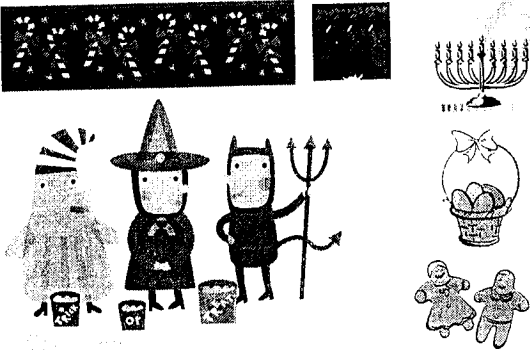


Disclaimer

The material in this presentation is provided for guidance and general information purposes only. Reliance on this information alone may not be considered reasonable care. Because many complicated factors can be involved in Customs issues, an importer may wish to obtain a ruling under the Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or may wish to obtain advice from an expert who specializes in Customs matters, for example, a licensed Customs Broker, attorney or consultant.

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FESTIVE ARTICLES



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Heading 9505

Heading 9505 has been the subject of a lot of debate since the beginning of the HTSUS. By focusing on the language in the Explanatory Notes and applying the following criteria (called the three prong test), Customs established narrow classes or kinds of merchandise which would be classified in 9505 at the GRI 1 level.

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Explanatory Notes

The EN's to 9505 indicate that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fibre, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, colored balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs.

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche - heading 67.04), and paper hats. However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.

(4) Throw-balls of paper or cotton-wool, paper streamers (carnival type), cardboard trumpets, "blow-outs", confetti, carnival umbrellas, etc.

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Original Three Prong Test

Classification of the subject merchandise rests on its apparent satisfaction of the guidelines set for festive articles. In general, merchandise is classifiable in heading 9505, HTSUSA, as a festive article when the article, as a whole:

1) is of non-durable material or, generally, is not purchased because of its extreme worth, or intrinsic value (e.g., paper, cardboard, metal foil, glass fiber, plastic, wood);

2) functions primarily as a decoration (e.g., its primary function is not utilitarian); and

3) is traditionally associated or used with a particular festival (e.g., stockings and tree ornaments for Christmas, decorative eggs for Easter).

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Three Prong Test (Continued)

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an article into a festive article.

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Three Prong Test (Continued)

Reminder: prior to Midwest Of Cannon Falls court case (1997), only decorative items were considered to be classifiable in 9505. All functional or utilitarian items were excluded.

- non durable
- decorative
- festive occasion

GRI 1

GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes and, unless otherwise required, according to the remaining GRI's, taken in order.

9505 Heading

Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:

- 9505.10 Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments:
- 9505.10.1010 Of glass Free
- Other:
- 9505.10.1500 Of wood Free
- 9505.10.25 00 Other..... Free
- 9505.10.3000 Nativity Scenes and figures thereof..... Free

Heading 9505 (Continued)

- Other:
- 9505.10.40 Of plastics
- 9505.10.4010 Artificial Christmas Trees
- 9505.10.4020 Other
- 9505.10.50 Other:
- 9505.10.5010 Artificial Christmas Trees
- 9505.10.5020 Other

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*Because of a tree
One - xmas tree go
Other under 10.7500 & not
xmas tree class.*

95 Heading (Continued)

- 9505.90.2000 Magic tricks and practical joke articles; parts and accessories thereof ... Free
- 9505.90.4000 Confetti, paper spirals or streamers, party favors and noisemakers; parts and accessories thereof ... Free
- 9505.90.6000 Other ... Free

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Chapter 95



- TOYS, GAMES AND SPORTS EQUIPMENT; PARTS AND ACCESSORIES THEREOF
- 1. This chapter **does not** cover:
 - (a) Candles (heading 3406);
 - (e) Sports clothing or fancy dress, of textiles, of chapter 61 or 62;

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Chapter 95 Exclusions



- 1. This chapter **does not** cover:
 - k) Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39);
 - l) Bells, gongs or the like of heading 8306;
 - t) Electric garlands of all kinds (heading 9405);
- garlands (string lights)*

- If article functions as a bell - not 9505.

