

# Bureau of Customs and Border Protection

## *General Notices*

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.

*Washington, DC, December 29, 2004*

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

William G. Rosoff for MICHAEL T. SCHMITZ,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

### **REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN DINNERWARE SETS**

**AGENCY:** Bureau of Customs and Border Protection; Department of Homeland Security.

**ACTION:** Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the tariff classification of certain dinnerware sets.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain dinnerware sets. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published in the *Customs Bulletin*, Volume 38, Number 45, on November 3, 2004. No comments were received in response to this notice.

**EFFECTIVE DATE:** Merchandise entered or withdrawn from warehouse for consumption on or after March 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** Brian Barulich, Textiles Branch: (202) 572-8883.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 38, No. 45, dated November 3, 2004, proposing to revoke New York Ruling Letter (NY) 875541, dated July 13, 1992, and NY A86799, dated September 17, 1996, and to revoke any treatment previously accorded by CBP to substantially identical transactions. No comments were received in response to this notice. As stated in the notice of proposed revocation, the notice covered any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be

the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In both NY 875541 and NY A86799, pursuant to General Rule of Interpretation 3(c), certain dinnerware sets composed of stoneware, glassware, and flatware articles were classified in subheading 8215.20.0000, HTSUSA, which provides for "Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other sets of assorted articles." A recent review of both rulings showed that the rates of duty for the dinnerware sets were not properly determined.

Pursuant to 19 U.S.C. 1625 (c)(1), CBP is revoking NY 875541 and NY A86799, and any other ruling not specifically identified, to reflect the proper classification of the merchandise and duty determination pursuant to the analyses set forth in Headquarters Ruling Letter (HQ) 967248 and HQ 967249. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

**DATED:** December 22, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967248  
December 22, 2004  
CLA-2: RR:CR:TE: 967248 BtB  
CATEGORY: Classification  
TARIFF NO.: 8215.20.0000

MS. SUSAN R. MCCABE  
THE HIPAGE COMPANY, INC.  
P.O. Box 3158  
Custom House Station  
Norfolk, VA 23514

RE: Dinnerware set from China; NY 875541 revoked

DEAR MS. MCCABE:

This is in reference to New York Ruling Letter (NY) 875541, dated July 13, 1992, issued to you by the Bureau of Customs and Border Protection (CBP), formerly known as the U.S. Customs Service, regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a certain dinnerware set made in China. We have reconsidered NY 875541 and have determined that the rate of duty set forth for the dinnerware set in the ruling is incorrect. This ruling revokes NY 875541 and advises how the duty rate for merchandise classified under subheading 8215.20.0000, HTSUSA, is calculated.

The records relating to the dinnerware set, previously stored in our former 6 World Trade Center office in New York City, were destroyed as a result of the terrorist incident on September 11, 2001. The only information regarding the dinnerware set that we currently have is the text of NY 875541. Due to our current lack of product information, we are unable to issue a revised duty rate for the dinnerware set at this time.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 875541 was published in the *Customs Bulletin*, Volume 38, Number 42, on November 3, 2004. No comments were received in response to this notice.

FACTS:

The instant dinnerware set is a 52-piece dinnerware set packaged for retail and consisting of stoneware, flatware, and glassware. The set includes four pieces of each of the following stoneware: dinner plates, dessert plates, soup bowls and mugs. It includes a flatware set with four pieces of each of the following: knives, forks, spoons, and teaspoons. The flatware has plastic handles. The set also includes four pieces of each of the following glassware: 12 oz. tumblers and 8 oz. tumblers.

In NY 875541, we classified the dinnerware set under subheading 8215.20.0000, HTSUSA, which provides for "Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other sets of assorted articles." The ruling states that "The rate of duty [for the set] will be the rate

applicable to that article in the flatware set subject to the highest rate of duty.” The knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate (1¢ + 5.7% *ad valorem* at the time) was held to apply to the dinnerware set. The ruling notes that the specific rate (1¢ each) is to be assessed on each article in the dinnerware set.

ISSUE:

What is the rate of duty applicable to the dinnerware set?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the Harmonized System is such that virtually all goods are classified by GRI 1, that is, according to the terms of the headings and any relative Section or Chapter Notes. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied, in order.

