

TOMPKINS & DAVIDSON, LLP
Counselors At Law

*One Astor Plaza
1515 Broadway - 43rd Floor
New York, NY 10036-8901*

*phone (212) 944-6611
fax (212) 944-9779
e-mail - tdlaw@tdllp.com*

June 30, 2005

TO CLIENTS AND FRIENDS:

**RE: TDLLP Court of International Trade Update:
Customs & Border Protection Plans to Limit “Festive” Classification**

Nearly two years ago, the Court of Appeals for the Federal Circuit (CAFC) handed down its decision in Park B. Smith Ltd. v. United States. At that time, the CAFC affirmed the Court of International Trade (CIT) analysis that placemats, table runners and napkins, with specific themes associated with a particular holiday are classifiable within heading 9505 as duty-free “Festive” Articles, if use at other times would be aberrant.

Thus, articles displaying symbolic content associated with a particular recognized holiday, such as Christmas trees, jack-o-lanterns or Easter bunnies, met the Midwest criteria and were determined to be “Festive” in accordance with the HTS. On the other hand, articles that were merely cheerful or colorful or associated with specific seasons of the year, **either by symbol or color**, but not associated with a particular festive holiday, and articles that might be associated with a particular holiday because of their color schemes, but having no symbolic content, did not meet the Midwest criteria for classification as festive articles. The court remanded the case back to the CIT for it to conduct a review of the 59 products in those two categories.

Shortly after the CAFC remand, the Explanatory Notes for Heading 9505 were revised to specifically exclude from the Festive provision: “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.”

In addition, the International Trade Commission has proposed¹ inclusion of a Chapter Note within Chapter 95, HTS, with similar language, which would exclude: “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).”

Apparently, with these two changes as support, and since the Government and Park B. Smith, Ltd. resolved the matter by stipulation, Customs and Border Protection (“CBP”) now proposes limiting the CAFC and CIT decisions to the merchandise / entries before the court in that particular litigation case. Statute requires that the public be provided with an opportunity to comment; the deadline is July 29, 2005.

Should CBP continue on this track, it is likely that all utilitarian articles, even if satisfying the well-established Midwest criteria, will not be considered / classified by CBP as “Festive” for tariff purposes.

Firm Contacts: Lou Shoichet (lshoichet@tdllp.com) or Barbara Wierbicki (bwierbicki@tdllp.com)

Note: The above comments are intended for general information only, and not as legal advice. Legal advice can only be offered after a review of a client’s specific facts and circumstances, which may affect the applicability of any general comments contained herein.

¹ The ITC has indicated that it plans to submit its recommendation to the President on this and other tariff changes On March 15, 2006; any revisions are scheduled to take effect as of January 1, 2007.