

Bureau of Customs and Border Protection

General Notices

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

Washington, DC, February 1, 2006,

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.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

19 CFR PART 177

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERAMIC ARTICLES “AVAILABLE IN SPECIFIED SETS”

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of ceramic table and kitchenware “available in specified sets” under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

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 U.S. Customs and Border Protection (“CBP”)

is revoking two rulings concerning the tariff classification of ceramic articles “available in specified sets” and is revoking any treatment CBP has previously accorded to substantially identical merchandise. Notice of the proposed revocations was published on December 7, 2005, in Vol. 39, No. 50 of the *Customs Bulletin*. Two comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 16, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Tariff Classification and Marking Branch: (202) 572-8776.

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 that 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 CBP 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 CBP’s obligations, notice proposing to revoke New York Ruling Letters (“NY”) B88253, dated July 30, 1997, and NY 813612, dated September 13, 1995, was published on December 7, 2005, in Vol. 39, No. 50 of the *Customs Bulletin*. Two comments were received in response to the notice.

As stated in the proposed notice, the revocation actions will cover any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings other than those herein identified; no further rulings have been found. 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, as amended (19 U.S.C. § 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

In NY B88253, merchandise described as porcelain or "stoneware" dinnerware in patterned sets was classified under subheading 6912.00.39, HTSUSA, which provides for "ceramic household tableware, other than of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. Note 6(b) of Chapter 69 is over \$38." In NY 813612, merchandise described as porcelain dinnerware in patterned sets was classified under subheading 6911.10.35, HTSUSA, which provides for "for ceramic household tableware, of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. Note 6(b) of Chapter 69 is not over \$56." In reaching these conclusions, we reasoned that the maximum size limit set forth in Additional U.S. Note 6 to Chapter 69 which defines and sets forth parameters for tableware "available in specified sets" was a guideline rather than a rule. The holdings in these rulings contradict the holding of a prior Headquarters Ruling letter ("HQ") 955838, dated August 8, 1994. In HQ 955838, we held that the size of any article "available in specified sets" cannot exceed the maximum dimensions set forth in Additional U.S. Note 6 to Chapter 69.

As is noted above, two comments were received in response to the notice of proposed revocation. Both are opposed to the revocations. The first commenter believes that CBP's proposed interpretation is inconsistent with the plain language of Additional U.S. Note 6 to Chapter 69 and is contrary to accepted principles of statutory construction. The second commenter asserts that interpreting Additional U.S. Note 6 to Chapter 69 as a "flexible guideline rather than as an absolute, unbending rule" is more reasonable. The second commenter also states that "[f]or at least the past ten years, our client has received tariff treatment for such articles consistent with the determinations reflected in NY B88253 and NY 813612." Both com-

menters state that it has been CBP's longstanding practice to accept articles of larger or smaller than the maximums set forth in the note as long as the article was in the size nearest to that dimension to the pattern being qualified. These comments are addressed below.

First, we emphasize that HQ 955638 predates the NY ruling letters subject to revocation regarding the interpretation and application of Additional U.S. Note 6 to Chapter 69. All interested parties knew or should have known that HQ 955838 construed Additional U.S. Note 6 to Chapter 69 to establish an absolute dimensional limit. It has never been CBP's practice to allow articles exceeding the dimensional maximums in the note to qualify as being an article available in a specified set. The commenters' clients could have requested their own rulings regarding this issue and should not have relied upon the holdings of rulings issued to other importers. See the reference to the Mod Act above; see too 19 CFR Part 177.9 (c): "no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter."

Second, we stress that our interpretation of Additional U.S. Note 6 to Chapter 69 is based on the plain language of the provision. In our view, the meaning of the note is plain and unambiguous. Many lines in the note take the following form:

12 plates of the size nearest to 15.3 cm in maximum dimension,
sold or offered for sale,

