What Every Member of the Trade Community Should Know About:

Lamps, Lighting and Candle Holders

U.S. CUSTOMS and BORDER PROTECTION

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or "Mod" Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are "***informed compliance***" and "***shared responsibility***," which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record's failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division, ORR, is a study of the classification of lamps, lighting and candle holders. "Lamps, Lighting and Candle Holders" provides guidance regarding the classification of imported merchandise. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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INTRODUCTION

Heading 9405 of the Harmonized Tariff Schedule of the United States (HTSUS) provides for "lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently affixed light source, and parts thereof not elsewhere specified or included." This heading includes six-digit subheadings for "chandeliers and other electric ceiling or wall lighting fittings" (subheading 9405.10); "electric table, desk, bedside or floor-standing lamps" (subheading 9405.20); "lighting sets of a kind used for Christmas trees" (subheading 9405.30); "other electric lamps and lighting fittings" (subheading 9405.40); "non-electrical lamps and lighting fittings" (subheading 9405.50); "illuminated signs, illuminated nameplates and the like" (subheading 9405.60); and "parts" (subheadings 9405.91, 9405.92 and 9405.99).

Most of the six-digit subheadings of heading 9405 are subdivided into eight-digit subheadings which describe the component materials of the lamps and lighting fittings. For example, subheading 9405.50.30 covers other non-electrical lamps and lighting fittings of brass, while subheading 9405.50.40 covers other non-electrical lamps and lighting fittings of materials other than brass.

Importers and brokers commonly enter 9405 products under incorrect subheadings based on the wrong material. Under General Rule of Interpretation 3(b) (GRI 3(b)) of the HTSUS, when a product is a composite good consisting of more than one material, a determination must be made regarding the material which represents the essential character of the article. If no single component of the product represents the item's essential character, classification is based on the component described in the subheading which appears last in the HTSUS. See GRI 3(c). This publication will discuss the factors which we study when we make a determination regarding the component which imparts the essential character of lamps and lighting fittings classifiable in heading 9405.

This publication will also discuss another common error which occurs when merchandise is entered in heading 9405. Religious or memorial candle holders of glass are classifiable in subheading 7013.99.35, HTSUS. While general purpose glass candle holders are classifiable in subheading 9405.50.40, general purpose decorative articles of glass are classifiable in subheading 7013.99.50 or other 7013.99 subheadings based on the unit value of the item. General purpose decorative articles of glass are often inaccurately described as candle holders and entered incorrectly in subheading 9405.50.40, HTSUS. Prior to importation, an importer should verify whether a product is truly a candle holder or a general purpose decorative article. This publication will discuss the distinctions between votive (i.e., religious/memorial) candle holders, general purpose candle holders and general purpose decorative articles of glass.

ELECTRIC CEILING OR WALL LIGHTING: SUBHEADING 9405.10

Subheading 9405.10 provides for chandeliers and other electric ceiling or wall lighting fittings. Excluded from this provision is the kind of lighting used to light public open spaces or thoroughfares such as street lamps and special illumination lamps for public buildings.

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's), taken in order. GRI 1, HTSUS, states in part that for legal purposes classification shall be determined according to the terms of the headings and any relative section or chapter notes. A determination of the appropriate eight-digit subheading of electric light fittings, provided for under subheading 9405.10, HTSUS, requires an examination of the material which imparts the essential character to the subject fittings. See GRI 3(b), HTSUS.

In general, essential character has been construed to mean the attribute which strongly marks or serves to distinguish what an article is - that which is indispensable to the structure, core or condition of the article. In addition, factors such as bulk, quantity, weight, value, or the role of a constituent material in relation to the use of the goods are to be considered, though the importance of these factors will vary between different kinds of goods.

Classification of goods provided for under subheading 9405.10 at the eight-digit level is dependent on whether the essential character of the goods is imparted by base metal or by a component other than base metal. The classification breakout at the eight-digit level is for base metal articles of brass (9405.10.40), for base metal articles of materials other than brass (9405.10.60) and for articles other than of base metal (9405.10.80).

When electric lighting fittings (which are deemed to be of base metal) contain two or more base metals, these products will be treated as articles of the base metal predominating by weight over each of the other metals. For example, brass plated lighting fixtures of metal are almost always **not** of brass as the brass plating does not predominate by weight over the base metal it covers.

