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# ❖ SPC&B Update ❖

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A Newsletter for Clients of Sharretts, Paley, Carter & Blauvelt, P.C.

July 19, 2010

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## *CBP Seeks Special Tariff Provisions For Duty Free Treatment of Certain Utilitarian Festive Articles, Including Wearing Apparel*



In April 2008, the U.S. Court of Appeals for the Federal Circuit (CAFC) held that certain women's garments decorated with recognized festive symbols or motifs, were properly classifiable as festive articles in heading 9505, HTS, duty free. (*Michael Simon Design I.*) During the course of that litigation, the tariff schedule was amended to include new Chapter 95 Note 1(v), which effectively precluded classification of utilitarian articles in Chapter 95. Michael Simon Design and several other importers again brought suit, claiming that the new note violated the law because tariff changes are supposed to be revenue neutral. Last month, the CAFC held that such modifications to the tariff schedules were not reviewable by the courts. (*Michael Simon Design II.*)

Despite the Courts' refusal to review the appropriateness of the new note, U.S. Customs & Border Protection (CBP) has nonetheless requested that the U.S. International Trade Commission (ITC) consider the insertion of new language in Chapter 98, which will provide for duty free entry of utilitarian articles that would have qualified as festive articles under *Michael Simon Design I* and prior court cases involving similar issues. The new provisions would replace previous provisions that were very limited in scope to now include the following:

- 9817.95.01 Utilitarian articles (including but not limited to Seder plates, blessing cups, menorahs or kinaras) 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 (provided for in subheading 3924.10, 3926.90, 6307.90, 6911.10, 6912.00, 7013.22, 7013.28, 7013.41, 7013.49, 9405.20, 9405.40 or 9405.50)
- 9817.95.05 Utilitarian articles, each incorporating a symbol and/or motif that is closely associated with a festive occasion (for example, Christmas, Easter, Halloween, or Thanksgiving), the foregoing articles used or displayed principally during that festive occasion and not typically at any other time, under the terms of U.S. note 9 to this subchapter

Note 9 would expand the definition of the festive articles that qualify for subheading 9817.95.05 to include

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tableware, kitchenware (except baking pans, cookie cutters, cookie stamps and presses) and toilet articles of chapter 39, 69 or 70; carpets and other textile floor coverings of chapter 57; apparel and accessories of chapter 61 or 62; and made-up textile articles of chapter 63.

In order to qualify for subheading 9817.95.05, the utilitarian festive articles must contain a design which would only be worn or used in connection with a particular holiday. Thus, products reflecting a Santa Claus or Christmas tree would generally be covered, whereas more generic designs of snowmen or snow flakes would not.

If you have not done so already, you should consider reviewing prior entries of utilitarian articles containing festive motifs or symbols for possible protest. The protest should contain language requesting suspension of action pending insertion of the new Chapter 98 provisions.

Anyone requiring assistance in reviewing their product line or preparing protests, should contact Gail Cumins at [gcumins@spcblaw.com](mailto:gcumins@spcblaw.com) or Donna Shira at [dshira@spcblaw.com](mailto:dshira@spcblaw.com) , or call us at 212-425-0055.