In understanding the language of the HTSUSA, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUSA, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In NY 875541, we held that the articles in the instant dinnerware set were goods put up in a set for retail sale. We ruled that the set was without an essential character<sup>1</sup> and, therefore, classifiable pursuant to GRI 3(c) which provides that: “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.”

In NY 875541, the heading occurring last in numerical order among those which equally merited consideration was heading 8215, HTSUSA (applicable to the flatware set).<sup>2</sup> Accordingly, we classified the instant dinnerware set in subheading 8215.20.0000, HTSUSA. The general rate of duty applicable to merchandise classified in subheading 8215.20.0000 is set forth in the HTSUSA as: “The rate of duty applicable to the article in the set subject to the highest rate of duty.”

However, in regard to the rate of duty applicable to the dinnerware set classified in subheading 8215.20.0000, HTSUSA, NY 875541 states:

The rate of duty will be the rate applicable to that article in the **flatware set** subject to the highest rate of duty. (Emphasis added).

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<sup>1</sup> While not stated in the ruling, the set was found to be without an essential character because all articles in the set were determined to be functionally equivalent. *Compare* HQ 950833, dated January 17, 1992, in which we found a substantially similar dinnerware set to be without a component which imparts an essential character, finding that all the articles in the set to be “functionally equivalent” and classifying the set pursuant to GRI 3(c).

<sup>2</sup> While not stated in the text of NY 875541, the stoneware in the set was classifiable in heading 6912, HTSUS (which provides for, among other articles, “Ceramic tableware, kitchenware . . .”), and the glassware was classifiable in heading 7013, HTSUS (which provides for, among other articles, “Glassware of a kind used for table, kitchen . . .”).

This statement in NY 875541 is not correct. The rate of duty applicable to merchandise classified in subheading 8215.20.0000, HTSUSA, is the highest rate of duty applicable to an article in the **set** subject to the highest rate of duty, **not** the highest rate of duty applicable to an article in a **flatware set** in the set. In ascertaining the highest rate of duty applicable to a set classified in subheading 8215.20.0000, HTSUSA, one must consider the duty rate of each and every article in the entire set, not just the duty rates applicable to articles in a flatware set. We note that it is possible for an article in a flatware set to be the article in the set with the highest rate of duty.

When a set classified in subheading 8215.20.0000, HTSUSA, consists solely of articles that all have *ad valorem* rates of duty, those rates are simply compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. When a set classified in subheading 8215.20.0000, HTSUSA, consists completely or partially of articles with compound duty rates, the compound duty rates must be converted to equivalent *ad valorem* rates. Once all the rates have been converted to *ad valorem* rates, they are compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. If an article with a compound duty rate is determined to be the article in the set subject to the highest rate of duty, the compound duty rate (not the compound duty rate converted to an *ad valorem* rate) is applied to the set. When assessing compound duty rates on a set, the *ad valorem* part of the rate of duty is assessed on the total value of the set and the specific duty is assessed on each article in the set. See HQ 088521, dated May 13, 1991.

To convert a compound duty rate to an equivalent *ad valorem* rate, one (i) obtains the unit value of each article, (ii) applies the article's listed compound rate of duty, and (iii) calculates the "equivalent *ad valorem* rate" by computing the percentage of the article's value that the compound rate of duty amounts to. For example, suppose that a set classified in subheading 8215.20.0000, HTSUSA, includes a knife that is separately classifiable in subheading 8211.91.5000, HTSUSA. The applicable rate of duty for the knife is "0.7¢ + 3.7%," a compound duty rate that must be converted to an equivalent *ad valorem* rate to determine if the knife's rate is the highest rate of duty for articles in the set. Suppose that there are four knives included in the set and their total value is 32¢. To obtain the unit value of a knife (i.e., the value of one knife), we divide 32¢ by 4 which equals 8¢. Now, we apply the knife's listed compound duty rate. Plugging 8¢ into the duty rate, we get  $0.7¢ + 3.7\%(8¢)$ . This equals .996¢ per knife, which amounts to 12.45% of the knife's value (i.e., .996 is 12.45% of 8¢). Therefore, 12.45% is the knife's equivalent *ad valorem* rate. The knife's rate of duty would then have to be compared against the rates of duty applicable to the other articles in the set to determine if it is the highest duty rate in the set, and thus applicable to the entire set.