Lamps and lighting fittings, consisting of two or more materials or components, are classified as if they consisted of the material or component which gives them their essential character. Determination of essential character will be on a case-by-case basis following the principles set forth above. Headquarters ruling HQ 951126, dated May 12, 1992, concerned the classification of electrical ceiling light fixtures constructed of metal and glass. The fixtures had candelabra-base lamp sockets and were marketed as brass ceiling light fixtures. The articles were octagon-shaped and had metal frames which held 16 pieces of 5 mm thick beveled glass to refract light. The fittings had a metal backing plate/base that housed the lamp sockets.

In HQ 951126, it was held that the metal imparted the essential character of the

subject light fixtures. In this case, both the backing plate/base and the brass tape (which held the glass pieces together) consisted of metal. Headquarters found that the metal components were indispensable because they formed the structure of the fitting which allowed it to perform its basic function of providing light. Without the metal backing plate/base to hold the lamp sockets and electric circuitry in place, the electrical lighting fixtures were not able to provide light. The fixtures could function without the glass in place. When the metal and glass components were examined in relation to the electrical lighting fixture as a whole, it was found that the role of the glass did not predominate over the role of the metal. The ceiling light fixtures were classified under subheading 9405.10.60, HTSUS.

Note rulings HQ 960861, July 19, 1999; HQ 961837, July 19, 1999; HQ 962431, December 9, 1999; HQ 954915, December 22, 1993; HQ 953431, July 16, 1993; HQ 089000, July 29, 1991; HQ 086628, July 3, 1990.

ELECTRIC LAMPS: SUBHEADING 9405.20

Subheading 9405.20 provides for electric table, desk, bedside or floor-standing lamps. Classification of the lamps provided for in subheading 9405.20 follows the same principles as noted for the goods under subheading 9405.10. **A determination must be made as to the material or component which imparts the essential character of the electrical lamps.**

As in subheading 9405.10, **the lamps provided for in subheading 9405.20, at the eight-digit level, are classified based on a determination of whether the essential character of the lamps is imparted by base metal or by a component other than base metal.** The breakout for classification at the eight-digit subheading is for base metal lamps of brass (9405.20.40), for base metal lamps other than of brass (9405.20.60) and for lamps other than of base metal (9405.20.80).

In HQ 957091, dated February 2, 1995, U.S. Customs determined the classification of an electrical white halogen desk lamp comprised of a metal flexible neck and a plastic shade. The weight breakdown of the component materials indicated the lamp was 50 percent metal, 30 percent plastic and 20 percent other material. In that ruling, Customs held that the essential character of the lamp was imparted by the metal components because they were indispensable to the structure and functioning of the lamp classified under subheading 9405.20.60, HTSUS. Additionally, when examining the metal and plastic in relation to the fixture as a whole, Customs did not believe the role of the plastic components predominated over the role of the metal components.

HQ 959270, dated January 24, 1997, concerned the classification of an electric table touch control lamp approximately 15 ½ inches in height. The lamp possessed the following features:

1. the lamp portion contained six decorated curved glass panels with decals matching those situated on the center pole of the lamp;

2. a composite tapering lamp base, with the upper portion made of porcelain (2 inches in height) on top of a brass-plated finished steel base (1½ inches in height);

3. a ceramic ball (2½ inches in height) with the coordinating design located above the porcelain section of the base at the pole's midpoint;

4. touch-control sensor for a three-way switch;

5. a 5-ft. power cord with a polarized plug.

In HQ 959270, it was held that the glass and ceramic components imparted the essential character of the table lamp. Headquarters found that the glass and ceramic components were more visible than the metal components and that the overall appearance of the table lamp was imparted more by the glass and ceramic than by the small amount of visible metal trim. Based on the component breakdown, the glass and ceramic components predominated by weight, bulk, quantity and value. The curved glass-paneled shade went well beyond performing a shade's normal function of reducing glare and deflecting light. It set the style of the lamp and distinguished it from other lamps. Accordingly, the table lamp was classified under subheading 9405.20.80, HTSUS.

