is separately classifiable.

GRI 3(c) provides that when goods cannot be classified by reference to GRI 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. Thus, for example, GRI 3(c) will be used when no single item in a set can be said to impart the essential character to the set.

ISSUE I. Tariff treatment of sets, mixtures and composite goods where a portion of the goods consists of American-made goods returned to the U.S. and/or articles assembled abroad wholly or partly of U.S. fabricated components.

A. American goods returned:

Subheading 9801.00.10(EN), HTSUS, provides for the duty-free entry of merchandise of U.S. origin which is returned to the U.S. without having been advanced in value or improved in condition by any process of manufacture or other means while abroad. The courts have held that the packaging abroad of products of U.S. origin, even for the purpose of retail sale, will not preclude classification under item 800.00, Tariff Schedules of the United States (TSUS) (the precursor provision to subheading 9801.00.10(EN), HTSUS), when there is no improvement in condition or advancement in value of the products themselves, apart from their containers. See United State v. John V. Carr & Sons. Inc., 69 Cust.Ct. 78, C.D. 4377 (1972), aff'd 61 CCPA 52, C.A.D. 1118 (1974).

In a recent case, Superscope, Inc. v. United States, 13 CIT , 727 F.Supp. 629 (CIT 1989), the court held that certain glass panels of U.S. origin that were exported, repacked abroad with certain foreign components, and returned to the U.S. as part of unassembled audio cabinets, were entitled to duty-free entry under item 800.00, TSUS. The court reasoned that the U.S.-origin panel portion of the unassembled cabinet (classified, as an entirety, as "furniture, and parts thereof, * * * of wood") was "not 'advanced in value or improved in condition * * * while abroad,' but [was] merely repacked." Although the Superscope caseconcerned the TSUS, not the HTSUS, the decision is believed to be equally applicable to similar situations arising under the HTSUS since item 800.00, TSUS, and relevant Schedule 8, TSUS, headnotes were carried over virtually unchanged into the HTSUS. Telexed instructions dated March 6, 1990, to Customs field offices regarding Superscope, advised that claims for subheading 9801.00.10(EN), HTSUS, treatment for components or items comprising a portion of imported unassembled articles, sets, composite goods, and other such combinations, shall be granted for those components or items satisfying the conditions and requirements of this tariff provision.

Certain questions not addressed in the March 6, 1990, telex have arisen in connection with the application of the GRI's to sets, mixtures, and composite goods where a portion of the goods consists of American goods returned. The first question concerns whether GRI 3(b) should be used to determine the tariff classification of a set or mixed or composite goods where a portion of the goods is entitled to free entry under HTSUS subheading 9801.00.10(EN), HTSUS. It can be argued, for example, that if two items in a four-item set are granted subheading9801.00.10(EN), HTSUS, treatment, the remaining two foreign-origin items may
no longer qualify, by themselves, as a set and, therefore, each item should be separately classified. However, we do not subscribe to this view.

In our opinion, a set or mixed or composite goods can exist, within the meaning of GRI 3(b), even though a portion of the collection consists of American goods returned. This view is consistent with the Superscope decision, in which the court clearly treated the U.S.-origin glass panels as part of the single tariff entity (unassembled furniture) for tariff classification purposes even though the glass panels separately qualified for entry under item 800.00, TSUS. Similarly, the presence of American goods returned in a set (also containing foreign-origin items) should not destroy the identity of the set and frustrate the purpose of GRI 3(b), which is to facilitate the classification of sets, mixtures and composite goods by permitting the components or items to be classified under a single HTSUS heading. Thus, GRI 3(b) (and, if applicable, GRI 3(c)) should be used to determine the tariff classification of a set or mixed or composite goods where a portion of the collection consists of materials or items qualifying for subheading 9801.00.10(EN), HTSUS, treatment.