** Decorative w/ bells - 9505 off (ie ornaments)*

Chapter 95 Exclusions



- 1. This chapter **does not** cover:
- (v) Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen, linen and similar articles having a utilitarian function (classified according to their constituent material). 1/
- 1/ See subheading 9817.95

- Candle holder? 9817.95 + must contain

Chapter 95



- Note 3: Subject to note 1 above [Exclusions], parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles.
- Subject to the provisions of Note 1 above, heading 9503 applies, *inter alia*, to articles of this heading combined with one or more items, which cannot be considered as sets under the terms of General Interpretative Rule 3(b), and which, if presented separately, would be classified in other headings, provided the articles are put up together for retail sale and the combinations have the essential character of toys

→ Toy figure holder (400)

Prior to Midwest Of Cannon Falls

Purely decorative items and their appropriate accessories were classified within the festive heading 9505. They were considered to be traditional items (as per the Explanatory Notes) or similar to those items.

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9505.10

For 9505.10: Artificial Christmas trees, tree skirts, tree ornaments, Advent Calenders, certain pull toys, certain articles (wreaths, centerpieces, candle rings, garlands, mistletoe, swags, sprigs), created from specific artificial foliage (evergreen branches, poinsettia, pine cone, pine needle leaves, holly leaves, laurel leaves, holly berries, mistletoe), all representations of Santa, Christmas Angels, Animated Display Figures, Porcelain Christmas Villages, Christmas Stockings, Christmas Stocking Holders, Nativity Sets

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Angel



- A generic angel is NOT a festive symbol
- Angels are around us all the time (guardian angel)
- MLB team Anaheim Angels with a halo as a logo
- Fiber optics does not make an angel festive
- Angel must be decorated with festive symbols or motifs to limit its use to Christmas

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*Fiber optic doesn't = festive -
A must have festive motifs or
foliage*

Christmas Village

Heading 9505, HTSUS, provides for, among other items, festive, carnival, and other entertainment articles. The EN to 9505 indicates that the heading covers:

(2) **Articles traditionally used at Christmas festivities**, e.g., artificial Christmas trees (these are sometimes of the folding type), nativity scenes, Christmas crackers, Christmas stockings, imitation yule logs...

HTSUS 9505

A Christmas village is "generally" festive as well as accessories of in the Christmas Catalogue & don't require festive symbols or motifs

HQ 957706

Although in general, ornamental ceramic articles are not traditionally associated or used with a particular festival, we find that sufficient evidence has been presented to demonstrate that the items which comprise the "Heritage Village Collection" and the "Snow Village Collection" are traditionally used during the festival of Christmas. It is our determination that the goods meet the criteria for classification as festive articles.

HTSUS 9505

Christmas Village

Christmas is the only holiday in which villages are considered to be traditionally associated. In those instances, the actual structure does not have to be traditional or be decorated with traditional motifs.

For all other holidays, the village structure must be decorated with a symbol of the holiday as well as being sold as a decoration for that holiday.

HTSUS 9505

must be in the Christmas Catalogue - for Christmas items!

Christmas Village

A If the "village" is a Christmas village, then the product and all the accessories to the village are festive of 9505.10. The way you can tell is that the catalog shows the Christmas village and all its accessories. If it is a Christmas village, we are unconcerned with the motif of the village or its figures.

Stocking Hanger/holders

HQ 962156 (1999)

Customs has classified Christmas stockings in Chapter 95 since the United States adopted the HTSUS. Headquarters Ruling Letters (HQs) pertaining to Christmas stockings were issued June 14, 1989 (HQ 084719); October 2, 1992 (HQs 951347 and 951348); and October 30, 1992 (HQs 951350 and 951353) based on the guidance provided in the ENs to Chapter 95 that included Christmas stockings among the exemplars of "articles traditionally used at Christmas festivities." Also, an angel Christmas Stocking hanger was also ruled as a festive article in heading 9505, HTSUS, in HQ 951461, issued March 22, 1993. We note that an article principally designed to hold Christmas stockings, as the stocking hangers under consideration here are so designed, functions as an accessory to the Christmas stocking. The hanger provides a more decorative means of allowing the Christmas stocking to be hung in celebration of the recognized holiday. Without the Christmas stocking itself, there would be little point of having a Christmas stocking hanger.