Note rulings HQ 964938, May 29, 2002; HQ 959270, January 24, 1997; HQ 954915, December 22, 1993; HQ 951789, August 5, 1992.

CHRISTMAS TREE LIGHTS: SUBHEADING 9405.30.00

Subheading 9405.30.00, HTSUS, provides for lighting sets of a kind used for Christmas trees. The key to the classification of electric light sets is a determination regarding the scope of subheading 9405.30.00. In ***Primal Lite, Inc.*** v. ***United States***, 182 F. 3d 1362 (Fed. Cir. 1999), *aff'g*, 15 F. Supp. 2d 915, 22 CIT 697 (1998), the United States Court of Appeals for the Federal Circuit upheld the decision by the Court of International Trade (CIT) that strands of elecrtic lights that are packaged with decorative plastic covers depicting various objects including fruit, vegetables, hearts, American flags, rearing horses and guitars, are classified under subheading 9405.40.80, HTSUS, which provides for "other electric lamps and lighting fittings." The court found that subheading 9405.30.00 was limited to lighting sets designed and used on Christmas trees, and did not cover other types of light strings and lighting sets not intended for use with Christmas trees. The CIT stated that "inasmch as the importations are not used for Christmas trees they do not fall within the plain original meaning of the statutory language." 15 F. Supp. 2d at 917.

It is U.S. Customs position, following the decision in *Primal Lite*, that electric light sets are classified in subheading 9405.30.00 only when they are designed and used on Christmas trees.

In HQ 962770, dated September 24, 1999, U.S. Customs held that an electric light set, sold and packaged as a "Halloween light set" was classified under 9405.40.80, HTSUS. The set consisted of a wire harness with 20 sockets, 20 miniature clear light bulbs and 20 removable white plastic covers molded in the shape of a draped sheet with black eyes and mouth to represent a ghost-like figure. The issue was whether the electric light set was classifiable in heading 9505 as a festive article. Note 1 (t) to Chapter 95, HTSUS, excludes electric garlands of all kinds (heading 9405). Since the Halloween light set qualified as an electric garland, it could not be classified in heading 9505 and had to be classified elsewhere.

Note rulings HQ 963264, May 4, 2001; HQ 963311, October 19, 2000; HQ 962309, September 30, 1999.

OTHER ELECTRIC LAMPS AND LIGHTING FITTINGS: SUBHEADING 9405.40

Subheading 9405.40 provides for other electric lamps and lighting fittings. Classification of the articles provided for in subheading 9405.40 follows the same principles as noted for the goods under subheadings 9405.10 and 9405.20. As previously noted, **a determination must be made as to the material or component which imparts the essential character of the lamps and lighting fittings of 9405.40.**

Classification of electric lamps and lighting fittings provided for in subheading 9405.40 at the eight digit level is dependent on whether the essential character of the merchandise is imparted by base metal or by a component other than base metal. The breakout for classification at the eight-digit subheading is for base metal articles of brass (9405.40.40), for base metal articles other than brass (9405.40.60) and for articles other than of base metal (9405.40.80).

In HQ 953431, dated July 16, 1993, U.S. Customs Headquarters held that an electrical clamp lamp comprised of metal and plastic components was classified under 9405.40.60, HTSUS. It had an 8½ inch metal reflector and a metal clamping device. The basis for the determination was that the metal components were indispensable to the structure of the clamp lamp and that the metal formed the structure of the fixture which allowed the clamp lamp to perform its basic function of providing light.

Note rulings HQ 966041, April 29, 2003; HQ 965968, December 16, 2002; 965248, July 26, 2002.

NON-ELECTRICAL LAMPS AND LIGHTING FITTINGS: SUBHEADING 9405.50

Subheading 9405.50, HTSUS, provides for non-electrical lamps and lighting fittings. The eight-digit subheadings for this merchandise include provisions which cover "incandescent lamps designed to be operated by propane or other gas, or by compressed air and kerosene or gasoline" (9405.50.20); other non-electrical lamps and lighting fittings of brass (9405.50.30); and other non-electrical lamps and lighting fittings of materials other than brass (9405.50.40).

