

June 14, 1993

CLA-2 CO:R:C:M 954319 DWS

CATEGORY: Classification

TARIFF NO.: 7013.99.50

District Director U.S. Customs Service Lincoln Juarez Bridge, Building #2 P.O. Box 3130 Laredo, TX 78044-3130

RE: IA 30/93; "Bubble Ball"; Glass Bowl; Votive-Candle Holder; Additional U.S. Rule of Interpretation 1(a); [HQ 950426](#); [HQ 088742](#); 7013.99.35

Dear District Director:

This is in response to your memorandum of April 15, 1993 (CLA- 2 L:CO RQM), relating to a request for internal advice initiated by International Trade & Commerce, Inc., on behalf of Hancock Importing, Inc., concerning the classification of glass bowls under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The merchandise consists of a 10 inch, bubble shaped glass bowl, known as a "Bubble Ball". A picture of the bowl containing a candle has been provided, and the importer claims that the bowl is classifiable under subheading 7013.99.35, HTSUS, as a votive-candle holder. Your office disagrees, claiming that the bowl is classifiable under subheading 7013.99.50, HTSUS, as other glassware of a kind used for indoor decoration.

The subheadings under consideration are as follows:

7013.99.35: [g]lassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): [o]ther glassware: [o]ther: [o]ther:

[v]otive-candle holders.

The general, column one rate of duty is 6.6 percent ad valorem.

7013.99.50: [o]ther glassware: [o]ther: [o]ther: [o]ther:

[v]alued over \$0.30 but not over \$3 each.

The general, column one rate of duty is 30 percent ad valorem.

ISSUE:

Whether the glass bowl is classifiable under subheading 7013.99.35, HTSUS, as a votive-candle holder, or under subheading 7013.99.50, HTSUS, as other glassware of a kind used for indoor decoration?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI's), taken in order.

GRI 1 provides that classification is determined according to the terms of the headings and any relative section or chapter notes. Because heading 7013, HTSUS, is a use heading, additional U.S.

Rule of Interpretation 1(a), HTSUS, is applicable. It states that:

a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

A glass votive-candle holder is a glass holder principally used in churches, where the candles are burned for devotional purposes. See, [HQ 950426](#), dated June 19, 1992, and [HQ 088742](#), dated April 22, 1991.

No evidence has been provided that, at the time of importation into the U.S., the glass bowl is principally used as a votive-candle holder, or any kind of candle holder for that matter. The bowl is of such a size and shape that it could be used as a flower vase or as a bowl to hold candies or, as a decorative article, glass marbles. It is quite evident from the photograph that the principal use of the glass is for indoor decoration.

Therefore, we find that the glass bowl is classifiable under subheading 7013.99.50, HTSUS, as other glassware of a kind used for indoor decoration.

HOLDING:

The glass bowl is classifiable under subheading 7013.99.50, HTSUS, as other glassware of a kind used for indoor decoration.

You should advise the internal advice applicant of this decision.

Sincerely,
John Durant, Director □

January 30, 2012

CLA-2-70:OT:RR:NC:N2:226

CATEGORY: Classification

TARIFF NO.: 7013.99.8000; 7013.99.5000; 9405.50.4000

Ms. Shaketha Miles Pier 1 Imports 100 Pier 1 Place Fort Worth, Texas 76102

RE: The tariff classification of two decorative glass articles from India and China and a glass candleholder from Canada
Dear Ms. Miles:

In your letter, dated December 27, 2011, you requested a tariff classification ruling regarding three glass articles.

Samples were submitted with your ruling request. In accordance with your request, we will return two of the three submitted samples. However, one of these samples (VIN# CCN19532C) was broken in transit.

VIN# CCN19532C (manufactured in India) - described as "Mosaic Glass 6.5 inch Pillar Holder" - is a vase-like glass article with a multicolor mosaic design, measuring five inches in width and 6.5 inches in height. VIN# 6K419 (manufactured in China) - described as "Glass Tealight Holder"- is a decorative glass article with a red color, measuring 3.43 inches in width and 3.94 inches in height. The article includes a chrome lining.