The next question concerns how the classification of a set or mixed or composite goods pursuant to GRI 3(b) or 3(c) is affected by the presence of American goods returned in the collection. With respect to GRI 3(b), no apparent problem is presented where, for example, an item in a set not imparting the essential character to the set qualifies for free entry under subheading 9801.00.10(EN), HTSUS. Under these circumstances, only the U.S.-origin item will receive free treatment under this tariff provision while the remainder of the set will be dutiable at the rate applicable to the foreign-origin item which imparts the essential character to the set. In Headquarters Ruling Letter (HRL) 555201 dated April 11, 1990, U.S.-origin paper labels were merely packed abroad with foreign-origin plastic index tabs, creating "goods put up in a set for

retail sale," within the meaning of GRI 3(b). We determined that the foreign-origin tabs imparted the essential character to the set and, therefore, the set was dutiable at the rate applicable to the tabs, with a classification allowance permitted under subheading 9801.00.10(EN), HTSUS, for the cost or value of the U.S.-origin labels.

However, a more difficult problem is presented when the item qualifying for subheading 9801.00.10(EN), HTSUS, treatment imparts the essential character to the set. It may be argued in such a case that duty-free treatment under this tariff provision should be accorded not only to the U.S.-origin item but to the foreign-origin items in the set as well. This position was adopted in HRL's 554935 dated April 10, 1989, and HRL 085967 dated March 2, 1990 (abstracted as C.S.D. 90-72(2)). However, we have reconsidered this view and determined that it not only is inconsistent with U.S. Note 1, Chapter 98, HTSUS, but leads to results not intended by GRI 3(b) or 3(c).

U.S. Note 1, Chapter 98, HTSUS (the chapter encompassing special classification provisions, including subheadings 9801.00.10(EN) and 9802.00.80(EN), HTSUS), provides as follows:

The provisions of this chapter are not subject to the rule of relative specificity in general rule of interpretation 3(a). Any article which is described in any provision in this chapter is classifiable in said provision if the conditions and requirements thereof and any applicable regulations are met. (Emphasis added).

The "conditions and requirements" of subheading 9801.00.10(EN), HTSUS, are (1) that the article be a product of the U.S.; and (2) that it not be advanced in value or improved in condition by any means while abroad. Granting duty-free treatment under subheading 9801.00.10(EN), HTSUS, to items in a set (e.g., foreign-made items) which do not meet these "conditions and requirements" would clearly contravene the plain meaning and intent of the referenced U.S. Note. Moreover, construing GRI 3(b) to mean that when the material or item which gives a set its essential character is entitled to free entry as American goods returned, then the entire set is entitled to such treatment, will inevitably lead to absurd results. Consider, for example, a set consisting of 15 items, only one of which satisfies the "conditions and requirements" of subheading 9801.00.10(EN), HTSUS. If the single U.S.-origin item imparts the set's essential character, then the above interpretation of GRI 3(b) would result in the 14 foreign-made items also receiving free treatment. A similarly absurd result would be reached where none of the items in the 15-item set can be said togive the set its essential character. Being last in numerical order, subheading 9801.00.10(EN), HTSUS, would render all of the items in the set duty free by application of GRI 3(c). We believe there is no question that the application of GRI's 3(b) and 3(c) was never intended to result in granting American goods returned status to foreign-made materials or components in a set or mixed or composite goods.

Consistent with the foregoing, we conclude that the use of GRI 3(b) or, if applicable, 3(c), to classify sets or mixed or composite goods should be accomplished without reference to the eligibility of certain of the materials or components contained therein for subheading 9801.00.10(EN), HTSUS, treatment.

HRL's
554935 and 085967 are modified accordingly.

Our position on this issue is best understood by applying it to a specific example. A battery charger kit is imported consisting of a battery charger of U.S. origin and two rechargeable batteries and a charger adapter module of Korean origin. As the charger, batteries, and module are described in different Chapter 1-97, HTSUS, headings, it is necessary first to determine whether the kit qualifies as "goods put up in a set for retail sale," within the meaning of GRI 3(b) and the relevant Explanatory Notes. Finding that it does, the next step is to classify the set under a single HTSUS heading by ascertaining which, if any, of the three items imparts the set's essential character. Because we determine that the battery charger gives the set its essential character, the entire set is classified in the Chapter 1-97, HTSUS, heading applicable to the battery charger. Next, it is necessary to determine whether any of the items in the set are entitled to free treatment under subheading 9801.00.10(EN), HTSUS. In consideration of Superscope and U.S. Note 1, Chapter 98, HTSUS, we find that only the battery charger meets the "conditions and requirements" of this tariff provision and, therefore, a classification allowance (from the full value of the set) is made for the cost or value of the charger alone. The practical effect of applying GRI 3(b) in this manner is that the foreign-made batteries and adapter are assessed duties at the rate applicable to the battery charger as if this item were ineligible for subheading 9801.00.10(EN), HTSUS, treatment.