SUBHEADING 7013.99.35 VS. SUBHEADING 9405.50.40 VS. SUBHEADING 7013.99.50

The classification of candle holders is a major issue which we must consider when studying heading 9405. While votive (i.e., religious or memorial) candle holders of glass are classifiable in subheading 7013.99.35, general purpose glass candle holders are classifiable in subheading 9405.50.40 and general purpose decorative glass articles are classifiable in subheading 7013.99.50 or other 7013 subheadings depending on unit value.

GLASS VOTIVE CANDLE HOLDERS: SUBHEADING 7013.99.35

Subheading 7013.99.35 of the HTSUS provides for glass votive candle holders. U.S. Customs Headquarters rulings have consistently held that "votive" candle holders are limited to products which are principally used to hold candles dedicated for religious or memorial purposes. According to these rulings, a product imported in a form which is principally used to hold any type of candle (i.e., a general purpose candle holder) should not be classified as a votive candle holder in subheading 7013.99.35, HTSUS.

Note rulings HQ 954372, September 22, 1994; HQ 956108, May 16, 1994; HQ 954319, June 14, 1993; HQ 088742, April 22, 1991; HQ 957982, August 3, 1995; HQ 950245, December 10, 1991; HQ 950938, January 10, 1992.

Although a particular candle holder may actually be used to hold a religious or memorial candle, the Headquarters rulings have held that the product will not be classified as a votive candle holder if its form indicates that it is a general purpose candle holder (i.e., an item imported in a form which may be used to hold any type of candle).

Many products invoiced or marketed as "votive" candle holders are not used as religious/memorial candle holders but are used as general purpose candle holders or simply general purpose decorative articles. Only glass candle holders which are shown to be of a class or kind principally used for religious or memorial purposes should be entered in subheading 7013.99.35, HTSUS.

It is important to note that principal use, not actual use, is the key to classification. Principal use is defined as the largest use in the United States of merchandise of a particular class or kind. The form of the product as imported determines its class or kind which determines its principal use. Although an individual item may be capable of use, or **may actually be used,** as a religious/memorial candle holder, if the form of the product indicates that this type of article **is not principally used** as a religious/memorial candle holder, the merchandise may not be classified in subheading 7013.99.35, HTSUS.

In fact, most imported candle holders are general purpose candle holders; relatively few are principally used as religious/memorial candle holders. When a candle holder as imported is decorated with religious pictures or motifs, this is a strong indication that the product is principally used as a religious/memorial candle holder. However, many products as imported have a general form and may be adapted for use either as religious candle holders or general purpose candle holders. When these types of general purpose candle holders are imported without religious pictures or motifs, they will not be regarded as votive candle holders even though some or all of the items imported on a particular shipment might later be decorated with religious symbols or pictures.

The key to classification is the form of the product as imported. A type of product which has been regarded as a votive candle holder classifiable in subheading 7013.99.35 is the ***Yahrtzeit*** light, the Jewish memorial candle holder. This item is used in the home to hold a candle lit in memory of a deceased relative. (Although the form of this product usually resembles the form of a drinking glass, the lip is generally a little irregular in shape - i.e., the product is not a perfect drinking glass.)

GENERAL PURPOSE GLASS CANDLE HOLDERS: SUBHEADING 9405.50.40

While glass votive candle holders (*i.e*., religious/memorial candle holders) are classifiable in subheading 7013.99.35, **general purpose glass candle holders are classified as non-electrical lamps and lighting fittings in subheading 9405.50.40, HTSUS.** As previously noted, most items referred to as “votive” candle holders are actually general purpose candle holders classifiable in subheading 9405.50.40.

An item will be regarded as a candle holder if it is principally used as a candle holder. However, many items which are simply general purpose decorative articles of glass are incorrectly claimed to be candle holders. **Although a product may be capable of use as a candle holder, if the form of the item indicates that it is principally used as a general purpose glass article, it should not be classified in subheading 9405.50.40, HTSUS.**

The principal use of the class or kind of merchandise under consideration determines classification, not the actual use of a specific item. The form of the imported article determines the class or kind of merchandise.

Note rulings HQ 954319, June 14, 1993; HQ 956810, November 28, 1994; HQ 956048, July 7, 1994.