You advised our office that the unit value of VIN # CCN19532C is over three dollars but not over five dollars and that the unit value of VIN # 6K419 is over thirty cents but not over three dollars.

You advised us that VIN# CCN19532C and VIN # 6K419 are not colored prior to solidification.

In your letter you state your opinion that VIN # CCN19532C and VIN # 6K419 should be regarded as candleholders and classified as lamps or lighting fittings in heading 9405. However, VIN # CCN19532C has the form of a general purpose glass vase, not a candleholder. It can be used to hold a wide variety of household items. In addition, the heavy coloring of this article restricts the dissemination of light. Furthermore, VIN # CCN19532C is not fitted to hold a candle. The chrome lining in item VIN # 6K419 precludes this article from disseminating light. Therefore, VIN # CCN19532C and VIN # 6K419 are not classifiable as lamps or lighting fittings in heading 9405.

The applicable subheading for Mosaic Glass 6.5 inch Pillar Holder, VIN # CCN19532C, will be 7013.99.8000, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes...other glassware: other: other: other: valued over three dollars each: other: valued over three dollars but not over five dollars each. The rate of duty will be 11.3 percent ad valorem.

The applicable subheading for Glass Tealight Holder, VIN# 6K419, will be 7013.99.5000, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes...other glassware: other: other: other: valued over thirty cents but not over three dollars each. The rate of duty will be 30 percent ad valorem.

VIN Number HC10DY03 (manufactured in Canada) is described as a tea light candle holder. It is constructed of plastic molding that is hollow and in the form of a pumpkin measuring approximately 4½ inches in diameter at its widest point by 3¼ inches high. There is a circular opening in the top of pumpkin specifically designed for a candle. It is stated that this candle holder is tested according to ASTM standards and will be marketed and sold in the candle holder department. The Pumpkin Candleholder has a flat base for placement on virtually any flat surface.

The applicable subheading for the Pumpkin Candleholder, VIN Number HC10DY03, will be 9405.50.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Non-electrical lamps and lighting fittings: Other: Other." The general rate of duty will be 6 percent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 646-733-3027.

Sincerely,

Thomas J. Russo Director, National Commodity Specialist Division

CLA-2-70:OT:RR:NC:1:126 CATEGORY: Classification TARIFF NO.: 7013.99.5000
Mr. Troy D. Crago Atico International USA, Inc. 501 South Andrews Avenue Ft. Lauderdale, FL 33301
RE: The tariff classification of decorative glass articles from China Dear Mr. Crago:

In your letter dated March 18, 2008, you requested a tariff classification ruling regarding three decorative glass articles. Samples were submitted with your ruling request. All three samples are designated with item number A072MA02922. Each sample consists of a painted glass panel with a glass tea light candle holder located behind the panel. Each panel measures approximately four inches by 2.8 inches. The first panel depicts a Santa Claus with two Christmas trees, the second depicts a snowman with a Christmas tree and the third depicts a snowman with two Christmas trees.

In your letter you stated that the value of each article is over thirty cents but not over three dollars.

In each article, the candle holder is designed to enhance or illuminate the decorative glass panel. The decorative glass article, not the candle holder, imparts the essential character of the merchandise.

In your letter you suggested that these products should be classified under the provision for festive articles in heading 9505, Harmonized Tariff Schedule of the United States (HTSUS). However, Note 1 (v) to Chapter 95 of the HTSUS excludes articles having a utilitarian function from classification as festive articles in heading 9505.

Heading 9505 is not applicable when a product has any utilitarian feature, even if this feature is ancillary to the product's decorative nature. The utilitarian component of an article will preclude the application of the provisions for festive articles in Chapter 95, even if this utilitarian component does not impart the essential character to the merchandise.