9505 - accessories

Stocking Hanger/holders (Continued)

Note 3 to Chapter 95 provides that "parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles." Therefore, as an accessory to Christmas stockings, the Christmas stocking hangers are classified with Christmas stockings as indicated infra.

Christmas Tree Ornaments

Christmas Tree Ornaments – classified in 9505.10.10-25 depending on constituent material

9505.10

Not tassles

Non-Christmas Tree Ornaments

Other Christmas Items- if properly classified in 9505.10, but not a tree ornament, the item will be classified in 9505.10.40 or 9505.10.50 as appropriate
(Note: This "on the tree/off the tree" policy was invalidated by Midwest court case in 1997)
Artificial Christmas trees 9505.10.2500 since 1997

Disregard

- 9505.10.4010 Artificial Christmas Trees
- 9505.10.4020 Other
- 9505.10.50 Other:
- 9505.10.5010 Artificial Christmas Trees
- 9505.10.5020 Other

9505.10



9505.90

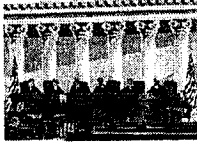


- Easter Eggs (three dimensional, colored)
- Jack-o'-lantern (three dimensional capable of illumination)
- Animated Display Figures
- Based upon the items above, it was clear Christmas, Easter and Halloween were the only recognized holidays for which we had determined specific festive articles and motifs.

9505.90

see pg. 13, 18

Midwest of Canon Falls



The 1996 Midwest Of Cannon Falls case and its appeal decision which was issued on August 14, 1997, modified and expanded the number of Festive holidays recognized by U.S. Customs as well as the number and types of items, which would be classifiable in heading 9505. In essence the appeals court reviewed the entire case as decided by the court of international trade in which the CIT rejected Customs position in liquidating merchandise under headings other than 9505.

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Midwest (Appeal)



Customs appealed on the items it lost and the importer appealed most of what they had lost. The CAFC affirmed the CIT with respect to the items the importer had won and reversed Customs on the few items held non-festive, making all the merchandise at issue festive under heading 9505, including utilitarian mugs and pitchers with festive motifs. These expanded festive occasions (holidays) included: Christmas, Valentine's Day, Easter, Halloween and Thanksgiving.

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Carborundum Co.



The Court in Midwest of Cannon Falls used the five (5) factors delineated in United States v. Carborundum Co. To determine the most specific heading under GRI 3(a).

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Carborundum Factors

- 1) The general physical characteristics of the merchandise.
(The article is decorated in a motif specific to a recognized holiday.)
- 2) The use is in the same manner as merchandise which defines the class.
(All of the items are principally, if not exclusively, used only during the holiday season for the specific purpose of decorating or used to entertain (in the home) on that holiday.)
- 3) The expectations of the purchasers of the merchandise.
(The purpose for the purchase is to decorate or entertain in the home).
- 4) The channel of trade in which the merchandise moves
(The article is marketed during, or immediately prior to, a recognized holiday.)

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Carborundum (Continued)

- 5) The environment of the sale of the merchandise (i.e. accompanying accessories and the manner in which the merchandise is advertised and displayed).
(Such merchandise is advertised with other articles that are clearly unique to a specific holiday.)

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Post Midwest Christmas Tree Ornament

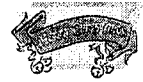
- a) be advertised and sold as a Christmas tree ornament, b) have a loop or some method to attach to a tree, c) not be too heavy or big to be hung or attached to a tree



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Expanded Festive Occasions

Christmas, Valentine's Day, Easter, Halloween and Thanksgiving. However, there were still restrictions.



Post Midwest Three-Prong Test

Classification of the subject merchandise rests on its apparent satisfaction of the guidelines set for festive articles. In general, merchandise is classifiable in heading 9505, HTSUSA, as a festive article when the article, as a whole,

- 1) is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal;
- 2) functions primarily as a decoration or functional item used in celebration of and for entertainment (in the home) on a holiday and
- 3) is associated with or used ONLY on a particular holiday.