GENERAL PURPOSE DECORATIVE GLASS ARTICLES: SUBHEADING 7013.99.50

When the form of an imported glass product indicates that it is principally used as a general purpose household article, it will be classified in subheading 7013.99, HTSUS, under the provision for glassware of a kind used for toilet, office, indoor decoration or similar purposes. **The precise eight-digit subheading is dependent on the unit value of the imported item.**

Glass decorative articles valued not over thirty cents each are classifiable in subheading 7013.99.40. When the unit value is over thirty cents but not over three dollars, subheading 7013.99.50 is applicable. When the unit value is over three dollars but not over five dollars, the applicable subheading is 7013.99.60 (for an article which is cut or engraved) or subheading 7013.99.80 (for an item which is not cut or engraved). Glass decorative articles valued over five dollars each are classifiable in subheading 7013.99.70 (for articles which are cut or engraved) or subheading 7013.99.90 (for products which are not cut or engraved).

General purpose glass articles are frequently entered incorrectly in subheading 9405.50.40. Glass products which are principally used as bowls, potpourri holders, flower vases, holders for miscellaneous items or general purpose decorative articles will not be regarded as candle holders even though they may also be used to hold candles.

Rulings HQ 954319, June 14, 1993; HQ 956810, November 28, 1994; and HQ 956048, July, 7, 1994 described glass products of a general decorative nature which could be used to hold a variety of items (e.g., flowers, glass beads, plants, food material, potpourri, miscellaneous household items, etc.). The rulings held that these types of articles did not belong to the class or kind of merchandise which includes lamps or lighting fittings.

Note also rulings HQ 962624, May 12, 1999; HQ 962414, June 21, 1999; HQ 965998, December 17, 2002; HQ 966106; December 31, 2002; NY F85426, April12, 2000; NY G80649, August 30, 2000; NY I89827, January 30, 2003; NY J80453, February 14, 2003; NY J82656, April 15, 2003.

While general purpose household articles are classified in subheading 7013.99, when the form of a product indicates that it is principally used as a table/kitchen article, subheading 7013.39 will apply. The applicable eight-digit subheading is dependent on the unit value of the item.

GLASS ARTICLES ON METAL STANDS

Frequently glass articles (including products described as candle holders) are imported with metal stands. When the glass item cannot stand on its own, the stand and glass items are regarded as a composite good. When the glass article can stand on its own and is packed together for retail sale with the stand (in its imported condition), the article and the stand will be regarded as a set.

In accordance with rulings issued by U.S. Customs, the glass vessels (not the stands) generally impart the essential character to this type of merchandise under General Rule of Interpretation 3(b) (GRI 3(b)).

Note rulings HQ 956048, July 7, 1994; HQ 956810, November 28, 1994; HQ 960620, August 26, 1997; HQ 087727, September 21, 1990; HQ 960819, July 16, 1998; HQ 960962, July 15, 1998; HQ 961095, July 20, 1998; HQ 961141, July 21, 1998; HQ 961211, July 23, 1998; HQ 962624, May 12, 1999; HQ 964680, November 21, 2001; NY G80140, August 15, 2000; NY H81611, May 15, 2001.

The function of the type of product in question (a glass vessel on a metal stand) is holding items. This function is performed by the glass portion of the merchandise. The metal stand is merely ancillary; it simply serves to support the glass. Glass articles with metal stands are often entered incorrectly under provisions applicable to the metal (e.g., heading 7323). The rulings cited above have emphasized the fact that the function of holding or displaying items is inherent in the glass portion of the merchandise, not the metal. Based on this function, we have generally held that the essential character of this type of merchandise is represented by the glass vessel, not the metal stand.

Under the principles previously discussed, a glass candle holder with a metal stand will be classified in subheading 9405.50.40 if the form of the glass vessel indicates that it is principally used as a general purpose candle holder. If its form indicates that it is principally used as a religious/memorial candle holder, subheading 7013.99.35 applies.

When the form of the glass vessel indicates that it is principally used as a general purpose decorative article (e.g., for holding potpourri, flowers or miscellaneous items), a glass holder with metal stand will be classified in subheading 7013.99.50 or another 7013 subheading depending on unit value. When we regard the glass article and metal stand as a set (i.e., when the article can stand on its own and is packed together with the stand for retail sale), the unit value which determines the applicable 7013 subheading is the unit value of the glass item alone, not the value of the entire set. However, when we regard the glass vessel and metal stand as a composite good (i.e., when the glass cannot stand on its own), the unit value which determines the applicable 7013 subheading will be the value of the entire composite good.