This line refers to the 12 plates that must be sold or offered for sale that are nearest to, but do not exceed, 15.3 cm in maximum dimension. "Maximum" is taken at its plain meaning in the provision, clearly establishing the largest dimension that, for example, this size plate can have and be considered an article in a specified set. Failure to interpret "maximum" in this manner would result in the word being meaningless throughout the note.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY B88253 and NY 813612 as they pertain to the classification of ceramic articles "available in specified sets," and any other ruling not specifically identified, to reflect the proper classification of the merchandise. The merchandise in NY B88253 will be classified under subheading 6912.00.4810, HTSUSA, which provides for ceramic tableware, kitchenware . . . other than porcelain or china, other, other, other, pursuant to the analysis set forth in proposed HQ 967792 (*see* "Attachment A" to this document). The merchandise in NY 813612 will be classified under subheading 6911.10.8010, HTSUSA, which provides for ceramic tableware, kitchenware . . . of porcelain or china, tableware and kitchenware, other, other, other, other, pursuant to the analysis set forth in proposed HQ 967920 (*see* "Attachment B" to this document).

In accordance with 19 U.S.C. 1625(c), these rulings will become effective sixty days after its publication in the *Customs Bulletin*.

Dated: January 20, 2006

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967792
January 20, 2006
CLA-2 RR:CTF:TCM 967792 AML
CATEGORY: Classification
TARIFF NO.: 6912.00.4810

MR. DONALD F. WRIGHT
EXCEL IMPORTING CORPORATION
100 Andrews Road
Hicksville, NY 11801

RE: The tariff classification of stoneware dinnerware "available in specified sets"; NY B88253 revoked

DEAR MR. WRIGHT:

This is in reference to New York Ruling Letter ("NY") B88253, dated July 30, 1997, issued to you regarding the tariff classification of certain stoneware dinnerware "available in specified sets" under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). We have reconsidered the decision made in NY B88253 and have determined that the conclusions reached therein are incorrect. This letter sets forth the correct classification of the stoneware dinnerware "available in specified sets."

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, 2186 (1993)), notice of the proposed revocation was published on December 7, 2005, in Vol. 39, No. 50 of the *Customs Bulletin*. Two comments were received in response to the notice.

FACTS:

We described the merchandise in NY B88253 as follows:

The merchandise is stoneware dinnerware that is identified as in the patterns English Garden, Dorchester, Orchard and Cosmos. Previous information submitted indicates that the patterns are principally for household use and are "available in specified sets" in accordance with Chapter 69, additional U.S. Note 6(b) of the Harmonized Tariff Schedule of the United States, with an aggregate value of over \$38.

We held that:

The applicable subheading for the above stoneware dinnerware sets will be 6912.00.39, Harmonized Tariff Schedule of the United States (HTS), which provides for ceramic household tableware, other than of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. Note 6(b) of Chapter 69 is over \$38. The duty rate will be 4.5 percent ad valorem.

In reaching that holding, we reasoned that:

The term “of the size nearest to 15.3 cm in maximum dimension” in headnote 2(b) of chapter 69 means either more or less than the dimension specified and within a rather wide range. For example a salad plate may actually be up to 20.38 cm in diameter or as small as 10.22 cm in diameter.

On August 8, 1994, we issued Headquarters Ruling Letter (“HQ”) 955838, which, in classifying a set of ceramic tableware, held that the maximum sizes set forth in Additional U.S. Note 6 to Chapter 69 could not be exceeded by any piece within the set.

ISSUE:

Whether any piece of table- or kitchenware “available in specified sets” may exceed the maximum size requirements of Additional U.S. Note 6 to chapter 69, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (“GRIs”). GRI 1 states, in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Additional U.S. Note 6 to Chapter 69 provides as follows:

6. For the purposes of headings 6911 and 6912:

(a) The term “available in specified sets” embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being “available in specified sets” unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

- 12 tea cups and their saucers, sold or offered for sale,
- 12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,
- 12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,
- 1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,
- 1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,
- 1 sugar of largest capacity, sold or offered for sale,
- 1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

The language of the additional U.S. note is unequivocal. The word “maximum” means “the greatest possible quantity or degree; the greatest quantity or degree reached or recorded; the upper limit of variation.” See www.thefreedictionary.com. This plain understanding was employed in HQ 955838. In deciding whether certain articles could be substituted for others, we stated:

Customs is of the opinion that the subject articles do not meet the necessary size requirements to be considered “available in specified sets”. As the measurements in the note above indicate, a “cereal” cannot exceed 15.3 cm. Protestant’s plate is 20.3 cm. It is too large to be substituted for a fruit plate or a cereal bowl. Therefore, the dinnerware is not considered “available for sale in specified sets”. The protested pieces are classifiable in subheading 6912.00.48, HTSUS, as other ceramic tableware and kitchenware.

