

“Set” has 464 separate definitions in the Oxford English Dictionary (OED), the most of any English word; its full definition comprises 10,000 words making it the longest definition in the OED.

A set, in the context of tariff classification is (in my opinion):

- a group or collection of objects, considered as an entity unto itself;
- a group of things of the same kind that belong together and are so used, or are complementary to each other.
- articles put up together to meet a particular need or carry out a specific activity

The previous Rules of Interpretation had, at IR 3(2), a definition of a set for the purposes of IR 3(1)(b)(ii) [the current IR 3(b)]. It defined a set as:

Goods which –

- (a) consist of products or articles having independent or complementary uses, grouped together for meeting a specific need or carrying out a specific activity and
- (b) are put up in retail packings.

If the imported entity comprises 2 or more articles and doesn't meet the definition of a “set” Customs will split the classification.

IR 3 as it was: SCHEDULE 2 RULES FOR THE INTERPRETATION OF SCHEDULE 3

(1) Where, for any reason, goods fall within 2 or more items, 2 or more sub-items of an item, 2 or more paragraphs of a sub-item or 2 or more sub-paragraphs of a paragraph, the item, sub-item, paragraph or sub-paragraph, as the case may be, that applies to the goods shall, subject to sub-rule (3), be ascertained in accordance with the following principles:

- (a) If one of the items, sub-items, paragraphs or sub-paragraphs, as the case may be, provides a more specific description of the goods than any other of the items, sub-items, paragraphs or sub-paragraphs, that first-mentioned item, sub-item, paragraph, or sub-paragraph as the case may be, applies to the goods.
- (b) If –
 - (i) the item, sub-item, paragraph or sub-paragraph that applies to the goods cannot be ascertained in accordance with paragraph (a);
 - (ii) the goods are –
 - (A) mixtures;
 - (B) composite goods consisting of different materials or made up of different components; or
 - (C) put up in sets; and
 - (iii) one material or component gives to the goods their essential character, the goods shall be taken to consist of that material or component.
- (c) If the item, sub-item, paragraph or sub-paragraph that applies to the goods cannot be ascertained in accordance with paragraph (a) or paragraph (b) the item, sub-item, paragraph or sub-paragraph as the case may be, that applies to the goods is that item, sub-item, paragraph or sub-paragraph that occurs last in Schedule 3 among those items, sub-items, paragraphs or sub-paragraphs which equally merit consideration when determining the item, sub-item paragraph or sub-paragraph, as the case may be, that applies to the goods.

(2) For the purpose of sub-paragraph (1)(b)(ii), goods put up in sets shall be taken to mean goods which –

- (a) consist of products or articles having independent or complementary uses, grouped together for meeting a specific need or carrying out a specific activity and
- (b) are put up in retail packings.

(3) Where –

- (a) for any reason goods fall within 2 or more sub-items of an item, 2 or more paragraphs of a sub-item or 2 or more sub-paragraphs of a paragraph, and
- (b) there is included in the sub-items, paragraphs or sub-paragraphs within which the goods fall any by-law sub-item, by-law paragraph or by-law sub-paragraph. the sub-item, paragraph or sub-paragraph, as the case may be, that applies to the goods is that under which no duty, or the least amount of duty is payable in respect of the goods or, if there are 2 or more sub-items, paragraphs or sub-paragraphs under which no duty or the least amount of duty, as the case may be, is payable, that one of those sub-items, paragraphs or sub-paragraphs that occurs first in Schedule 3.

(4) For the purposes of sub-rule (3) a sub-item shall be deemed to be a by-law sub-item, a paragraph shall be deemed to be a by-law paragraph, and a sub-paragraph shall be deemed to be a by-law sub-paragraph, if it is expressed to apply to goods, or to a class of kind of goods, as prescribed by by-law."

IR 3 as it is: SCHEDULE 2 RULES FOR THE INTERPRETATION OF SCHEDULE 3

When by application of Rule 2 (b) or for any other reason, goods are prima facie, **classifiable under two or more headings**, classification shall be **effected as follows**:

- (a) 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 substances contained in mixed or composite goods or to **part only of the items in a set put up for retail sale**, those headings are to be **regarded as equally specific** in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (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
- (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

1986: [AAT](#)

Times Consultants Vs the Collector of Customs.