B. Articles assembled abroad in whole or in part of U.S. fabricated components:

Subheading 9802.00.80(EN), HTSUS, provides a partial duty exemption for:

[a]rticles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting.

An article satisfying the above conditions and requirements is subject to a duty upon the full value of the imported assembled article, less the cost or value of the U.S.-origin components assembled therein, provided the documentary requirements of section 10.24, Customs Regulations (19 CFR 10.24), are met.

The above analysis regarding subheading 9801.00.10(EN), HTSUS, also is applicable, in large part, to situations in which a portion of a set or mixed or

composite goods consists of components or items assembled abroad in whole or in part of U.S.-origin fabricated components. If, for example, a set consists of an item(s) which has been assembled abroad in whole or in part of U.S.-origin components, as well as an item(s) of foreign manufacture, duties will be assessed pursuant to subheading 9802.00.80(EN), HTSUS, upon the full value of the set less the cost or value of the U.S. fabricated components. This, of course, assumes that the assembled article meets the conditions and requirements of this tariff provision. The duty rate to be applied to the dutiable value of the set will be determined by classifying the entire set pursuant to the GRI's as if subheading 9802.00.80(EN), HTSUS, were inapplicable to any portion of the set. See U.S. Note 4 (b), subchapter II, Chapter 98, HTSUS.

An illustration of the above discussion follows: A hairdressing set is imported consisting of a comb, brush, and electric hair clippers, all of Mexican manufacture, and scissors assembled in Mexico of U.S.-origin components (which meet the conditions and requirements of subheading 9802.00.80(EN), HTSUS). All four items are described in separate Chapter 1-97, HTSUS, headings, and the set qualifies as "goods put up in a set for retail sale," within the meaning of GRI 3(b). Applying GRI 3(b) to determine the classification of the set, we find that the electric hair clippers impart the essential character to the set. Therefore, the hairdressing set is classified for duty-rate purposes in subheading 8510.20.0000(EN), HTSUS ("Hair clippers"), which carries a duty rate of 4 percent. This duty rate is applied against the full appraised value of the set, less the cost or value of the U.S. fabricated components comprising the assembled scissors.

If we alter the facts in the above example slightly by changing the country of origin of the comb from Mexico to the U.S. (the comb is merely packaged in Mexico with the other items of the hairdressing set), the same procedure should be used to determine the tariff status of the set. The first step is to ascertain whether the items qualify as "goods put up in a set for retail sale." Next, the entire set is classified pursuant to GRI 3(b) without regard to the eligibility of any of the items for Chapter 98, HTSUS, treatment. The final step is to determine whether any of the items in the set is entitled to special tariff treatment under Chapter 98, HTSUS. In this example, the set would be classified for duty-free purposes in the HTSUS provision applicable to the electric hair clippers. An allowance in duty would be made under subheading 9802.00.80(EN), HTSUS, for the cost or value of the U.S.-origin components comprising the scissors/and a classification allowance would be made under subheading 9801.00.10(EN), HTSUS, for the cost or value of the U.S.-origin comb. Again, special tariff treatment under subheadings 9801.00.10(EN) and 9802.00.80(EN), HTSUS, presumes compliance with the applicable documentation requirements.