The candle holder portion of the product at issue precludes classification in Chapter 95 even though this candle holder does not impart the essential character of the article. Therefore, these decorative glass articles - consisting of glass panels with candle holders placed behind the panels - may not be classified in heading 9505 of the HTSUS.

The applicable subheading for the three decorative glass articles (item number A072MA02922) - each consisting of a glass panel with a glass candle holder placed behind the panel - will be 7013.99.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes... other glassware: other: other: valued over thirty cents but not over three dollars each. The rate of duty will be 30 percent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at 646-733-3027.

Sincerely,
Robert B. Swierupski
Specialist Division

Director,

National Commodity

January 31, 2007
CLA-2-94:RR:NC:1:110
CATEGORY: Classification
TARIFF NO.: 9405.50.4000
Mr. Nicholas D'Andrea Delmar International NY Inc.

147-55 175th Street Jamaica, NY 11434
RE: The tariff classification of a glass candle holder from China.

Dear Mr. D'Andrea:

In your letter dated January 10, 2007 you requested a tariff classification ruling on behalf of your client Chateau Designs.

The merchandise under consideration is a cylindrical-shaped glass candle holder, Style #280762. A sample of the candle holder was submitted with your ruling request and will be returned to you. The sample measures approximately 3¼ inches tall with an open top diameter of 2¼ inches. The glass holder is covered with an assortment of 7 inch wide colored glass panels of various vertical lengths cemented onto the holder creating a mosaic pattern.

The applicable subheading for the glass candle holder, Style #280762 will be 9405.50.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for which provides for "Lamps and lighting fittings...not elsewhere specified or included...: Non-electrical lamps and lighting fittings: Other: Other." The general rate of duty will be 6 percent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at 646-733-3016.

Sincerely,
Robert B. Swierupski
Specialist Division

Director,

National Commodity

March 16, 2009
CLA-2-94:OT:RR:NC:1:110
CATEGORY: Classification
TARIFF NO.: 9405.50.4000; 7013.99.5000
Ms. Francine Ramsey Hampton Direct, Inc.

350 Pioneer Drive P.O. Box 1199 Williston, VT 05495
RE: The tariff classification of candle holders and glass from India.

Dear Ms. Ramsey:

In your letter dated February 10, 2009, you requested a tariff classification ruling.

The merchandise under consideration consists of three articles described as the Tea Light Holder w/Frosted Amber Glass (SKU # 67050), Tea Light Holder w/Clear Crackle Glass (SKU # 67060) and the Mosaic Votive Holder (SKU # 67080). Samples of the three articles were submitted with your ruling request.

The Tea Light Holder w/Frosted Amber Glass consists of a thin amber colored glass cylinder measuring approximately 3¾ inches tall with an inside diameter of 3 inches. This glass cylinder is cemented to a metal ring base with three metal ball-shape feet. A removable insert consisting of a second metal ring, which rests on the lip of the top opening of the glass, suspends a round metal cup approximately 3½ inches below the opening of the glass by three metal wires. This metal cup measures approximately ¾ inches deep with a diameter of 1½ inches and is specifically designed to hold a tea light candle. The Tea Light Holder w/Clear Crackle Glass is identical in design to the frosted amber glass holder with a metal base and removable metal tea light candle insert. This holder features a decorative clear crackle glass cylinder measuring approximately 4¾ inches tall with an inside diameter of 3¾ inches.

The submitted sample, identified as the Mosaic Votive Holder (SKU # 67080) is a decorative glass article measuring approximately 3 inches in height, 4 inches in length, 2½ inches in depth, 2 inches at the base and 3 inches in diameter at the top opening. The exterior surface of the article is composed of black and mirrored glass mosaic with silver metal beading and glass beads on the rim. You indicate in your letter that the value of this decorative glass article is over thirty cents but not over three dollars each. Although you describe the article as a votive holder, there are no design features identifying it as a lamp or lighting fitting. Articles that utilize light purely for its decorative effect, and to furnish illumination to the articles themselves do not have any substantial capacity for illuminating the surrounding area, are not illuminating articles and consequently are not lamps within the common meaning of the term. The insertion of a candle within the Mosaic Votive Holder only enhances the decorative nature of the article; any lighting of the surrounding space is only incidental to the use of the importation as a decorative article.

