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**POTENTIAL DUTY-SAVINGS OPPORTUNITY FOR IMPORTERS OF HOLIDAY (OR
OTHER CELEBRATORY) THEMED MERCHANDISE -
ITC ACCEPTING COMMENTS ON PROPOSED CHANGES TO DUTY-FREE
FESTIVE ARTICLES TARIFF PROVISIONS**

By: Arthur W. Bodek (abodek@gdlsk.com)

In our letter of July 23, 2010, we advised of a request by U.S. Customs and Border Protection (“Customs”) that the U.S. International Trade Commission (“ITC”) commence an investigation which may result in a broadening of the class of merchandise that will qualify for duty-free treatment as “festive articles” (within Heading 9505¹ or elsewhere in the HTS).

By way of background, a note was inserted into the tariff, effective February 3, 2007, that excluded from duty-free festive treatment: “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.” While Customs has issued substantial duty refunds with respect to qualifying festive articles enumerated in the tariff note that were imported prior to February 3, 2007, it has treated such articles imported on or after such date as dutiable.

The ITC has recently begun its investigation of a Customs request to modify existing Chapter 98, HTS, provisions to restore duty-free treatment to certain festive articles denied such treatment by virtue of the 2007 tariff note. The ITC, which must prepare recommendations for transmittal to the President by November 29, 2010, has indicated that it intends to largely adopt the Customs proposals.²

¹ Subject to certain limitations, the courts have applied Heading 9505 to a host of articles (1) incorporating a symbol closely associated with a festive occasion (to include holidays and potentially other celebratory occasions) and (2) used or displayed principally during that festive occasion.

² If adopted, the proposal would extend duty-free treatment to the following:

- a 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 [plastic tableware and kitchenware], 3926.90 [certain other plastic articles], 6307.90 [certain made-up textile articles], 6911.10 [tableware and kitchenware of porcelain or china], 6912.00 [ceramic tableware and kitchenware, other than of porcelain or china], 7013.22 [stemware drinking glasses of lead crystal], 7013.28 [glass stemware drinking glasses, other than of glass-ceramics], 7013.41 [glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass ceramics, of lead crystal], 7013.49 [certain other such glassware], 9405.20 [electric table, desk, bedside or floor-standing lamps of base metal], 9405.40 [other electric lamps and

Significantly, the ITC has invited written submissions from interested parties for its consideration during the investigation. Such submissions must be received by the ITC by **October 22, 2010.** This state of affairs presents an opportunity for importers to help shape the final parameters of the duty-free festive article concept. Affected companies should review their product lines to identify potentially impacted merchandise. A non-exhaustive list of issues upon which importers may wish to comment include:

- The particular tariff provisions to be afforded duty-free treatment.
- Those occasions that will be considered festive (*e.g.*, all variety of holidays, lifecycle events, other celebratory occasions, etc.).
- When an article will be considered “used or displayed principally during that festive occasion and not typically at any other time.”
- Whether any changes will be applied only prospectively (or retroactively as well).

Depending upon the final form of the ITC’s recommendations (and to the extent they are adopted by the President), additional duty-free opportunities may be created for importers of “festive articles.” Affected companies should strongly consider participating in the process.

We are available to assist in the drafting of comments in connection with the ITC’s investigation. Please do not hesitate to contact our office for assistance or with any questions regarding the broader issue of duty-free opportunities with respect to “festive articles.”

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lighting fittings, but not including lighting sets of a kind used for Christmas trees], or 9405.50 [non-electrical lamps and lighting fittings]); and

- b Utilitarian articles, consisting of 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, each incorporating a symbol and/or motif that is closely associated with Christmas, Easter, Halloween, Thanksgiving or similar festive occasion, the foregoing articles used or displayed principally during that festive occasion and not typically at any other time.