We note that the preceding discussion relates only to the tariff treatment of

sets and mixed and composite goods when a portion of the goods is eligible for special tariff treatment under certain Chapter 98, HTSUS, provisions. The above analysis is not applicable to situations in which a portion of a set or mixed or composite goods is classifiable in a Chapter 1-97, HTSUS, heading providing for a free rate of duty in the General Subcolumn. For example, HRL 083470 dated May 17, 1989, concerned the tariff classification of a foreign-made stuffed doll imported packed for retail sale with certain foreign-origin accessories (a cradle, stuffed bear, rattle, and blanket). We determined that the items qualified as "goods put up in a set for retail sale" and that the doll imparted the set's essential character. We stated that the doll was classifiable in subheading 9502.10.20(EN), HTSUS, and that dolls of this subheading are subject to temporary duty suspension under subheading 9902.95.01(EN), HTSUS. Therefore, it was held that the entire set was classifiable under subheading 9502.10.20(EN), HTSUS, and entitled to duty-free treatment under subheading 9902.95.01(EN), HTSUS. By the same token, had we determined that the cradle, rather than the doll, gave the set its essential character, the doll would not have been entitled to free treatment but would have been dutiable at the rate applicable to the cradle (as would the other items in the set).

ISSUE II. Eligibility of sets, mixtures and composite goods for special tariff treatment programs.

This issue concerns the manner in which eligibility for special duty treatment under one or more of the tariff preference programs is determined for mixtures, composite goods, and sets. General Note 3(C)(i)(A), HTSUS, lists the following programs under which special tariff treatment may be provided: CBI, GSP, Automotive Products Trade Act, Agreement on Trade in Civil Aircraft, U.S.-Canada Free Trade Agreement, and U.S.-Israel Free Trade Area. General Note 3(a)(iii), HTSUS, states that special rates of duty under one or more of these programs apply to those products which are properly classified under a provision for which a special rate is indicated in the "Special" subcolumn and for which all of the legal requirements for eligibility for such program(s) have been met.

Thus, as is true in regard to all imported articles, the first step in determining whether sets or mixed or composite goods are entitled to special duty treatment under one or more of the tariff preference programs is to ascertain the proper classification of the article pursuant to the GRI's. If, for example, a particular set is classified by reference to GRI 3(b), the item of the set which imparts its essential character determines the classification of the entire set. If the "Special" subcolumn opposite the subheading under which the set is classified contains a special duty rate, then the entire set would be entitled to that special rate, assuming compliance with the program's legal requirements. In this regard, see HRL 084709 dated August 24, 1989, involving composite goods and GSP eligibility. However, where no such

duty rate is indicated for that subheading, the entire set would be ineligible for the tariff preference program, even though items in the set (not imparting the set's essential character) would be eligible if classified separately.

One of the requirements for duty-free treatment under the CBI, GSP and U.S.-Israel Free Trade Area programs is that the eligible article must satisfy the 35 percent value-content requirement. That is, the sum of the cost or value of the materials produced in the beneficiary country, plus the direct costs of processing operations performed in the beneficiary country, must equal or exceed 35 percent of the appraised value of the imported article. In determining whether this requirement has been satisfied with respect to sets or mixed or composite goods which are classifiable under one subheading pursuant to the GRI's, the includable material and direct costs must be compared to the appraised value of the entire collection of materials or components (e.g., the entire set).

Prior to August 20, 1990, the GSP program differed from the CBI and U.S.-Israel FTA programs in that the latter programs included a "product of" requirement, while the GSP did not. This requirement means that to receive duty-free treatment, an article either must be made entirely of materials originating in the beneficiary country or, if made of materials from a non-beneficiary country, those materials must be substantially transformed in the beneficiary country into a new or different article of commerce. In Madison Galleries, Ltd. v. United States, 688 F.Supp. 1544 (CIT 1988), aff'd 870 F.2d 627 (Fed. Cir. 1989), the court concluded that, under the GSP statute, it is unnecessary for an article to be a "product of" a GSP country to be eligible for duty-free treatment under that program. However, section 226 of the recently enacted Customs and Trade Act of 1990 (Public Law 101-382) includes an amendment to the GSP statute requiring an article to be a "product of" a GSP country for it to receive duty-free treatment. This amendment was effective for articles entered, or withdrawn from warehouse for consumption, on or after August 20, 1990.