The applicable subheading for the Tea Light Holder w/Frosted Amber Glass (SKU # 67050), and the Tea Light Holder w/Clear Crackle Glass (SKU # 67060) will be 9405.50.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...not elsewhere specified or included: Non-electrical lamps and lighting fittings: Other: Other." The general rate of duty will be 6 percent ad valorem.

The applicable subheading for the decorative glass article (SKU # 67080) will be 7013.99.5000, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes... other glassware: other: other: other: valued over thirty cents but not over three dollars each. The rate of duty will be 30 percent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at (646) 733-3016.

Sincerely, Robert B. Swierupski Director National Commodity Specialist Division

May 3, 2012
CLA-2-70:OT:RR:NC:N2:226
CATEGORY: Classification
TARIFF NO.: 7013.99.8000
Ms. Alice Liu Atico International, Inc.

501 South Andrews Avenue Ft. Lauderdale, FL 33301
RE: The tariff classification of a decorative glass article from China
Dear Ms. Liu:

In your letter dated March 30, 2012, you requested a tariff classification ruling regarding a product described as "Glass Candle Holder" – item number A029IA05112. A representative sample was submitted with your ruling request.

The product is a decorative glass article consisting of a glass mirror panel and a frosted glass panel with a black paisley design painted on its exterior surface. A two-inch tealight candle holder is permanently placed between the two panels of glass. Each glass panel measures approximately four inches square.

Although you describe the product as a "glass candle holder", the essential character of the item is imparted by the frosted glass paisley panel, not the candle holder. The candle holder is ancillary and merely serves to illuminate the decorative paisley design of the glass article.

You stated in your letter that the unit value of this item is over three dollars but not over five dollars.

The applicable subheading for the decorative glass article, item number A029IA05112, will be 7013.99.8000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes... other glassware: other: other: other: valued over three dollars but not over five dollars each. The rate of duty will be 11.3 percent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Jacob Bunin at (646) 733-3027.

Sincerely,
Thomas J. Russo Director National Commodity Specialist Division

March 2, 2010
CLA-2-94:OT:RR:NC:1:110
CATEGORY: Classification
TARIFF NO.: 9405.50.4000
Mr. Donald S. Simpson Barthco 5101 South Broad Street Philadelphia, PA 19112
RE: The tariff classification of a glass candle holder from France.

Dear Mr. Simpson:

In your letter dated February 8, 2010, you requested a tariff classification ruling on behalf of your client, ARC International North America.

The merchandise under consideration is item number G2051 (4 oz. glass candle holder). A representative sample of the article in its imported condition was submitted with your ruling request and will be returned to you.

The candle holder is a cup-like container measuring approximately 2 ½ inches high with an outside diameter of 2 ¼ inches, and is designed for the production of filled candles. A filled candle, as defined by the American Society for Testing and Materials (ASTM), is a candle produced and used within the same vessel. As imported, this candle holder is a disposable vessel made of thin, clear glass. From the information you provided, upon importation into the United States by ARC International, the candle vessels are sent to the customer's facility, where they will be filled with wax and a wick and packaged for retail sale. You provided laboratory test results which indicated that this item is in compliance with ASTM F2179, a standard for glass containers that are produced for use as candle vessels.

The applicable subheading for the 4 oz. glass candle holder, item number G2051, will be 9405.50.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Non-electrical lamps and lighting fittings...: Other: Other." The general rate of duty will be 6 percent 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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at (646) 733-3016.

