

*What Every Member of the
Trade Community Should Know About:*
**Hand Tool Sets Classified
Under Subheadings
8205.90.00 and
8206.00.00**



AN INFORMED COMPLIANCE PUBLICATION

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NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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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.

Regulations and Rulings (RR) of the Office of International Trade 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 on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled “Hand Tool Sets Classified Under Subheadings 8205.90.00 and 8206.00.00.” It provides guidance regarding the classification of these items. 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 U.S. Customs and Border Protection, Office of International Trade, Executive Director, Regulations and Rulings, 799 9th Street N.W. 7th floor, Washington, D.C. 20229-1177.

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HAND TOOL SETS CLASSIFIED UNDER SUBHEADINGS 8205.90.00 AND 8206.00.00

Subheading 8205.90.0000, Harmonized Tariff Schedule of the United States (HTSUS) provides for “[s]ets of articles of two or more of the foregoing subheadings.” Subheading 8206.00.0000, HTSUS, provides for “[t]ools of two or more of headings 8202 to 8205, put up in sets for retail sale.” The unit quantity for reporting purposes is pieces and the applicable duty for these provisions is “the rate of duty applicable to that article in the set subject to the highest rate of duty.”¹

Subheading 8205.90.00, HTSUS

Subheading 8205.90.00, HTSUS, refers to sets of articles of two or more of the foregoing subheadings. To be classified under subheading 8205.90, there needs to be a collection of two or more items classified under two or more subheadings of heading 8205 that “are put up in a manner suitable for sale directly to users without repacking.”² If within one shipment there are fifty hammers (8205.20) and twenty-five wood chisels (8205.30), suitable for sale directly to the users, the merchandise is classified in subheading 8205.90.00, HTSUS, which provides for “[s]ets of articles of two or more of the foregoing subheadings.” This set provision provides a parameter as to what items would constitute a set under subheading 8205.90. If a wrench (8204) is included with these same two tools (hammer and wood chisel), this is no longer a set under 8205.90 because the wrench is not covered by the four-digit heading of 8205. However, if it is packaged for retail sale with these other tools, it now fits into the definition of heading 8206.

Subheading 8206.00.00, HTSUS

Subheading 8206.00.00, HTSUS, allows for tools that are put up in sets suitable for retail sale to be classified under this one subheading based upon GRI 1, provided that there are at least two tools in the set that would be classified under two different headings of 8202 to 8205. If there are tools from other headings or chapters that are also in this set, the entire set can still be classified under heading 8206 if these additional items are of minor importance and do not change the essential character of “sets of tools of two or more of the headings 8202 to 8205.” Such minor importance would possibly involve a flashlight³ or other items that would assist in the work performed by the tools of headings 8202 to 8205 and are auxiliary in nature to the central function of the tool set.

¹ Note that according to the General Rules of Interpretation (GRI), “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 the remaining GRIs 2 through 6, applied in sequential order. Accordingly, merchandise must first be classifiable under the applicable HTSUS heading prior to classification consideration under the subheadings discussed herein.

² See GRI 3(b) (X) (c) for the definition of retail sale.

³ HQ 964409 (4/16/01)

A large complex tool set is not required for classification under heading 8206. A simple combination of tools such as sets of spanners (heading 8204) and screwdrivers (heading 8205) would qualify for classification under heading 8206 provided that they are put up in sets for retail sale. A set for retail sale may involve a plastic case, metallic tool box or some other form of retail packaging. Although the tool set must be packaged for retail sale, the set is not required to be sold at retail.⁴

In HQ 965096 (January 10, 2002), a 52-piece home and auto tool set was classified under heading 8206. Only two of the twelve classifications fell under headings 8202 to 8205. Although the other ten classifications fell outside of these HTSUS headings, they did not change the essential character of the set as a tool set containing two or more tools from headings 8202 to 8205. These other items within the set were considered to be of minor importance. If the added tools from outside of headings 8202 to 8205 were not of minor importance, it would change the character of the “sets of tools of two or more of the headings 8202 to 8205” and heading 8206 would no longer be a consideration. The entire set would need to be evaluated for classification purposes and a determination would need to be made as to whether or not it was a set pursuant to GRI 3(b).

The tool set mentioned above, consisting of a hammer, wood chisel and a wrench, would be classified under heading 8206 based upon GRI 1. Classification was determined according to the terms of the heading and the relative section and chapter notes. Heading 8206 (tools of two or more of headings 8202 to 8205, put up in sets for retail sale) describes the product.