Post Midwest (Continued)

An article's satisfaction of these three criteria is indicative of classification as a festive article. The motif of an article is not dispositive of its classification and, consequently, does not transform an item into a festive article. It must be used in the same manner as merchandise which defines the class.

9505 Post Midwest (Continued)

Classification Within Heading 9505 as a Result of the Midwest of Cannon Falls Court Case

Post Midwest

- The Midwest case identified the following additional items as festive
- In 9505.10 Dolls (All representations of Mrs. Santa Claus, nutcrackers) Statuettes and Figurines (All representations of Mrs. Santa Claus), Wooden pull toys, Christmas Water Globes



Expanded Interpretation of 9505 Motifs, Symbols or Representations

- For purely decorative items (plaques, wall hangings, water globes statuettes) the following patterns or motifs will cause classification as Festive (if allowed by Chapter notes)
- In 9510.10 Santa Claus, Mrs. Santa, Decorated Christmas tree, Nativity Scenes, Christmas Stockings, Rudolph the Red-Nose Reindeer
- In 9505.90 Jack-O'-Lantern (not illuminated)

*Red & White
Candy Cane's*

*all items
ready 1/7/08*

Customs Response To Midwest

Customs responded to the Midwest decision by re-examining the utilitarian articles that were before the court to determine why they were considered festive and, concluded that since all the articles were three-dimensional, that is why they were accepted by the court as festive

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Utilitarian Items (3-D Rule)

If the item is functional, the item **MUST BE** a three dimensional full bodied representation of a recognized festive motif (not just a silhouette) Some examples of utilitarian items are kitchen and tableware, cups, cookie jars, pitchers, teapots serving bowls and baskets.


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Park B. Smith

Because of the "three dimensional rule" applied to functional items, the government was again taken to court by the Park B. Smith company, importer of tablecloths, placemats and similar items.

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 **Post Park B. Smith**

Park B. Smith Festive Test

- Such articles must be "closely associated" with a festive occasion, or the physical appearance of the article is so intrinsically linked to that festive occasion that its use during other time periods would be aberrant. [Note: An example of a good that is associated with Christmas is the Christmas stocking. It is classified as festive regardless of appearance.]
- Such articles must be displayed and used by the consumer only during that festive occasion.

Post Park B. Smith

By using this test, certain Christmas plates and other collectibles, which are on display all year long, can no longer meet the festive test. They may have symbols of the holiday, but the use of the product is all year long.

Valentine's Day Post Park

- Certain Valentine items will actually be excluded from classification as festive. For example, a lovely decorative pillow (of Chapter 63) saying "Be My Valentine" clearly will not be used only on Valentine's Day. Those items will be used as long as the relationship lasts.

Post Park B. Smith

Certain minor festive adornments do not make the article festive if the overwhelming totality of the article is non-festive. For example, a sprig of holly leaves on a 6 foot snowman.

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Russ Berrie

- 1) The Russ Berrie case concerned jewelry with festive motifs.
- 2) Was the merchandise classifiable as jewelry or as festive?
- 3) The court made a specific point: If there were no exclusions, relative specificity would apply. It was determined that "imitation jewelry" was more specific than "other festive."



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Post Park B. Smith/Russ Berrie

The courts have made it quite clear that if a Heading has an exclusion for goods of Chapter 95 and the good was not excluded from Chapter 95 by some Chapter 95 note or exclusion, the good would be classified within Chapter 95.

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Reminder

- Remember: Even if an article is prima facie classifiable in 9505, it is not classified in that heading if subject to a Chapter 95 exclusion.
- An example would be an electric garland with a festive motif excluded by Chapter Note 95(t), which excludes electric garlands of all kinds.




**Electric Garland**

An electric garland was defined in Ruling HQ 963311 as "an article...able to be hung or displayed and is composed of a string of light bulbs which are powered by an electrical source either attached by a battery, cord, or plug."