The crux of the holding above is that “maximum” is taken in its ordinary meaning and denotes the upper allowable limit that cannot be exceeded. Stated plainly, articles of table- and kitchenware “available in specified sets” cannot exceed the maximum dimensions set forth in Additional U.S. Note 6 to Chapter 69.

Given that NY B88253 explicitly stated that Additional U.S. Note 6 to Chapter 69 “means either more or less than the dimension specified and within a rather wide range,” in contravention of the plain language of the note and HQ 955838, NY B88253 must be revoked.

The HTSUS provisions under consideration are as follows:

- | | |
|------------|---|
| 6912.00 | Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china: |
| | Tableware and kitchenware: |
| 6912.00.10 | Of coarse-grained earthenware, or of coarse-grained stoneware; of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, |

but which, on other articles, must be mottled, streaked or solidly colored brown to black with metallic oxide or salt:

* * *

Other:

Available in specified sets:

6912.00.35 In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is not over \$38

Other:

6912.00.48 Other.

Given the statement in NY B88253 that the term "maximum" in Additional U.S. Note 6 to Chapter 69 means "more or less" and given that the size of some of the articles in the stoneware dinnerware apparently (NY B88253 was lost on September 11, 2001) exceeded the maximum dimension set forth in the tariff, the goods fall to be classified under subheading 6912.00.4810, HTSUSA. This comports with the holding in HQ 955838.

HOLDING:

The stoneware dinnerware is classified under subheading 6912.00.4810, HTSUSA which provides for ceramic tableware, kitchenware . . . other than porcelain or china, other, other, other. The general, column 1 duty rate is 9.8% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY B88253 is revoked. In accordance with 19 U.S.C. § 1625 (c)(2), this ruling will become effective sixty days after its publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

cc: National Commodity Specialist Division
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[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967920
January 20, 2006
CLA-2 RR:CTF:TCM 967920 AML
CATEGORY: Classification
TARIFF NO.: 6911.10.8010

MR. CURT DEVLIN
ACTION INDUSTRIES, INC.
460 Nixon Rd.
Cheswick, PA 15024

RE: Tariff classification of porcelain dinnerware "available in specified sets"; NY 813612 revoked

DEAR MR. DEVLIN:

This is in reference to New York Ruling Letter ("NY") 813612, dated September 13, 1995, issued to you regarding the tariff classification of certain porcelain dinnerware "available in specified sets" under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). We have reconsidered the decision made in NY 813612 and have determined that the conclusions reached therein are incorrect. This letter sets forth the correct classification of the porcelain dinnerware "available in specified sets."

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, 2186 (1993)), notice of the proposed revocation was published on December 7, 2005, in Vol. 39, No. 50 of the *Customs Bulletin*. Two comments were received in response to the notice.

FACTS:

We described the merchandise in NY 813612 as follows:

The merchandise at issue is porcelain dinnerware that is identified as in the Joy Of Christmas pattern, Item Number 17637. The information submitted indicates that the pattern is principally for household use and is "available in specified sets" in accordance with Chapter 69, additional U.S. Note 6(b) of the Harmonized Tariff Schedule of the United States.

After considering the cost per item information you provided, we held that:

The applicable subheading for the Joy of Christmas porcelain dinnerware set will be 6911.10.35, Harmonized Tariff Schedule of the United States (HTS), which provides for ceramic household tableware, of porcelain or china, available in specified sets, in a pattern for which the aggregate value of the articles listed in additional U.S. Note 6(b) of Chapter 69 is not over \$56. The duty rate will be 26 percent ad valorem.

Included in your submission were measurements, in inches, of the various articles that comprised the specified set. The relevant measurements and our conversion from inches to centimeters (multiplying the number of inches by 2.54) are as follows:

10 1/2" Dinner Plate	26.7 centimeters
7 1/2" Salad Plate	19.1 centimeters
8" Soup/Cereal	20.32 centimeters
15" Oval Platter	38.1 centimeters
10" Oval Shape Veg. Dish	25.4 centimeters

On August 8, 1994, we issued Headquarters Ruling Letter ("HQ") 955838, which, in classifying a set of ceramic tableware, held that the maximum sizes set forth in Additional U.S. Note 6 to Chapter 69 could not be exceeded by any piece within the set.