In NY 875541, we erroneously failed to consider the duty rate of each and every article in the dinnerware set when searching for the rate of duty applicable to the dinnerware set. Instead, we only considered the rates of duty for articles in the flatware set. As a result, the knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate (1¢ + 5.7% *ad valorem* at the time) was held to apply to the dinnerware set.

While the only information that we have about the dinnerware set is the text of NY 875541, using the rate of duty applicable to the knife as the rate of duty for the dinnerware set is erroneous. While we cannot calculate the rate of duty in effect in 1992 for every item in the dinnerware set due to our lack of information (i.e., it is impossible to convert compound duty rates to equivalent *ad valorem* rates without knowing an article's value), certain articles in the set were subject to such high duty rates (e.g., the glassware in the set was subject to a 38% *ad valorem* rate of duty in 1992), that it is unlikely that the knife was the article in the set subject to the highest rate of duty.

HOLDING:

Due to our current lack of information about the dinnerware set (specifically, the value of articles in the set), we are unable to provide a rate of duty for the dinnerware set at this time. We invite you to request a new ruling on the dinnerware set pursuant to Part 177 of the Customs Regulations to obtain a ruling that sets forth the effective rate of duty on the merchandise.

NY 875541, dated July 13, 1992, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

John Elkins for MYLES B. HARMON,  
*Director;*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967249  
December 22, 2004  
CLA-2: RR:CR:TE: 967249 BtB  
CATEGORY: Classification  
TARIFF NO.: 8215.20.0000

MS. PAMELA T. ROSE  
HEILIG-MYERS  
2235 Staples Mill Road  
Richmond, VA 23230

RE: Dinnerware set (Homemakers Set) from China; NY A86799 revoked

DEAR MS. ROSE:

This is in reference to New York Ruling Letter (NY) A86799, dated September 17, 1996, issued to you by the Bureau of Customs and Border Protection (CBP), formerly known as the U.S. Customs Service, regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a certain dinnerware set made in China. We have reconsidered NY A86799 and have determined that the rate of duty set forth for the dinnerware set in the ruling is incorrect. This ruling revokes NY

A86799 and advises how the duty rate for merchandise classified under subheading 8215.20.0000, HTSUSA, is calculated.

The records relating to the dinnerware set, previously stored in our former 6 World Trade Center office in New York City, were destroyed as a result of the terrorist incident on September 11, 2001. The only information regarding the dinnerware set that we currently have is the text of NY A86799. Due to our current lack of product information, we are unable to issue a revised duty rate for the dinnerware set at this time.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY A86799 was published in the *Customs Bulletin*, Volume 38, Number 42, on November 3, 2004. No comments were received in response to this notice.

**FACTS:**

The instant dinnerware set is known as Homemakers Set. It is a 56-piece dinnerware set packaged for retail and consisting of stoneware, flatware, and glassware. The set includes six pieces of each of the following ceramic stoneware: dinner plates, dessert plates, soup bowls and mugs. It includes a flatware set with six pieces of each of the following flatware: knives, forks, spoons, and teaspoons. The flatware has plastic handles. The set also includes four pieces each of the following glassware: 12 oz. highball glasses and 12 oz. on-the-rocks glasses.

In NY A86799, we classified the dinnerware set under subheading 8215.20.0000, HTSUSA, which provides for "Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other sets of assorted articles." The ruling states that "The rate of duty [for the set] will be the rate applicable to that article in the flatware set subject to the highest rate of duty." The knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate (0.4¢ + 5.6% *ad valorem* at the time) was held to apply to the dinnerware set. The ruling notes that the specific rate (0.4¢ each) is to be assessed on each article in the dinnerware set.

**ISSUE:**

What is the rate of duty applicable to the dinnerware set?

**LAW AND ANALYSIS:**

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the Harmonized System is such that virtually all goods are classified by GRI 1, that is, according to the terms of the headings and any relative Section or Chapter Notes. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied, in order.

In understanding the language of the HTSUSA, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUSA, and are the official

interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In NY A86799, we held that the articles in the instant dinnerware set were goods put up in a set for retail sale. We ruled that the set was without an essential character<sup>1</sup> and, therefore, classifiable pursuant to GRI 3(c) which provides that: "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."