Glass articles with metal stands should generally be classified under the provisions applicable to the glass articles, not under the provisions which apply to the metal. This type of merchandise is often entered incorrectly under the metal provisions.

Note ***Pomeroy Collection, Ltd.*** v. ***United States***, 336 F. 3d 1370 (Fed. Cir. 2003), aff'g Pomeroy Collection, Inc. v. United States, 246 F. Supp. 2d 1286 (Ct. Int'l Trade 2002).

CANDLES AND CANDLE HOLDERS

Thus far, this publication has discussed the classification of empty candle holders. When a candle and its holder are imported together packed for retail sale as a set, a determination must be made as to whether the merchandise should be classified based on the provision applicable to the candle (subheading 3406.00.00) or the provision applicable to the item which is holding the candle. HQ 956347, August 30, 1994, held that the essential character of this set in accordance with GRI 3(b) is represented by the holder, not the candle. Therefore, the set is classifiable under the provision applicable to the holder, not in subheading 3406.00.00 (the provision applicable to the candle).

As explained above, a glass holder is classifiable in subheading 9405.50.40 if its form indicates that it is principally used as a general purpose candle holder. If it is a glass item principally used as a religious/memorial candle holder, subheading 7013.99.35 applies. If it is simply a general purpose decorative article made of glass, subheading 7013.99.50 or another 7013.99 provision would apply depending on its unit value. If it is a general purpose decorative article made of a material other than glass, it is classifiable based on the appropriate provision for that material (e.g., articles of ceramic are classifiable in Chapter 69).

When a candle is poured into its holder and imported as a composite good, the essential character of the merchandise is generally represented by the candle (subheading 3406.00.00) if the holder is a relatively inexpensive item. Note HQ 956577, April 17, 1995. However, if the holder is an expensive item, the holder could represent the essential character of the composite good. Classification will be based on the component of the composite good (candle or holder) which is held to impart the essential character to the merchandise.

When the merchandise is not imported as a set (i.e., the holder and the candle are not packed together for retail sale) and the candle is not poured into the holder, the two products (candle and holder) will be classified separately. The candle will be classified in subheading 3406.00.00 and the holder will be classified in its appropriate provision depending upon our determination of its principal use.

It is important to note that most candles from China are subject to anti-dumping duty. Whether a candle and candle holder are classified under the

provision applicable to the candle or the provision applicable to the candle holder, the importer must pay anti-dumping duty on most Chinese candles.

COUNTRY OF ORIGIN MARKING

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. Part 134 of the Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The "country of origin" for marking purposes is defined by section 134.1(b), Customs Regulations (19 CFR 134.1(b)), to mean the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin."

Neither the marking statute nor the regulations make any provision for the marking of sets. In the absence of any special requirements, the general country of origin marking requirements apply, i.e., every article that is imported into the U.S. must be marked to indicate its country of origin as determined by where the article underwent its last substantial transformation. Note T.D. 91-7, January 8, 1991.

According to T.D. 91-7, "if the materials or components are not substantially transformed as a result of their inclusion in a set or mixed or composite good, then subject to the usual exceptions, each item must be individually marked to indicate its country of origin."

HQ 734503, dated July 20, 1992, involved the marking requirements for a cut crystal piece used in making an electric lamp. U.S. Customs found that the crystal piece did not lose its identity by virtue of its assembly into a lamp and that, accordingly, the country of origin of the crystal had to be identified in the marking legend on the assembled lamp.

In HQ 734859, dated March 22, 1993, it was held that the assembly in the U.S. of imported lamp parts, such as bases, pipes, sockets, felt, glass middles, brass castings and caps, constituted a substantial transformation. Therefore, pursuant to 19 CFR 134.35, the lamp parts were excepted from country of origin marking and only the outermost container in which they were imported was required to be marked.

In HQ 734882, dated August 9, 1993, U.S. Customs determined that imported art glass lamp shades, that after importation were screwed onto electrically-wired zinc bases of U.S. origin, did not undergo substantial transformation in the U. S. and had to be marked to indicate their country of manufacture.

