
❖ SPC&B Update ❖

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

June 2, 2011

USITC Reverses Course and Does Not Recommend Duty-Free Provisions for Utilitarian Festive Articles



We have advised you in the past of a request issued by U.S. Customs & Border Protection (CBP) to the U.S. International Trade Commission (ITC) to consider the insertion of new language in Chapter 98 of the Harmonized Tariff Schedules of the United States (HTSUS), that would have provided for duty free entry of certain utilitarian articles precluded from classification as festive articles in Chapter 95 due to new Chapter Note 95(1)(v). See SPC&B Updates of September 20, 2010, and July 19, 2010, for a full discussion of the proposed provisions.

Despite receiving favorable comments from CBP and the Committee for the Implementation of Textile Agreements (CITA), as well as from various importers and trade organizations, the ITC has now concluded that the proposed modifications to the HTSUS are not “necessary or appropriate,” one of the statutory prerequisites for proposing such modifications, and indicated that the changes would not be substantially rate neutral, since they were based on court decisions that did not consider the impact of the new Chapter 95 note on utilitarian articles. Finally, the ITC noted, without making a determination, that the proposed modifications might cause injury to the domestic industry. In this regard, several domestic interests commented that the proposal would have a significant adverse effect on the conditions of competition for the affected U.S. industry.

Although not certain, it is anticipated that the President will follow the ITC’s recommendation and that the proposed changes will not be implemented administratively. Any further attempts to provide for duty free entry of utilitarian articles containing festive themes most likely will require legislative action. We shall continue to advise you as this issue evolves.

If you have any questions regarding the tariff treatment of products featuring festive motifs, please contact Gail Cumins at gcumins@spcblaw.com or Donna L. Shira at dshira@spcblaw.com, or call us at 212-425-0055.

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