In NY A86799, the heading occurring last in numerical order among those which equally merited consideration was heading 8215, HTSUSA (applicable to the flatware set).<sup>2</sup> Accordingly, we classified the instant dinnerware set in subheading 8215.20.0000, HTSUSA. The general rate of duty applicable to merchandise classified in subheading 8215.20.0000 is set forth in the HTSUSA as: "The rate of duty applicable to the article in the set subject to the highest rate of duty."

However, in regard to the rate of duty applicable to the dinnerware set classified in subheading 8215.20.0000, HTSUSA, NY A86799 states:

The rate of duty will be the rate applicable to that article in the **flatware set** subject to the highest rate of duty. (Emphasis added).

This statement in NY A86799 is not correct. The rate of duty applicable to merchandise classified in subheading 8215.20.0000, HTSUSA, is the highest rate of duty applicable to an article in the **set** subject to the highest rate of duty, **not** the highest rate of duty applicable to an article in a **flatware set** in the set. In ascertaining the highest rate of duty applicable to a set classified in subheading 8215.20.0000, HTSUSA, one must consider the duty rate of each and every article in the entire set, not just the duty rates applicable to articles in a flatware set. We note that it is possible for an article in a flatware set to be the article in the set with the highest rate of duty.

When a set classified in subheading 8215.20.0000, HTSUSA, consists solely of articles that all have *ad valorem* rates of duty, those rates are simply compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. When a set classified in subheading 8215.20.0000, HTSUSA, consists completely or partially of articles with compound duty rates, the compound duty rates must be converted to equivalent *ad valorem* rates. Once all the rates have been converted to *ad valorem* rates, they are compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. If an article with a compound

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<sup>1</sup> While not stated in the ruling, the set was found to be without an essential character because all articles in the set were determined to be functionally equivalent. *Compare* HQ 950833, dated January 17, 1992, in which we found a substantially similar dinnerware set to be without a component which imparts an essential character, finding that all the articles in the set to be "functionally equivalent" and classifying the set pursuant to GRI 3(c).

<sup>2</sup> While not stated in the text of NY A86799, the ceramic articles in the set were classifiable in heading 6912, HTSUS (which provides for, among other articles, "Ceramic tableware, kitchenware . . ."), and the glassware was classifiable in heading 7013, HTSUS (which provides for, among other articles, "Glassware of a kind used for table, kitchen . . .").

duty rate is determined to be the article in the set subject to the highest rate of duty, the compound duty rate (not the compound duty rate converted to an *ad valorem* rate) is applied to the set. When assessing compound duty rates on a set, the *ad valorem* part of the rate of duty is assessed on the total value of the set and the specific duty is assessed on each article in the set. See HQ 088521, dated May 13, 1991.

To convert a compound duty rate to an equivalent *ad valorem* rate, one (i) obtains the unit value of each article, (ii) applies the article's listed compound rate of duty, and (iii) calculates the "equivalent *ad valorem* rate" by computing the percentage of the article's value that the compound rate of duty amounts to. For example, suppose that a set classified in subheading 8215.20.0000, HTSUSA, includes a knife that is separately classifiable in subheading 8211.91.5000, HTSUSA. The applicable rate of duty for the knife is "0.7¢ + 3.7%," a compound duty rate that must be converted to an equivalent *ad valorem* rate to determine if the knife's rate is the highest rate of duty for articles in the set. Suppose that there are six knives included in the set and their total value is 48¢. To obtain the unit value of a knife (i.e., the value of one knife), we divide 48¢ by 6 which equals 8¢. Now, we apply the knife's listed compound duty rate. Plugging 8¢ into the duty rate, we get 0.7¢ + 3.7%(8¢). This equals .996¢ per knife, which amounts to 12.45% of the knife's value (i.e., .996 is 12.45% of 8¢). Therefore, 12.45% is the knife's equivalent *ad valorem* rate. The knife's rate of duty would then have to be compared against the rates of duty applicable to the other articles in the set to determine if it is the highest duty rate in the set, and thus applicable to the entire set.

