

April 14, 2006

MEMORANDUM FOR: DIRECTORS, FIELD OPERATIONS

FROM: Office of Regulations and Rulings

THROUGH: Executive Director, Trade Compliance and Facilitation
Office of Field Operations

SUBJECT: Guidance on the Classification of Festive Articles

This is to inform you and your staffs, as well as the trade community that CBP has limited the court decisions in the case of *Park B. Smith, Ltd. v. United States*, 25 Ct. Int'l Trade 506 (2001), *affirmed in part, vacated in part, and remanded*, 347 F. 3d 922 (Fed. Cir. 2003), *reh'g denied* (Fed. Cir. March 16, 2004), to the entries before the courts in that litigation. CBP's notice of final action appears in the April 5, 2006 publication of the *Customs Bulletin*, and was effective on issuance.

Due to pending litigation in the Court of International Trade involving the issue of classification of various types of merchandise as "festive articles" of heading 9505 of the Harmonized Tariff Schedule of the United States (HTSUS), CBP will not issue classification rulings with regard to any merchandise which would be impacted by the decisions in these cases. See 19 C.F.R. 177.7(b) of the CBP Regulations.

Please continue processing entries as set out in the June 2005 Field Directive. **Utilitarian** or **functional** articles should not be classified in Chapter 95. Ports may accept classification and liquidate **purely decorative** articles, not otherwise excluded from Chapter 95 or heading 9505, as festive articles if the articles meet the two-step test set forth by the court in *Midwest of Cannon Falls, Inc. v. United States*, 20 Ct. Int'l Trade 123 (1996), *aff'd in part, rev'd in part*, 122 F.3d 1423 (Fed. Cir. 1997).

BACKGROUND:

For background of the *Park B. Smith* case and CBP's limiting decision, see the Memorandum of June 28, 2005 to Directors in the Office of Field Operations and CBP's

proposal to limit the decisions of the court in the June 29, 2005 *Customs Bulletin*, Volume 39, Number 27, and CBP's limiting decision in the April 5, 2006 *Customs Bulletin*, Volume 40, Number 15.

For information on some of the pending court cases involving the issue of classification of various articles as "festive," see the Memorandum of June 28, 2005 referenced above. We note additional cases involving other commodities have been filed.

ACTION:

Utilitarian or **functional** articles, such as table linens, apparel, mugs, china, etc., should not be classified in Chapter 95. You may accept classification and liquidate **purely decorative** articles, not otherwise excluded from Chapter 95 or heading 9505, as festive articles, if: (1) the articles are "closely associated" with a festive occasion and (2) the articles are displayed and used by the consumer only during the festive occasion (use at any other time would be aberrant). In addition, you are to classify and liquidate in heading 9505, HTSUS, **functional** merchandise for which importers have binding rulings or for which importers are able to show that a ruling issued to another party applies to their merchandise.

Importers seeking classification as "festive articles" in heading 9505, HTSUS, for merchandise which falls within the descriptions above of merchandise subject to pending court cases may request suspension of liquidation of their entries or may file protests against liquidation of their merchandise in provisions of the tariff schedule other than as "festive articles" of heading 9505, HTSUS. Importers should be reminded of their responsibility to use reasonable care in classifying their goods.

Questions from the importing community concerning this notice should be referred to the National Commodity Specialist Division, U.S. Customs and Border Protection. Specifically, calls may be referred to National Import Specialist Alice Wong at 646-733-3026. For operational issues involving entry summary/protest issues contact John Leonard of the Office of Field Operations at 202-344-2687; for other textile operational issues contact Susan Thomas of the Office of Field Operations at 202-344-3719.

This notice should be distributed to all Port Directors, Assistant Port Directors, Import and Entry Specialists, brokers, importers, and other interested parties.

/signed/
Myles B. Harmon, Director
Commercial and Trade Facilitation Division

cc: NIS Alice Wong
Gwenn Kirschner, Chief, Special Products Branch
Jeff Konzet, Chief, Textiles and Apparel Branch
Tom Russo, Chief, Metals and Machinery Branch