(Note: An electric garland is still excluded from Ch 95 even if it has festive motifs)

*no Christmas tree lights,
lighted pine needle garland -
not lighted wreaths - these are
9505.*

Present Day Recognized Symbols for 9505.10, Christmas

- Tree ornaments, Advent Calendars, Certain articles (wreaths, centerpieces, candle rings, garlands, mistletoe, swags, sprigs), created from specific artificial foliage (evergreen branches, poinsettia, pine cone, pine needle leaves, holly leaves, laurel leaves, holly berries, mistletoe)
- All representations of Santa and Mrs. Claus, Christmas Angels, Christmas Villages, Christmas Packages, Christmas Stockings, Gingerbread Man or Woman, Nativity Sets or Scenes, Decorated Christmas Tree, Rudolph the Red Nose Reindeer, Santa's Reindeer, Noel, Merry Christmas, Ho, Ho, Ho, Words from well-known Christmas carols and songs that reference the holiday

words = festive

**Present Day Recognized Festive Occasions,
9505.90**

- **Valentine's Day** - Happy Valentine's Day and Be My Valentine
- **Mother's Day** - Happy Mother's Day
- **Father's Day** - Happy Father's Day
- **St. Patrick's Day** - Happy St. Patrick's Day, Leprechaun
- **Easter** - Decorated eggs, Easter rabbit, Easter bunny, Easter lily, Happy Easter
- **4th of July, Happy 4th, Happy Independence Day**
- **Passover** - Seder Plate, Elijah Cup, Seder Matzah Plate (functional 9817)
- **Succot** - Citron or etrog box
- **Halloween** - Jack-o'-lantern, ghost, skeleton, black cat (scary), Happy Halloween, Witch, Cauldrons, Bats, Spider Webs, Scary Creatures, Haunted Houses, Monsters, Boo and other scary words (eek, see Wilton) Skull, Animals and People dressed in costumes
- **Thanksgiving** - Turkey, Pilgrims & Indians, Happy Thanksgiving
- **Chanukah or Hanukkah** - Menorah, Dreidel, Happy Chanukah
- **Kwanza** - Happy Kwanza

Festive

Symbols:

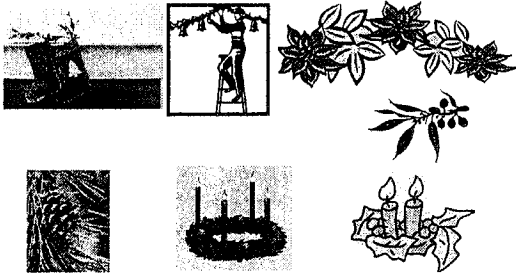


Festive Foliage

HQ 950999

Those artificial foliage items which qualify as Christmas articles of subheading 9505.10 include wreaths, garlands, candle rings, centerpieces - complete articles -- made up of foliage commonly and traditionally associated with Christmas [i.e., artificial poinsettias, pine cones, pine needle leaves, evergreen branches, holy berries, holly leaves, laurel leaves, or mistletoe (singly or combination thereof)]. (This largely restates Customs position under the TSUS) These articles can be further decorated with plastic sleighs, miniature Santas, glass balls, ribbon, etc. Stylized/modern versions of Christmas wreaths, garlands, etc. (i.e., those articles decorated with neon poinsettias, mauve glass balls, etc.) also qualify as festive.

Festive Foliage



Festive Foliage

At the present time, based on the information before us, there is no other artificial foliage traditionally associated with any other holiday. Hence, only Christmas foliage of the type described above is classifiable in heading 9505. The rest is classifiable in Chapter 67.

Festive Foliage

Note that picks, sprigs, sprays, swags, branches, -- incomplete articles -- no matter what they are made of or what flower they represent, are all classifiable in Chapter 67 -- the only exception being mistletoe sprays which are classifiable in 9505.10.

Christmas Tree Ornament

As for the proper classification of the wreaths and garlands at the eight digit subheading level, subheadings 9505.10.10, 9505.10.15 and 9505.10.25 cover Christmas ornaments of glass, wood and other, respectively. To qualify as a Christmas ornament, Customs looks to the following three criteria:

Tree Ornament



1. that the item is advertised and sold as a Christmas tree ornament;
2. that there is some method, generally a loop attached to the top, to hang the item on a tree; and
3. that the item is not too big or too heavy to be hung or attached to a tree.