In NY A86799, we erroneously failed to consider the duty rate of each and every article in the dinnerware set when searching for the rate of duty applicable to the dinnerware set. Instead, we only considered the rates of duty for articles in the flatware set. As a result, the knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate (0.4¢ + 5.6% *ad valorem* at the time) was held to apply to the dinnerware set.

While the only information that we have about the dinnerware set is the text of NY A86799, using the rate of duty applicable to the knife as the rate of duty for the dinnerware set is erroneous. While we cannot calculate the rate of duty in effect in 1996 for every item in the dinnerware set due to our lack of information (i.e., it is impossible to convert compound duty rates to equivalent *ad valorem* rates without knowing an article's value), certain articles in the set were subject to such high duty rates (e.g., the glassware in the set was subject to a 36.1% *ad valorem* rate of duty in 1996), that it is unlikely that the knife was the article in the set subject to the highest rate of duty.

**HOLDING:**

Due to our current lack of information about the dinnerware set (specifically, the value of articles in the set), we are unable to provide a rate of duty for the dinnerware set (Homemakers Set) at this time. We invite you to request a new ruling on the dinnerware set pursuant to Part 177 of the Customs Regulations to obtain a ruling that sets forth the effective rate of duty on the merchandise.

NY A86799, dated September 17, 1996, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

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### **REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF MEN'S COTTON DENIM WOVEN UPPER BODY GARMENTS**

**AGENCY:** Bureau of Customs and Border Protection, Dept. of Homeland Security **ACTION:** Notice of revocation of one ruling letter and revocation of treatment relating to the classification of certain men's cotton denim woven upper body garments.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the classification of certain men's cotton denim woven upper body garments under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of proposed action was published in the May 12, 2004, CUSTOMS BULLETIN, Volume 38, Number 20. One comment from the importer was received in response to the notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 13, 2005.

**FOR FURTHER INFORMATION CONTACT:** Teresa Frazier, Textiles Branch, at (202) 572-8821.

#### **SUPPLEMENTARY INFORMATION:**

##### **BACKGROUND**

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**."

These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (NY) D89498, dated March 30, 1999, and to revoke any treatment accorded to substantially identical merchandise was published in the May 12, 2004, CUSTOMS BULLETIN, Volume 38, Number 20. One comment from the importer was received in response to the notice. The importer requested that CBP delay the effective date of the revocation because of the hardship that the importer would face in fulfilling customer orders due to the inability to obtain the necessary quota. CBP referred the matter to the Committee for the Implementation of Textile Agreements (*hereinafter* "CITA") for consideration. The delayed effective date for this revocation was allowed by CITA.

As stated in the notice of proposed revocation, the notice covered any rulings on this merchandise, which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs and Border Protection is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling issued to a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for

importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D89498, dated March 30, 1999, CBP classified certain men's cotton denim woven upper body garments in subheading 6205.20.2050, Harmonized Tariff Schedule of the United States Annotated, which provides for men's or boys' shirts: of cotton: other: other: other: with two or more colors in the warp and/or filling: other: men's.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY D89498 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966831, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

**DATED:** December 23, 2004

Greg Deutsch for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966831  
December 22, 2004  
CLA-2 RR:CR:TE 966831 TMF  
CATEGORY: Classification  
TARIFF NO.: 6201.92.2031

MR. JOHN B. PELLEGRINI, ESQUIRE  
MCGUIRE WOODS, LLP  
65 East 55th Street  
New York, NY 10022-3219

RE: Reconsideration of New York Ruling Letter (NY) D89498; classification of men's cotton denim woven shirt

DEAR MR. PELLEGRINI

Pursuant to your request dated March 18, 1999 for a binding tariff classification ruling of certain men's cotton denim woven shirts on behalf of your client, Berkley Shirt Company, Inc., Customs and Border Protection (formerly U. S. Customs Service) issued New York Ruling Letter (NY) D89498, dated March 30, 1999. This ruling classified the merchandise in subheading 6205.20.2050, Harmonized Tariff Schedule of the United States Annotated

(HTSUSA), which provides for men's or boys' shirts: of cotton: other: other: other: with two or more colors in the warp and/or filling: other: men's.

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter, therefore, revokes NY D89498 and sets forth the correct classification determination.

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY D89498 was published on May 12, 2004, in Vol. 38, No. 20 of the CUSTOMS BULLETIN. One comment, from you, was received in response to the notice.