Sincerely, Robert B. Swierupski Director National Commodity Specialist Division

July 1, 2014
CLA-2-94:OT:RR:NC:N4:110
CATEGORY: Classification
TARIFF NO.: 9405.50.4000; 9817.95.05
Mr. Aron Cullen CVS/pharmacy One CVS Drive Woonsocket, RI 02895
RE: The tariff classification of glass candle holders from China
Dear Mr. Cullen:

In your letter dated June 9, 2014, you requested a tariff classification ruling.

Under consideration is the Christmas Candle Holder, Item Number 972254. A sample was submitted with your ruling request.

Item Number 972254 is for two styles of glass candle lamp holders. Both styles consist of a glass holder similarly shaped to a stemless bubble wine glass, with a tapered opening surrounded by a wreath. The glass candle holder measures approximately 6 ½ inches tall and 4 inches in diameter at its widest point. It is designed to hold a standard pillar candle (not included). The wreath is made of artificial foliage such as, pine needles, pine cones, holly berries and leaves. The two styles are identical except for their decorative features. The first style features a small owl attached to the wreath, while the second style features a small cardinal attached to the wreath. The second style also features an artificial sparkling foliage wreath that simulates snowflakes. The candle holders are designed to be placed onto virtually any flat surfaces. It is stated that the merchandise will be marketed and sold during the holiday season.

The Christmas Candle Holder, Item Number 972254 is classifiable under subheading 9405.50.4000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Non-electrical lamps and lighting fittings: Other: Other." However this item has a three-dimensional representation of a symbol or motif closely associated with Christmas, a specific holiday in the United States. Therefore, it is eligible for duty-free treatment under subheading 9817.95.05, HTSUS.

The applicable subheading for the Christmas Candle Holder, Item Number 972254 will be 9817.95.05, HTSUS, which provides for "Articles classifiable in subheadings...9405.20, 9405.40 or 9405.50, the foregoing meeting the descriptions set forth below: 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." The general rate of duty will be free.

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 World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Hope Abada at hope.abada@cbp.dhs.gov.

Sincerely,
Gwenn Klein Kirschner Director National Commodity Specialist Division

CLA-2 CO:R:C:M 956347 KCC
CATEGORY: Classification
TARIFF NO.: 3406.00.00; 9405.50.40
David M. Murphy, Esq.

Grunfeld, Desiderio, Lebowitz & Silverman 245 Park Avenue New York, New York 10167-0002
RE: Decorative crystal candle holders; candle; gift box; EN 94.05; candlestick; candleholder; candlestick holder; HRL 953016, 088742 and 089054; GRI 3(b); set; essential character; EN Rule 3(b); 3406.00.00; GRI 5(b); packing material; GSP; 19 U.S.C. 2463(b); BDC; eligible article; product of; T.D. 91-7; Madison Galleries, LTD. v. United States
Dear Mr. Murphy:

This is in regards to your letter dated April 29, 1994, on behalf of Crystal Clear Industries, Inc., concerning the applicability of the Generalized System of Preferences (GSP) and tariff classification of decorative crystal candle holders under the Harmonized Tariff Schedule of the United States (HTSUS). A sample of the candle holder and several printed gift boxes were submitted for our examination.

FACTS:

The articles under consideration are globe-shaped crystal candle holders (glass candle holders). A decorative pattern is cut in the glass which is designed to enhance the patterns created by the flickering candle. You state that the glass candle holder is produced in Poland. The submitted sample, style # 415143-GB, is 3 inches tall, labeled "Essex Votive, Handcut 24% Full Lead Crystal", and is valued at \$2.60. It is representative of similar items imported by Crystal Clear. The glass candle holders may be imported in other sizes and with different decorative patterns cut in the glass. The glass candle holders are not used for devotional purposes.

Your information indicates that the glass candle holders may be imported packaged in a cardboard gift box without a candle. The gift boxes, valued at \$0.51, are products of Italy. However, some of the candles may be packaged in plain brown boxes from Poland. Additionally, a Taiwanese candle, valued at \$0.09, may be added to the glass candle holders before importation into the U.S.

