

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C. 20436**

**Investigation No. 1205-9**

**Certain Festive Articles: Recommendations for Modifying the Harmonized Tariff Schedule  
of the United States**

**AGENCY:** United States International Trade Commission

**ACTION:** Notice of institution of investigation and opportunity to present written views on proposed recommendations.

**SUMMARY:** Following receipt of a letter from U.S. Customs and Border Protection (CBP), the Commission instituted investigation No. 1205-9, *Certain Festive Articles: Recommendations for Modifying the Harmonized Tariff Schedule of the United States*, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005), for the purpose of making recommendations to the President regarding the addition of a U.S. note and the amendment or replacement of certain classification provisions in subchapter XVII of chapter 98 of the Harmonized Tariff Schedule of the United States (HTS) relating to certain utilitarian articles that incorporate a festive design, decoration, emblem, or motif.

**DATES:**

**October 22, 2010:** Deadline for filing written views relating to the Commission's proposed recommendations.

**November 29, 2010:** Transmittal of the Commission's recommendations to the President.

**ADDRESSES:** All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The public record for this collection of proposals may be viewed on the Commission's electronic docket (EDIS) at <http://www.usitc.gov/secretary/edis.htm>.

**FOR FURTHER INFORMATION, CONTACT:** Fred Schottman, Nomenclature Analyst (202-205-2077, [fred.schottman@usitc.gov](mailto:fred.schottman@usitc.gov)), or Janis L. Summers, Attorney Advisor (202-205-2605, [janis.summers@usitc.gov](mailto:janis.summers@usitc.gov)), of the Office of Tariff Affairs and Trade Agreements (fax 202-205-2616). The media should contact Margaret O'Laughlin, Office of External Affairs (202-205-1819), [margaret.olaughlin@usitc.gov](mailto:margaret.olaughlin@usitc.gov)). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet website (<http://www.usitc.gov>). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

**BACKGROUND:** Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3005(a)) provides that the Commission shall keep the HTS under continuous review and periodically recommend to the President such modifications in the HTS as the Commission considers necessary or appropriate to accomplish five general objectives. Among these stated objectives, section 1205(a)(2) of the 1988 Act directs the Commission to consider changes to the HTS to promote the uniform application of the Harmonized System Convention and particularly the Protocol thereto, which contains the Harmonized System nomenclature structure and accompanying legal notes. Subsections (b) through (d) of section 1205 describe the procedures the Commission is to follow in formulating

recommendations, including with respect to soliciting and considering views of interested Federal agencies and the public. Section 1205(b)(1) requires that the Commission give notice of proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing.

In a letter dated July 1, 2010, from Myles B. Harmon, Director, Commercial and Trade Facilitation Division, CBP asked that the Commission conduct an investigation under section 1205 for the purpose of making recommendations to the President regarding the addition of a U.S. note and the amendment or replacement of certain classification provisions in chapter 98 of the HTS relating to certain utilitarian articles that incorporate a festive design, decoration, emblem, or motif. The letter included CBP's proposed language for a U.S. note and proposed changes in two U.S. tariff rate lines at the 8-digit level that take into account (a) Federal court decisions on the classification of particular utilitarian articles, and (b) the amendment of note 1 to chapter 95 of the international Harmonized System by the World Customs Organization (WCO).

CBP's letter requested that the following U.S. note 9 be inserted in subchapter XVII of chapter 98:

"9. Heading 9817.95.02 applies only to 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."

The letter further requested that existing HTS subheadings 9817.95.01 and 9817.95.05 and superior text thereto be replaced by:

"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) .....	Free	25%
9817.95.02	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.....	Free	25%."

CBP's letter provided additional background on the tariff classification of utilitarian articles that incorporate a festive design, decoration, emblem, or motif. The letter summarized relevant court decisions and decisions of CBP that are the basis of CBP's request. A copy of CBP's letter is being posted on the Commission's web site at [www.usitc.gov/tariff\\_affairs/modifications\\_hts.htm](http://www.usitc.gov/tariff_affairs/modifications_hts.htm).

The Commission believes that a modification of CBP's description for heading 9817.95.02 should be considered in order to clarify the intended scope of the heading and conform to normal HTS language. The Commission proposes that a phrase included in the request letter's description for that heading as "a festive occasion (for example, Christmas, Easter, Halloween, or Thanksgiving)" be replaced by "Christmas, Easter, Halloween, Thanksgiving or similar festive occasion".