Therefore, for articles entered, or withdrawn from warehouse for consumption, before August 20, 1990, the above-described difference between the GSP and the CBI and U.S.-Israel FTA remains. To illustrate how this difference impacts upon sets and mixed and composite goods, consider again the example of the hairdressing set from Mexico (a GSP country). Assume for purposes of this discussion that the comb, brush, and scissors are manufactured in Mexico from materials originating in Mexico. However, the electric hair clippers are manufactured in Taiwan (a non-GSP country), imported into Mexico, and merely packaged with the other items in the set prior to the set's direct shipment to the U.S. Pursuant to GRI 3(b), the set is classified in subheading 8510.20.0000(EN), HTSUS ("Hair clippers"), which is a GSP-eligible provision. The mere packaging of the Taiwanese-origin hair clippers with the other items

clearly will not substantially transform the clippers into a "product of" Mexico. However, this will not, in and of itself, preclude GSP treatment for the set (assuming it was entered before August 20, 1990). Nevertheless, no costs relating to the hair clippers may be counted toward the 35 percent requirement. Therefore, to satisfy this requirement, the cost or value of the materials from which the comb, brush and scissors are made, plus the direct costs involved in manufacturing those three items, must equal or exceed 35 percent of the appraised value of the entire set (including the hair clippers).

The next question concerns whether the same hairdressing set would be entitled to CBI treatment, assuming that the comb, brush, and scissors are made in Jamaica from Jamaican materials and the hair clippers are manufactured in Taiwan and imported into Jamaica for packaging with the other items of the set. Again, the set would be classified in subheading 8510.20.0000(EN), HTSUS, which is a CBI-eligible provision. However, because the entire imported entity (the set) is not the " product of" Jamaica, as required by the CBI statute, neither the set nor any part thereof would be entitled to duty-free treatment under this program. As a general rule, a collection classifiable in one subheading pursuant to the GRI's will receive CBI treatment only if all of the items or components in the collection are considered "products of" the beneficiary country. The same is now true under the GSP with respect to articles entered on or after August 20, 1990.

ISSUE III. Application of country or origin marking requirements to sets, mixtures and composite goods.

The specific issue to be addressed here is what effect, if any, will GRI 3(b) have on the country of origin marking requirements of articles classified by reference to this GRI?

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides, subject to specified exceptions, that every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin."

The primary purpose of the country of origin marking statute is to "mark the

goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." United States v. Friedlaender & Co., 27 C.C.P.A. 297, 302, C.A.D. 104 (1940).

Neither the statute nor the Customs Regulations contains any provisions regarding the marking of sets, mixtures or composite goods. n1 In the absence of any special requirements, the general country of origin marking requirements apply, i.e., every article that is imported into the U.S. must be marked to indicate its country of origin as determined by where the article underwent its last substantial transformation.

n1 The only provision that relates at all to the marking of such items is section 134.14, Customs Regulations (19 CFR 134.14), entitled "Articles usually combined." It provides that "[w]hen an imported article is of a kind which is usually combined with another article after importation but before delivery to an ultimate purchaser and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation" (e.g., to avoid confusion, an imported perfume bottle made in France to be filled with perfume made in the U.S. would have to be marked "Bottle Made in France" as opposed to "Made in France").

The tariff treatment of an article under the HTSUS generally has no effect on the country of origin marking requirements under 19 U.S.C. 1304. As previously indicated, GRI 3(b) specifies only that sets, mixtures and composite goods are classified as if they consisted of the material or component that imparts the essential character to the goods. It does not specify that sets, mixtures and composite goods are to be marked as if they consisted of the material or component that imparts the essential character. Therefore, the classification of a set or mixed or composite goods in one HTSUS subheading by reference to GRI 3(b) is not determinative of the country of origin marking requirements of the materials or components which comprise the article. For purposes of 19 U.S.C. 1304, the relevant inquiry regarding the marking of the materials or components in such a collection is whether such items have been substantially transformed as a result of their inclusion in the set, mixture or composite good.