The wreaths and garlands do not meet these criteria.

Consequently, they are not classifiable as Christmas tree ornaments.

Further Response To Midwest/Park

As a result of the court cases, certain functional items which were three-dimensional representations of accepted symbols were accepted as festive articles and classified within Heading 9505. It was determined that the Explanatory Notes and Chapter Notes for Chapter 95 needed clarification.

Explanatory Note 95(4)
Amended 2003

The heading also **excludes** articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.

© 2003

Chapter Note 95(v) 2007

Tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material). 1/

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ITC

The U.S. International Trade Commission (ITC) published in the Federal Register of September 14, 2004, soliciting public comments on certain proposed modifications to the HTSUS. These modifications resulted from a review by the World Customs Organization of certain chapters of the HTSUS and were scheduled for implementation in 2007. The purpose of the proposals to amend the HTSUS and the Explanatory Notes was to provide clarity, uniformity and ease in the classification of goods and not effectuate changes in rates of duty."

© 2004

9817

Duty Neutrality

Special Classification Provisions:
Temporary Legislation: Temporary
Modifications Established Pursuant to
Trade Legislation; Additional Import
Restrictions Established Pursuant to
Section 22 of the Agricultural Adjustment
Act, As Amended.

Special Classification Provision
9817 (2007)

- Articles classifiable in subheadings 3924.10, 3926.90, 6307.90, 6911.10, 6912.00, 7013.22, 7013.28, 7013.41, 7013.49, 9405.20, 9405.40, 9405.50, the foregoing meeting the descriptions set forth below:
- 9817.95.01 ~~Utilitarian~~ articles of a kind used in the home in the performance of specific religious or cultural ritual celebrations for religious or cultural holidays, or religious festive occasions, such as Seder plates, blessing cups, menorahs or kinaras (candleholders for Kwanza)

Special Classification Provision
9817

- Articles classifiable in subheadings 3924.10, 3926.90, 6307.90, 6911.10, 6912.00, 7013.22, 7013.28, 7013.41, 7013.49, 9405.20, 9405.40, 9405.50, the foregoing meeting the descriptions set forth below:
- 9817.95.05 ~~Utilitarian~~ articles in the form of a three-dimensional representation of a symbol or motif clearly associated with a specific holiday in the United States.

Not just a painting of a festive symbol or an item

Pending Court Cases

- LTD Commodities - household articles of paper, ceramic and textile
- Nicico Group, Inc. – Placemats
- Michael Simons Designs, Inc. – Sweaters and blouses
- Berwick Industries – Plastic and textile bows
- Waterford Wedgwood USA, Inc. – glassware and tableware
- Cuthbertson Imports, Inc. – Earthenware Dinnerware
- Wilton Industries, Inc. – Cake and baking pans, etc.

2014/11/11

Wilton (2007)

- CIT reaffirms that the Court of Appeals decision in Midwest, amplified by Park B. Smith, applies to utilitarian articles, and that the amended Explanatory Note "has no relevance here."
- Tariff terms such as "festive" in the title of heading 9505 are construed according to their common and commercial meanings. The meanings of a tariff term can be discerned from dictionaries and other reliable sources of information.
- Nothing in the definition of the word "festive" suggests it is limited to civic/religious holidays.
- Consequently, the court finds that festive articles are not limited to holidays but includes private festive celebrations (weddings, graduations, birthdays, anniversaries)

2014/11/11

Presently, Subject To Wilton

To qualify as a festive occasion, it must be a joyous occasion celebrated at the same time by the whole group. Thus, weddings, birthdays, although joyous, are private celebrations and, at present, do not qualify

2014/11/11

Michael Simon 9/11/07

- In 2003, prior to the chapter 95 exclusion for functional articles, Michael Simon Design, Inc. imported apparel items into the U.S., including 16 styles of sweaters.
- Customs classified 13 styles under 6110, which covers "sweaters, pullovers...and similar articles, knitted or crocheted."
- One style was classified under 6206, which covers, among other articles, women's and girl's blouses.
- The remaining style was not under dispute.