The Harmonized System nomenclature, which is maintained by the WCO, provides a uniform structural basis for the customs tariffs and statistical nomenclatures of all major trading countries of the world, including the United States. The Harmonized System comprises the broadest principles of classification and levels of categories in the HTS, comprising the general rules of interpretation, section and chapter titles, section and chapter legal notes, and heading and subheading texts to the 6-digit level of detail. Additional U.S. notes, further subdivisions (8-digit subheadings and 10-digit statistical annotations) and statistical notes, as well as the entirety of chapters 98 and 99 and several appendixes, are national legal and statistical detail added for the administration of the U.S. tariff and statistical programs and are not part of the international HS.

An up-to-date copy of the HTS, which incorporates the international HS in its overall structure, can be found on the Commission's website (<http://www.usitc.gov/tata/hts/bychapter/index.htm>). Hard copies and electronic copies on CD can be found at many of the 1,400 Federal Depository Libraries located throughout the United States and its territories; further information about these locations can be found at <http://www.gpoaccess.gov/fdlp.html> or by contacting GPO Access at the Government Printing Office at this telephone number: 866-512-1800.

The Commission will prepare recommendations for the President in the form of a single report. In preparing these recommendations, the Commission will take into account CBP's request, as well as all other appropriate legal and technical considerations relating to HTS chapters 39, 57, 61, 62, 63, 69, 70, 94, and 95. The Commission will consider and include, where appropriate, the input submitted by other agencies and interested parties. Submissions from other agencies and the public must be filed by October 22, 2010, in order to be assured of consideration in the Commission's report and recommendations to the President.

Written submissions should be filed in accordance with the procedures below. Such submissions should take into account the classification of the merchandise concerned under the international Harmonized System as well as domestic judicial decisions and seek to further the goals set out by section 1205 of the 1988 Act and the Harmonized System Convention. No proposals for changes to existing U.S. rates of duty or to 10-digit statistical annotations or notes will be considered by the Commission during its review. However, the Commission will examine information concerning the rates of duty currently utilized by importers in liquidated and undisputed entries of specific festive articles that are the subject of this investigation. The changes in the HTS that may result from this investigation are not intended to alter current tariff rates. The changes instead are intended to ensure that existing tariff treatment continues to be applicable following the implementation of new U.S. tariff provisions, taking into account HTS changes that were proclaimed as of February 3, 2007, and related judicial decisions and CBP classification rulings.

**PROPOSED RECOMMENDATIONS:** Section 1205(b)(1) of the 1988 Act requires that the Commission give notice of proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing.

The Commission hereby gives notice that its proposed recommendations in this investigation for purposes of section 1205(b)(1) of the 1988 Act are as follows:

- (1) Adopt CBP's proposed language for U.S. note 9, to be inserted in subchapter XVII of chapter 98 of the HTS; and
- (2) Adopt CBP's proposed language for HTS subheadings 9817.95.01 and 9817.95.02 and the deletion of subheading 9817.95.05 with the exception of the one change noted above regarding

the parenthetical expression shown in HTS subheading 9817.95.02, as requested, relating to festive occasions. Thus, HTS subheading 9817.95.02 would read as follows:

9817.95.02	Utilitarian articles, 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, under the terms of U.S. note 9 to this subchapter.....	Free	25%.”
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**WRITTEN SUBMISSIONS:** Interested parties and agencies are invited to file written submissions relating to the Commission’s proposed recommendations. All written submissions should be addressed to the Secretary. Written submissions relating to CBP’s request should be received no later than October 22, 2010. Submissions should refer to “Investigation No. 1205-9” in a prominent place on the cover page and/or the first page. All written submissions must conform with the provisions of section 201.8 of the Commission’s *Rules of Practice and Procedure* (19 C.F.R. 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission’s rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, [http://www.usitc.gov/secretary/fed\\_reg\\_notices/rules/documents/handbook\\_on\\_electronic\\_filing.pdf](http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf)). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission’s Rules of Practice and Procedure* (19 C.F.R. 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the “confidential” or “non-confidential” version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. Confidential business information received in the submissions may be made available to CBP during the examination of the requested HTS modifications. The Commission will not otherwise publish or release any confidential business information received, nor release it to other government agencies or other persons.

By order of the Commission.

/s/  
Marilyn R. Abbott  
Secretary to the Commission

Issued: September 13, 2010