We should note that when NAFTA countries (the United States, Canada and Mexico) are involved there is a different set of rules regarding country of origin determination. The Annex 311 rules for determining the country of origin of NAFTA goods are set forth in 19 CFR Part 102. See T.D. 96-46, published in 61 Fed. Reg. 28932.

THE IMPORTER'S RESPONSIBILITIES

Since the enactment of the Customs Modernization Act in December, 1993, the legal burden of correctly classifying and valuing merchandise has shifted from U.S. Customs to the importer, who must use reasonable care in carrying out these responsibilities. Prior to importation the importer of record is responsible for determining the material which comprises a particular lamp or lighting fitting and the principal use of the product in the U. S. The importer is also responsible for insuring that the entered value is determined in accordance with U.S. Customs valuation law.

When a lamp or lighting fitting consists of more than one component, the importer should be aware of the principles which govern decisions regarding a product's essential character and should obtain specific information from the foreign supplier regarding each component. This information should include each component's weight, value, volume, area and function within the complete product. In order to enable U.S. Customs to verify the importer's determination of the product's essential character, it would be helpful if the importer presents the information regarding each component as well as a sample or photograph of the item.

The importer should also be aware of the distinctions between votive glass candle holders classifiable in subheading 7013.99.35, general purpose candle holders classifiable in subheading 9405.50.40 and general purpose decorative glass articles classifiable under various 7013.99 provisions (e.g., 7013.99.50) depending on the unit value of the item. It may be helpful for the importer to obtain marketing and advertising material indicating how this merchandise will be marketed and used. However, one should understand that this information will assist us in our analysis but may not be determinative since classification is based on principal use. The form of the product will be more significant than its actual use in any decision regarding the appropriate HTSUS provision for the merchandise.

The importer must be aware of the principles which govern the classification of candles and candle holders that are imported together. When an imported product consists of a candle poured into the holder or a candle and holder packed together for retail sale, a determination must be made regarding the essential character of the merchandise. In any case, anti-dumping duty must be paid on most candles from China.

A binding ruling regarding the classification of a product may be requested prior to importation. See Part 177 of the Customs Regulations (19 CFR 177). A ruling

request should include a sample of the item as well as information on its use and precise composition. Each material which comprises the product should be identified. For mixtures, sets, or composite goods, a breakdown indicating the bulk, quantity, weight, value and role of each component should be submitted with the ruling request.

WHAT RECORDS MUST BE KEPT

The Tariff Act requires any owner, importer, consignee, importer of record, entry filer or other party who imports merchandise into the U.S. to make, keep and render for examination or inspection, records which pertain to the importation of the merchandise and are normally kept in the ordinary course of business, for a period of time not to exceed five years from the date of entry. The term "records" includes electronic data. These records would include purchase orders, payment information, shipping records, ledgers, research and development records, *etc*. In addition, certain records required for entry of merchandise must be produced upon demand by U.S. Customs. Failure to produce required entry records could lead to delays in release of your merchandise and/or to the imposition of penalties.

INVOICING REQUIREMENTS

In accordance with section 141.86 of the Customs Regulations (19 CFR 141.86), invoices should describe the precise nature and use of the merchandise. Each component material of the article should be identified. If possible the invoice should provide a complete breakdown by weight and a complete breakdown by value. These breakdowns would give us information indicating the percentage of the article (by weight and by value) which is represented by each component.

The style name and brand name of the article is important and it would be helpful if this information appears on the invoice along with the marks, numbers and symbols which represent this merchandise. In addition, an invoice should provide information on the unit value, the total value of the shipment, quantity and terms of sale. When a product is a set, the invoice should not simply indicate the value of the entire set but should identify each article within the set and provide the unit value for each of these items. Please see *"What Every Member of the Trade Community Should Know About: Customs Value"* for information on determining value for U.S. Customs purposes. This publication is available on the U.S. Customs and Border Protection Internet Web site, which is described below.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is http://www.cbp.gov

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions ("Customs Bulletin")* is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:…"* series. Check the Internet web site http://www.cbp.gov for current and related publications such as "New Decisions on Candle Holders v. Decorative Glass Articles."

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

"Your Comments are Important"

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA

Visit our Internet web site: http://www.cbp.gov