ISSUE:

Whether any piece of table- or kitchenware "available in specified sets" may exceed the maximum size requirements of Additional U.S. Note 6 to chapter 69, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 states, in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Additional U.S. Note 6 to Chapter 69 provides as follows:

6. For the purposes of headings 6911 and 6912:

(a) The term "available in specified sets" embraces plates, cups, saucers and other articles principally used for preparing, serving or storing food or beverages, or food or beverage ingredients, which are sold or offered for sale in the same pattern, but no article is classifiable as being "available in specified sets" unless it is of a pattern in which at least the articles listed below in (b) of this note are sold or offered for sale.

(b) If each of the following articles is sold or offered for sale in the same pattern, the classification hereunder in subheadings 6911.10.35, 6911.10.37, 6911.10.38, 6912.00.35 or 6912.00.39, of all articles of such pattern shall be governed by the aggregate value of the following articles in the quantities indicated, as determined by the appropriate customs officer under section 402 of the Tariff Act of 1930, as amended, whether or not such articles are imported in the same shipment:

12 plates of the size nearest to 26.7 cm in maximum dimension, sold or offered for sale,

12 plates of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale,

12 tea cups and their saucers, sold or offered for sale,

12 soups of the size nearest to 17.8 cm in maximum dimension, sold or offered for sale,

12 fruits of the size nearest to 12.7 cm in maximum dimension, sold or offered for sale,

1 platter or chop dish of the size nearest to 38.1 cm in maximum dimension, sold or offered for sale,

1 open vegetable dish or bowl of the size nearest to 25.4 cm in maximum dimension, sold or offered for sale,

1 sugar of largest capacity, sold or offered for sale,

1 creamer of largest capacity, sold or offered for sale.

If either soups or fruits are not sold or offered for sale, 12 cereals of the size nearest to 15.3 cm in maximum dimension, sold or offered for sale, shall be substituted therefor.

The language of the additional U.S. note is unequivocal. The word “maximum” means “the greatest possible quantity or degree; the greatest quantity or degree reached or recorded; the upper limit of variation.” See www.thefreedictionary.com. This plain understanding was employed in HQ 955838. In deciding whether certain articles could be substituted for others, we stated:

Customs is of the opinion that the subject articles do not meet the necessary size requirements to be considered “available in specified sets”. As the measurements in the note above indicate, a “cereal” cannot exceed 15.3 cm. Protestant’s plate is 20.3 cm. It is too large to be substituted for a fruit plate or a cereal bowl. Therefore, the dinnerware is not considered “available for sale in specified sets”. The protested pieces are classifiable in subheading 6912.00.48, HTSUS, as other ceramic tableware and kitchenware.

The crux of the holding above is that “maximum” is taken in its ordinary meaning and denotes the upper allowable limit that cannot be exceeded. Stated plainly, articles of table- and kitchenware “available in specified sets” cannot exceed the maximum dimensions set forth in Additional U.S. Note 6 to Chapter 69.

We did not apply the dimension standards in NY 813612, in contravention of the plain language of the Additional U.S. Note 6 and HQ 955838. Both the salad plates which measure 19.1 cm and the soup/cereal bowls which measure 20.32 cm exceed the 15.3 and 17.8 cm size limits set forth in the Additional U.S. Note 6. Thus, NY 813612 must be revoked.

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
	Other:
	Other:
	Available in specified sets:
6911.10.35	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of this chapter is not over \$56
	Other:
6911.10.80	Other.

Given the size of some of the articles in the porcelain dinnerware, which exceed the maximum dimensions set forth in the tariff, the goods fall to be classified under subheading, HTSUSA. This comports with the holding in HQ 955838.

HOLDING:

The porcelain dinnerware is classified under subheading 6911.10.8010, HTSUSA which provides for ceramic tableware, kitchenware . . . of porcelain

or china, tableware and kitchenware, other, other, other, other. The general, column 1 duty rate is 20.8% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY 813612 is revoked. In accordance with 19 U.S.C. §1625 (c)(2), this ruling will become effective sixty days after its publication in the *Customs Bulletin*.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

cc: National Commodity Specialist Division
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