Heading 8206 is not a heading dedicated to a set of professional or adult household tools. Junior tool sets may also be classified under the subheading of 8206.00, HTSUS. In HQ 965249 (February 12, 2002), a tool set marketed as a “Junior Trucker” was classified under this subheading. This set was designed and marketed to children ages 8 and up. This tool set was not considered a toy set. Although it was designed for small hands and not suitable for a car mechanic, they were nonetheless usable tools for the kinds of small jobs that might interest the age group for which they were intended. It was not a set designed for play of make believe. Subheading 8206.00.0000, HTSUS, was determined to be the appropriate classification.

UNIT OF QUANTITY

Statistical Note 1 to Chapter 82 states that for the purposes of statistical reporting of sets of headings 8205 and 8206, the number of pieces reported shall be the total number of separate pieces in the set(s). In other words, if the set under heading 8206 consists of a screwdriver, hammer, pliers, 4 sockets in a tool holder and an assortment of 50 screws, each single item must be counted. The 4 sockets and the holder (5), along with each screw (50) would be counted as a piece. Therefore, this tool set would

⁴ See HQ 083968 dated July 6, 1989

be reported as containing a unit of quantity of 58 pieces. The fitted tool box or tool case used to carry the tools is not counted.

DUTY

In order to determine the rate of duty for the items classified under subheadings 8205.90 and 8206.00, the rate of duty for all of the items within that specific set must be determined. The rate of duty for the entire set is the rate of duty that is applicable to that article in the set subject to the highest rate of duty. Where a case is specially shaped or fitted to contain hand tools, is suitable for long-term use and entered with the hand tools, the applicable rate will be the article in the set subject to the highest rate, notwithstanding the case. GRI 5(a) would apply and the case is subsumed into the tool set. If the particular carrying case does not meet the requirements of GRI 5 and contains hand tools classified under subheadings 8205.90 or 8206.00, then the case must be considered as an "article in the set" to determine the highest rate of duty.

Determining the rate of duty after the decision has been made as to what items in the set are to be considered for duty purposes sometimes requires the determination of the ad valorem equivalent for comparison purposes. For demonstration purposes, we've created a tool set which consists of a wrench, flashlight, pliers and xyz. The wrench (8204.12) has an ad valorem rate of 9%, the flashlight (8513.10.20) has an ad valorem rate of 12.5% and the pliers have a compound rate. Also included in this set is item xyz which has a specific rate. Both the flashlight and item xyz are of minor importance, can be used with the set and they do not change the essential character of the set of tools of two or more of headings 8202 to 8205. All of these items are packaged within a molded plastic case that is fitted for its contents and is of a kind normally sold therewith. The determination has been made, based upon GRI 1, that this set should be classified under heading 8206. The case is subsumed into the tool set and does not need to be considered for duty purposes. The ad valorem equivalent needs to be determined for the pliers and xyz to make an appropriate comparison for duty purposes. The duty rate for xyz will be 9.6¢/doz. and the duty rate for the pliers (8203.20.60) is 12¢/doz. + 5.5%. When dealing with a specific rate and compound rate, you will need to know the value of the items. The value of xyz is \$2.75/doz. and the value of the pliers in this example is \$0.375/ea. The calculations are as follows:

Wrench (8204.12) = 9%

Flashlight (8513.10.20) = 12.5%

xyz with a specific duty rate of 9.6¢/doz. and valued at @ \$2.75/doz

Divide \$0.096 by \$2.75 = 0.0349

Multiply by 100 to get the ad valorem equivalent = 3.5%

Pliers (8203.20.60) with a compound duty rate of 12¢/doz. + 5.5%

\$0.375 x 12 = \$4.50/doz.

Divide \$0.12 by \$4.50 = 0.0267

Multiply by 100 to get the ad valorem equivalent = 2.7%
Add the ad valorem rate of 5.5% to the computed 2.7% rate
(5.5% + 2.7%) = 8.2% is the ad valorem equivalent.

In this example of the wrench, flashlight, xyz and pliers, the item with the highest rate of duty, packaged inside of the fitted plastic molded case, is the flashlight, which merits equal consideration for duty purposes. Accordingly, all items within this set (with a reported quantity of four pieces), will be dutiable at the 12.5% ad valorem rate. Had the pliers been determined to carry the highest rate, the duty rate for the set would be the compound rate (12¢/doz. + 5.5%), not the ad valorem equivalent rate (8.2%).

Classification of a tool set under subheadings 8205.90.00 and 8206.00.00, HTSUS, does not end with these individual classifications. The classification of each item within the set needs to be determined, and sometimes the specific value of some of the items is needed to determine the ad valorem equivalent. It is important that this information be detailed on the invoice.

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, the "Know Before You Go" publication and traveler awareness campaign is 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 and Border Protection 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 edition of Title 19, Code of Federal Regulations 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 current 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 current 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, U.S. Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000.

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.

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 1-888-NO-DROGA



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