This issue was addressed in HRL 084935 dated August 23, 1989 (as modified in HRL 086895 dated August 17, 1990), which concerned the proper classification and marking requirements applicable to a "Pocket Gym" imported from Canada. The "Pocket Gym" consisted of certain exercise equipment made in Canada, instruction sheets and poster printed in Canada, and a nylon bag of Korean origin. It was determined that the "Pocket Gym" qualified as a classification

purposes under GRI 3(b). Therefore, as the essential character of the merchandise was imparted by the exercise equipment, we held that the "Pocket Gym" (including the nylon bag) was classifiable in subheading 9506.91.0030(EN), HTSUS ("Other articles and equipment for gymnastics, * * *"). With regard to marking, however, we determined that the Canadian items should be marked to indicate their Canadian origin and the nylon bag should be marked "Made in Korea" since, for marking purposes, nothing was done to the bag or the printed materials in Canada that would change their country of origin. The marking

determination was recently affirmed in HRL 733740 dated December 5, 1990.

The same type of analysis would apply to the example of the hairdressing set discussed previously consisting of a comb, brush, scissors and electric hair clippers. Although the electric hair clippers impart the essential character to the set and thus determine how the collection is classified, the country of origin marking requirements are determined on the basis of substantial transformation. None of the items in the hair dressing set is substantially transformed as a result of its inclusion in the set. Therefore, each item is required to be marked to indicate its own country of origin. If one of the items (e.g., the comb) is manufactured in the U.S., it would be excepted from marking under section 134.32(m), Customs Regulations (19 CFR 134.32(m)), pertaining to U.S.-origin articles exported and returned.

As in the above examples, in most cases, the mere inclusion of an item in a collection will not substantially transform it into an article with a new name, character or use and, therefore, each item must be separately marked with its own country of origin. (Where the marking of the container will reasonably indicate the country of origin to the ultimate purchaser, the container may be marked instead of the individual articles. See 19 U.S.C. 1304(a)(3)(D) and 19 CFR 134.32(d)). This result is consistent with the purpose of the marking statute since the ultimate purchaser's decision as to whether to buy theset might be influenced by the country of origin of any of the items in the set, whether or not an item gives the set its essential character.

It is noted, however, that in certain circumstances, the marking of every item in a collection of goods may not be consistent with the purpose of the statute, or may be impractical and/or undesirable. This may be because one or more items in the collection are relatively insignificant and would have no influence on the purchasing decision, because the items in the collection are too numerous, making it impractical to specify the country of origin of each item, or for various other reasons. Therefore, Customs will continue to employ a "common sense" approach to determine the marking requirements applicable to articles which comprise a collection of goods.

An example of this approach is found in HRL 555365 dated September 7, 1990,

which concerned the tariff treatment and country of origin marking requirements applicable to U.S.-made junction boxes packaged abroad with foreign-made screws (three to a box) and returned to the U.S. Customs found that the foreign screws are excepted from the requirements of 19 U.S.C. 1304 even though nothingwas being done to the screws other than packaging them with U.S.
junction boxes. Applying a "common sense" approach, Customs concluded that marking of the screws was not required because they lost their separate identity and became an integral part of the U.S.-origin junction boxes as a result of their inclusion in the kit. Customs recognized that what the ultimate purchaser in the U.S. is buying is a junction box kit and not individual screws, and that the marking of the screws would not be consistent with the purpose of 19 U.S.C. 1304. (Because the junction boxes were excepted from marking under 19 CFR 134.32(m), pertaining to U.S.-origin articles exported and returned, had marking of the screws been required, this would have been the only country of origin marking that would have been required on the junction box container.)

To summarize, GRI 3(b) generally is not relevant in determining the country of origin marking requirements of sets, mixtures, or composite goods. The general rule used in determining the country of origin marking requirements

under 19 U.S.C. 1304 of all imported articles of foreign origin also applies to these types of goods, i.e., the country of origin is the country where the last substantial transformation occurs. If the materials or components are not substantially transformed as a result of their inclusion in a set or mixed or composite goods, then, subject to the usual exceptions, and the "common sense" approach, each item must be individually marked to indicate its own country of origin. Because the country of origin marking requirements of all articles, including those which comprise a collection of goods, always depends on the particular facts presented, in close cases, guidance regarding the marking should be sought from Customs officers prior to importation.

HARVEY B. FOX, Director, Office of Regulations and Rulings.