In the U.S., a majority of the glass candle holders will be repackaged into a gift box with a brass stand and a candle. A sample gift box with a representative photograph of the candle holder, candle and brass stand was submitted.

ISSUE:

I. Is the glass candle holder with and without candles packaged in a gift box or brown box classified as non-electrical lamps and lighting fittings under subheading 9405.50.40, HTSUS?

II. Does the glass candle holder with candle qualify for preferential tariff treatment under the GSP?

LAW AND ANALYSIS:

I. Tariff Classification

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states, in part, that "for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes...."

Subheading 9405.50.40, HTSUS, provides for:

Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included...Non-electrical lamps and lighting fittings...Other...Other.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System (HCDCS) Explanatory Notes (ENs) may be consulted. The ENs, although not dispositive, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See, T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989). EN 94.05 (pg. 1581), states that lamps and light fittings of this group can be composed of any material and use any source of light, including candles. In addition, EN 94.05(l)(6) states that this heading covers "...in particular candelabra, candlesticks, and candle brackets."

We are of the opinion that the terms "candlestick", "candlestick holder", and "candleholder" are interchangeable. Candleholder has been defined as a candlestick, Webster's II New Riverside University Dictionary, pg. 224 (1st ed. 1984), and as a holder for a candle; candlestick, The Random House Dictionary of the English Language, pg. 216 (1st Ed. 1983). Candlestick has been defined as a utensil for supporting a candle, whether elaborately made or in the common form of a saucer with a socket in the center, Webster's New International Dictionary, pg. 390 (2d ed. 1939). Reference to lexicographic authorities is proper when determining the meaning of a tariff term. *Hasbro Industries, Inc. v. United States*, 703 F. Supp. 941 (CIT 1988), *aff'd*, 879 F.2d 838 (1989); *C.J. Tower & Sons of Buffalo, Inc. v.*

United States, 69 CCPA 128, 673 F.2d 1268 (1982).

We have previously held that empty glass candle holders are classified under subheading 9405.50.40, HTSUS, as non-electrical lamps and lamp fittings. See, HRL 953016 dated April 27, 1993, HRL 088742 dated April 22, 1991, and HRL 089054 dated August 2, 1991, which classified glass candle holders as non-electrical lamps and light fittings under subheading 9405.50.40, HTSUS, pursuant to EN 94.05.

Based on the above definitions and rulings, we find that the glass candle holders without candles are, in fact, candlesticks as the

term is used in the ENs. The articles at issue are a utensil used for supporting a candle. Therefore, the glass candle holders are properly classified under subheading 9405.50.40, HTSUS, as non-electrical lamps and light fittings.

The glass candle holder with accompanying candles are classified under two different tariff provisions. The glass candle holder is classified under heading 9405, HTSUS, and the candle is classified under heading 3406, HTSUS. When, by application of GRI 2, HTSUS, goods are prima facie classifiable under two or more headings, GRI 3, HTSUS, is applicable. In this case, classification is determined by application of GRI 3(b), HTSUS, which provides:

Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

To determine what is a "set put up for retail sale", EN Rule 3(b)(X) (pg. 4), provides a three-part test for "goods put up in sets for retail sale":

For the purposes of this Rule, the term 'goods put up in sets for retail sale' shall be taken to mean goods which:

- (a) consist of at least two different articles which are prima facie, classifiable in different headings....;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repackaging (e.g., in boxes or cases or on boards).

As stated previously, the candle holder and candle are classified under different headings. When combined the components are put up together to meet a particular need or carry out a specific activity; to provide decorative illumination. However, based on the submitted information, it is unclear as to how the candle holder and candle will be packaged. If the articles are packaged together for sale directly to the consumer in either the gift box or brown box without repackaging with the brass stand, they meet the qualifications of a set. However, if the candle holder and candle will be repackaged in the U.S. with the metal stand, they do not meet the qualifications of a set. Therefore, the candle holder and candle which will not be repackaged with the brass stand are a set for tariff purposes. To determine the proper classification, the essential character of the set needs to be determined.