The goods: Goods consist of a publication in magazine form to which is loosely attached a pre-recorded tape of music. The attachment is by adhesive tape to a cardboard matching panel, which in turn is attached to the magazine by one or two staples. The tape is a cassette housed in a plastic box and both are clearly intended to be detached from the panel and therefore from the magazine.

The matter: Upon importation, the magazines were entered for home consumption under item 4902. The cassettes were entered separately under 9212.29. Following a review of the relevant goods by Customs, a decision was made that the subject goods represented sets of cassettes/magazines and that the proper tariff classification was 9212.29. Duty was PUP. The decision was reviewed internally and affirmed. However the basis of affirmation shifted slightly. Having identified the goods as sets consisting of a cassette and magazine, the Collector considered that interpretative rule 3(2) applied. He considered that the essential character of the goods could not be established and that therefore rule 3(1)(c) required him to classify the goods to the paragraph last occurring in Schedule 3. This led him to paragraph 9212.29 referred to above. The two principal issues to be decided therefore are whether the subject goods are put up as sets and if so whether an essential character can be determined so as to define the components of the sets or if not whether, accordingly, the "last occurring paragraph" rule will apply.

The decision: The matter was remitted to Customs with the direction that the subject goods are put up in sets, that the component that gives the sets their essential character is the magazine or part-work, and that therefore the combination falls to be classified to item 4902.

1986: Federal Court – Single Judge (Davies J)

The Collector of Customs Vs Times Consultants.

The matter: This was an appeal from the decision of the AAT delivered 26 May 1986. The decision accorded with the view of the majority of the members of the Tribunal, one member expressing a dissenting view.

The Tribunal held that the goods were goods put up in sets as defined in Rule 3(2). That aspect of the Tribunal's decision was not challenged in this appeal. Nor in this appeal was challenge made to the Tribunal's next step of turning to the provisions of Rule 3(1) and, in particular, to the provisions of paragraph (b) thereof.

What was challenged in the appeal was the Tribunal's decision under Rule 3(1)(b)(iii) that the part work or magazine gave to the goods their essential character and therefore that the goods should be taken to consist of that component

The decision: The decision under appeal was set aside and the matter remitted to the AAT for re-hearing with or without further evidence.

It was decided that the Tribunal made an error of law in its conception of "essential character", took into account as significant, evidence as to the publisher's aims and views which were not in fact significant to the issue of essential character, drew conclusions as to a purchaser's view of the goods based on Mrs Mullineux' evidence without giving attention to Mr Brouner's evidence and other material before the Tribunal and failed to turn its attention adequately to the goods themselves, to their nature, composition and their function.

In effect, Davies J concluded that neither article gave to the set its essential character because the essential character of the set was that it comprised two entirely different articles, each suitable for individual use but each complimenting the other.

The effect of that conclusion was that the goods must be classified to the last occurring.

1987: Federal Court – Full Bench

Times Consultants Vs the Collector of Customs.

The matter: This was an appeal from a decision of a judge of the Court allowing an appeal from a decision of the AAT. The primary judge held that errors of law had been made by the Tribunal in determining an appeal brought to it under the Customs Tariff Act 1982 ("the Act").

The decision: The appeal (the original Federal Court appeal!) should be allowed with costs, the order of Davies J. set aside, and in lieu thereof it be ordered that the application (this application!) be dismissed with costs.

THE CONCLUSION

Under the current structure of IR 3, the decision of Davies J concerning the essential character of a set impacts on IR3(b).

In effect, when considering IR3(b), if you have a set where, as per Davies J, the essential character of the set is that it comprises two (or more) entirely different articles, each suitable for individual use but each complimenting the other(s), neither article gives to the set its essential character, and IR3(b) cannot be used.

Further, under the current structure of IR3(a), if you have a set put up for retail that comprises two (or more) entirely different articles, each suitable for individual use but each complimenting the other(s), it is almost entirely the case that two or more headings will each refer to part only of the items in that set put up for retail sale. Therefore those headings are to be regarded as equally specific, and IR3(a) cannot be used either.

Therefore if you have set put up for retail that comprises two (or more) entirely different articles, each suitable for individual use but each complimenting the other(s), and two or more headings each refer to part only of the items in that set, classification must fall to last occurring.