9/11/07

Michael Simon Continued

- The government contended that utilitarian articles are not classifiable as festive articles under heading 9505.
- Citing both *Midwest* (utilitarian mugs, pitchers) and *Park B. Smith* (utilitarian napkins, placemats and rugs with Halloween and Christmas symbols) precedent, the court of appeals rejected the government's position.
- The court reiterated their previous positions and ruled that the utilitarian nature of the imported apparel items does not preclude their classification as festive articles.

9/11/07

Michael Simon (Continued)

- The court also rejected the claim that the amended Explanatory Notes (2003), which expressly excludes articles having a utilitarian function from being classified as festive in Heading 9505 applied in this matter.
- The court stated that since the Explanatory Notes are contrary to our precedent [i.e. *Midwest* and *Park B. Smith*], "we do not afford them any weight."

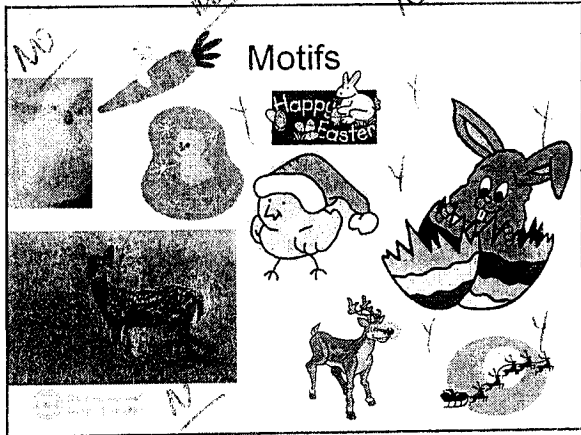
9/11/07

Michael Simon (Continued)

The court asserted that since the notes to Section XI of the HTSUS, in which chapters 61 and 62 fall, expressly state that the section does not cover articles of chapter 95, the wearing apparel were classifiable in chapter 95 as they were not precluded from chapter 95 per Midwest and Park. B. Smith.

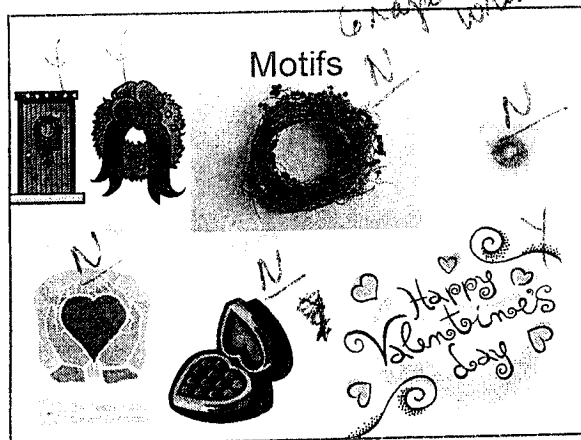
controlling authority & may continue

*Y = Yes, Festive
N = No*

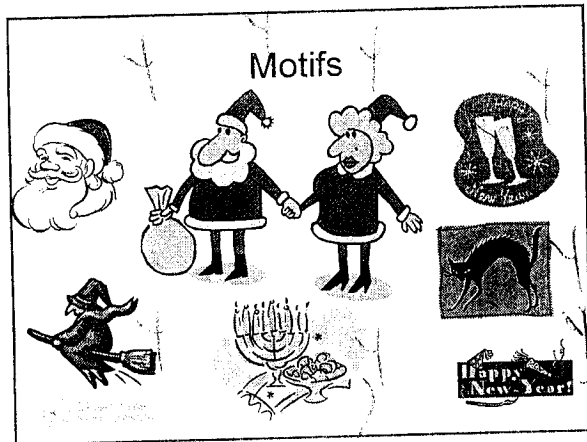


- Generic "chic" does not = festive (see Park B Smith)
whereby easter eggs are festive

Christmas winter



- wreath decorated w/ no festive "approved festive" foliage is not festive. See Hg Motif ruling for specific foliage.



stance of what it makes sense (group)

words happy new year

1817
 14 William
 14 a