In general, essential character has been construed to mean the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article. In addition, EN Rule 3(b) (pg. 4), provides further factors which help determine the essential character of goods. Factors such as bulk, quantity, weight or value, or the role of a constituent material in relation to the use of the goods are to be utilized, though the importance of certain factors will vary between different kinds of goods.

We are of the opinion that the essential character of the set is imparted by the glass candle holder. The glass candle holder is the central piece and the focus of the set. It is the component which attracts the consumer and is, actually, the component which the consumer is purchasing. The glass candle holder is valued much higher (\$2.60) than the candle (\$0.09). The candle when burned will eventually disappear and the consumer will purchase a replacement. Therefore, the glass candle holder and candle set is classified under subheading 9405.50.40, HTSUS.

Classification of the candleholder and candle which is not a set is different from the above set classification. The candle holder and candle must be classified separately under their respective headings. EN 94.05, states that heading 9405, HTSUS, does not include candles of heading 3406, HTSUS. Therefore, the candle holder will be classified under subheading 9405.50.40, HTSUS, and the candle will be classified under subheading 3406.00.00, HTSUS, which provides for "Candles, tapers and the like."

We note that GRI 5(b), states that "[i]n addition to the foregoing provision, the following rules shall apply in respect of the goods referred to therein:...

Subject to the provision of rule 5(a) above, packing materials and packing containers entered with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision is not binding when such packing materials or packing containers are clearly suitable for repetitive use.

Based upon an examination of the submitted gift box sample and a description of the brown box, we are of the opinion that the boxes are packing materials which are to be classified with the entered goods. The boxes are of the type in which a consumer normally finds glass articles packaged and are clearly not designed for repetitive use. Therefore, the boxes are classified with the glass candle holders under subheading 9405.50.40, HTSUS.

II. Generalized System of Preferences

Under the GSP, eligible articles the growth, product or manufacture of a beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of 1) the cost or value of materials produced in the BDC, plus 2) the direct costs of the processing operation in the BDC, is equivalent to at least 35% of the appraised value of the article at the time of entry. See, 19 U.S.C. 2463(b).

The candle holder and candle set in this case is an "eligible article" for purposes of the GSP since the tariff provision under which the set is classified provides for a GSP free rate of duty.

Section 503(b) of the Trade Act of 1974 (19 U.S.C. 2463(b)), amended by the "Customs and Trade Act of 1990" (Public Law 101-382), effective August 20, 1990, now reads as follows:

- (b)(1) The duty-free treatment provided under section 501 shall apply to any eligible article which is the growth, product or manufacture of a BDC.

The "product of" requirement means that to receive duty-free treatment the article must be wholly the growth, product, or manufacture of the BDC, or must be a new or different article of commerce which has been grown, produced or manufactured in the BDC. See, *Madison Galleries, LTD. v. United States*, 688 F. Supp.

1544, (CIT 1988), affirmed, 870 F.2d 627 (Fed. Cir. 1989).

In regards to the instant case, you state that the candle holder is produced in Poland (a BDC) and that the candle is produced in Taiwan (a non-BDC). Because the mere packaging of the candle with the candle holder in Poland will not result in the substantial transformation of the candle into a "product of" Poland, the entire imported set would not be considered the "product of" Poland. See, T.D. 91-7, 25 Cust. Bull. 7 (1991). Therefore, the candle holder and candle set will not be entitled to GSP treatment.

HOLDING:

The glass candle holders imported without candles packaged in gift or brown boxes, and the glass candle holder and candle sets are classified under subheading 9405.50.40, HTSUS, as non-electrical lamps and lighting fittings.

The glass candle holders and candles which do not qualify as sets are classified separately under subheading 9405.50.40, HTSUS, as non-electrical lamps and lighting fittings, and under subheading 3406.00.00, HTSUS, as candles. The glass candle holder and candle sets are not entitled to GSP treatment.

Sincerely,
John Durant, Director Commercial Rulings Division