You requested that CBP delay the effective date of the revocation because of the hardship that your client would face in fulfilling customer orders due to your client's inability to obtain the necessary quota. CBP referred the matter to the Committee for the Implementation of Textile Agreements for consideration and the delayed effective date for the revocation was subsequently allowed.

**FACTS:**

The description of the men's cotton denim woven shirt in New York Ruling Letter (NY) D89498, dated March 30, 1999, reads as follows:

. . . [S]tyle 210166AB, is a man's 100% cotton denim woven shirt. The garment features long sleeves with a one button cuff, a one button side sleeve vent, a collar, a full frontal opening secured with a seven button closure, a polyester fleece lining, two buttoned flapped breast pockets and a curved hemmed bottom.

Although a sample garment is not available, Berkley Shirt Company, the manufacturer of the merchandise above, provided to our office a sample that they state is identical to merchandise of NY D89498.

**ISSUE:**

Whether the subject garment is classifiable as a jacket under Heading 6201, HTSUSA, or as a shirt under Heading 6205, HTSUSA.

**LAW AND ANALYSIS:**

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation ("GRI"). GRI 1 provides that classification shall be determined according to the terms of the heading of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes ("EN") to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The issue in the instant case is whether the submitted sample is properly classifiable as a men's shirt or as a jacket. A physical examination of the garment reveals that it possesses features traditionally associated with both jackets and shirts and therefore potentially lends itself to classification as either a coat or jacket under heading 6201, HTSUSA, or as a shirt under heading 6205, HTSUSA.

The garment at issue is considered to be a hybrid garment since it possesses characteristics found on both shirts and jackets. In circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 (“Guidelines”), is appropriate. The Guidelines were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. The Guidelines offer the following with regard to the classification of shirt-jackets:

\* \* \*

Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist . . . The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.
- (10) Elasticized or rib-knit cuffs.
- (11) Drawstring, elastic or rib-knit waistband.

\* \* \*

Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above-listed features and if the result is not unreasonable . . . Garments not possessing at least three of the listed features will be considered on an individual basis. *See Guidelines, supra.*

CBP recognizes that the garment at issue is a hybrid garment, possessing features of both shirts and jackets. A physical examination of the garment at issue reveals that it possesses three of the Guidelines’ jacket criteria:

- fabric weight equal to or exceeding 10 ounces per square yard;
- a full lining;
- buttons fastened with reinforcing thread for heavy-duty use.

The garment's cotton denim outer shell and interior fleece lining separately have an average fabric weight of 8 ounces per square yard. The garment's body portion has a combined fabric weight of 16 ounces per square yard, which is an indication of the garments' use for outerwear purposes. Further, the combination of the garment's quilted sleeve lining, full fleece lining, and oversize cut are features characteristic of outerwear garments.

Based on the factors outlined in the Guidelines, we find this heavy construction woven denim garment is intended to be worn over other clothing for added warmth and protection from the elements. Therefore, as the garment sufficiently satisfies the above-discussed jacket criteria and gives the overall impression of a jacket, it is not unreasonable to reclassify the garment in heading 6201, HTSUSA, as a jacket. For some of the rulings issued by CBP which classifies substantially similar upper body garments as men's jackets of heading 6201, HTSUSA, see Headquarters Ruling Letter (HQ) 966159, dated April 14, 2003, classifying a men's denim jacket with fleece and quilted polyfill lining in heading 6201, HTSUSA; HQ 960522, dated January 26, 1998, classifying men's denim stadium jackets with fleece lining in heading 6201, HTSUSA; NY H87763, dated February 26, 2002, classifying men's cotton denim overshirt with a fleece lining in heading 6201, HTSUSA.

**HOLDING:**

NY D89498, dated March 30, 1999, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Style number 210166AB, is classified in subheading 6201.92.2031, HTSUSA, which provides for "Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of cotton: Other: Other, Other: Blue Denim: Men's." The general column one rate of duty is 9.4 percent *ad valorem*, quota category number 334.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at [www.cbp.gov](http://www.cbp.gov).

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CPB office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Greg Deutsch for MYLES B. HARMON,  
*Director;*  
*Commercial Rulings Division.*