

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

**Hand Tool Sets
Classified Within
Subheadings
8205.90.00 and
8206.00.00**



AN INFORMED COMPLIANCE PUBLICATION

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U.S. CUSTOMS and BORDER PROTECTION

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.

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 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, ORR, is a study of the classification of hand tool sets within subheadings 8205.90.00 and 8206.00.00. “Hand Tool Sets Classified Within Subheadings 8205.90.00 and 8206.00.00” provides guidance regarding the 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, (Mint Annex) NW, Washington, D.C. 20229.

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

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HAND TOOL SETS CLASSIFIED WITHIN 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.”

CLASSIFICATION

Subheading 8205.90.00, HTSUS, refers to sets of articles of two or more of the foregoing subheadings. This provision does not mean that the imported articles must be put up in a set for retail sale. It means that you need a collection of two or more items classified within two or more subheadings of heading 8205 that are imported together and might reasonably be packaged together. If within one shipment (consisting of one invoice and one bill of lading) there are fifty hammers (8205.20) and twenty-five wood chisels (8205.30), 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” pursuant to General Rule for Interpretation (GRI) 1. This GRI 1 set provision provides us with a parameter as to what items would constitute a set within subheading 8205.90. The competing subheadings were 8205.20, 8205.30 and 8205.90. Subheading 8205.90 is the subheading that most accurately describes the merchandise. Unlike a GRI 3 set provision, this subheading would only apply if there were two or more items from different subheadings within the same heading (8205). If you have these same two tools (hammer and wood chisel) and you have a wrench (8204), you no longer have a GRI 1 set within 8205.90 because the wrench is not covered by the four-digit heading. However, if it is packaged for retail sale, you now fit into the definition of heading 8206.

Subheading 8206.00.00, HTSUS, allows tool sets, put up in sets for retail sale, to be classified within this one subheading based upon GRI 1, provided there are at least two tools in the set that would normally be classified within headings 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 within 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 flashlight¹ 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.

Heading 8206 reads two or more tools from headings 8202 to 8205. It does not require a need to have a large complex tool set to utilize heading 8206. A simple combination of tools such as sets of spanners (heading 8204) and screwdrivers

¹ HQ 964409 (4/16/01)

(heading 8205) would qualify for classification within heading 8206 provided 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. It does not require that the retail sale packaging be a tool box, tool bag or other form of retail packaging of the kind normally sold with a set of tools. In addition, it does not require that the set be for retail sale.²

In HQ 965096 (January 10, 2002), we classified a 52-piece home and auto tool set in which only two of the twelve classifications fell within headings 8202 to 8205. The other ten classifications were outside these HTSUS numbers, however, 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 however, 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 reconsidered for classification purposes and a determination would need to be made as to whether or not you have a set.³

The final tool set mentioned above in 8205 that consists of a hammer, wood chisel and a wrench would be classified within 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) is more specific than the heading for the wrench (heading 8204), hammer and wood chisel (heading 8205).

Heading 8206 is not a heading dedicated to a set of professional or adult household tools. Junior tool sets may also be classified within the subheading of 8206.00, HTSUS. In HQ 965249 (February 12, 2002), a tool set marketed as a “Junior Trucker” was classified within 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 within heading 8206 consists of a screwdriver, hammer, pliers, 4 sockets in a tool holder and an assortment of 50 screws, the screws would not change the essential character of the set. The 4 sockets and the holder (5), along with each screw (50) would be counted as a piece. Therefore, this tool set would 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.

² See HQ 083968 dated July 6, 1989

³ See Informed Compliance Publication “Classification of Sets”

DUTY

In order to determine the rate of duty for the items classified within heading 8206, the rate of duty for all of the items within the 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 within heading 8206, 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 an imaginary 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%. The flashlight is of minor importance, is used with the set and does not change the essential character of a set of tools from headings 8202 to 8205. Pliers have a compound rate and included in our imaginary set is item xyz, (of minor importance and does not change the essential character of the tools of two or more of headings 8202 to 8205) has a specific rate. All of these items in our imaginary tool set 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 within 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¢/dozen and the duty rate for the pliers (8203.20.60) will be 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 our 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 our wrench, flashlight, xyz and pliers, the item with the highest rate 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 pay duty at this 12.5% ad valorem rate. Had the pliers been determined to carry the highest rate, the duty rate would be the compound rate (12¢/doz. + 5.5%), not the ad valorem equivalent rate (8.2%).

As you can see from the above, classification of a tool set within subheadings 8205.90.00 or 8206.00.00, HTSUS, does not end with these individual classifications. You need to determine the classification of each item within the set 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 your invoice. When ABI filers transmit summary information for these two GRI 1 set provisions (8205.90 and 8206.00, HTSUS), the quantity and value figures would be transmitted only for the proper aforementioned tariff number and not for both the set provision and the associated rate of duty tariff number.

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, 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



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