

Bureau of Customs and Border Protection

CBP Decisions

ADM-9-03:OT:RR:RD:BS

H007121 STB

19 CFR Part 123

CBP Dec. 07-25

Advance Electronic Presentation of Cargo Information for Truck Carriers Required to be Transmitted Through ACE Truck Manifest at Ports in the States of Idaho and Montana

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final Rule.

SUMMARY: Pursuant to section 343(a) of the Trade Act of 2002 and implementing regulations, truck carriers and other eligible parties are required to transmit advance electronic truck cargo information to U.S. Customs and Border Protection (CBP) through a CBP-approved electronic data interchange. In a previous document, CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved interchange and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry. This document announces that at all land border ports in Idaho and Montana truck carriers will be required to file electronic manifests through the ACE Truck Manifest System.

DATES: Trucks entering the United States through land border ports of entry in the states of Idaho and Montana will be required to transmit the advance information through the ACE Truck Manifest system effective August 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. James Swanson, via e-mail at james.d.swanson@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that CBP promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule to effectuate the provisions of the Act. In particular, a new section 123.92 (19 CFR 123.92) was added to the regulations to implement the inbound truck cargo provisions. Section 123.92 describes the general requirement that, in the case of any inbound truck required to report its arrival under section 123.1(b), if the truck will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than 1 hour prior to the carrier's reaching the first port of arrival in the United States. For truck carriers arriving with shipments qualified for clearance under the FAST (Free and Secure Trade) program, section 123.92 provides that CBP must electronically receive such cargo information through the CBP-approved EDI system no later than 30 minutes prior to the carrier's reaching the first port of arrival in the United States.

ACE Truck Manifest Test

On September 13, 2004, CBP published a notice in the **Federal Register** (69 FR 55167) announcing a test allowing participating Truck Carrier Accounts to transmit electronic manifest data for inbound cargo through ACE, with any such transmissions automatically complying with advance cargo information requirements as provided in section 343(a) of the Trade Act of 2002. Truck Carrier Accounts participating in the test were given the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange messaging.

A series of notices announced additional deployments of the test, with deployment sites being phased in as clusters. Clusters were announced in the following notices published in the **Federal Register**: 70 FR 30964 (May 31, 2005); 70 FR 43892 (July 29, 2005); 70 FR 60096 (October 14, 2005); 71 FR 3875 (January 24, 2006); 71 FR

23941 (April 25, 2006); 71 FR 42103 (July 25, 2006), 71 FR 77404 (December 26, 2006); 72 FR 7058 (February 14, 2007); and 72 FR 14127 (March 26, 2007).

CBP continues to test ACE at various ports. CBP will continue, as necessary, to announce in subsequent notices in the **Federal Register** the deployment of the ACE truck manifest system test at additional ports.

Designation of ACE Truck Manifest System as the Approved Data Interchange System

In a notice published October 27, 2006 (71 FR 62922), CBP designated the Automated Commercial Environment (ACE) Truck Manifest System as the approved EDI for the transmission of required data and announced that the requirement that advance electronic cargo information be transmitted through ACE would be phased in by groups of ports of entry.

ACE will be phased in as the required transmission system at some ports even while it is still being tested at other ports. However, the use of ACE to transmit advance electronic truck cargo information will not be required in any port in which CBP has not first conducted the test.

The October 27, 2006, document identified all land border ports in the states of Washington and Arizona and the ports of Pembina, Neche, Walhalla, Maida, Hannah, Sarles, and Hansboro in North Dakota as the first group of ports where use of the ACE Truck Manifest System is mandated. Subsequently, CBP announced on January 19, 2007 (72 FR 2435) that, after 90 days notice, the use of the ACE Truck Manifest System will be mandatory at all land border ports in the states of California, Texas and New Mexico. On February 23, 2007 (72 FR 8109), CBP announced that, after 90 days notice, the ACE Truck Manifest System will be mandatory at all land border ports in Michigan and New York. On April 13, 2007 (72 FR 18574), CBP announced that after 90 days notice at all land border ports in Vermont and New Hampshire, and at the land border ports in North Dakota in which ACE had not been required, the ACE Truck Manifest System will be mandatory.

ACE Mandated at Land Border Ports of Entry in Idaho and Montana

Applicable regulations (19 CFR 123.92(e)) require CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the EDI system is in place and fully operational. Accordingly, CBP is announcing in this document that, effective 90 days from the date of publication of this notice, truck carriers entering the United States through land border ports of entry in the states of

Idaho and Montana will be required to present advance electronic cargo information regarding truck cargo through the ACE Truck Manifest System.

Although other systems that have been deemed acceptable by CBP for transmitting advance truck manifest data will continue to operate and may still be used in the normal course of business for purposes other than transmitting advance truck manifest data, use of systems other than ACE will no longer satisfy advance electronic cargo information requirements at the ports of entry announced in this document as of August 6, 2007.

Compliance Sequence

CBP will be publishing subsequent notices in the **Federal Register** as it phases in the requirement that truck carriers utilize the ACE system to present advance electronic truck cargo information at other ports. ACE will be phased in as the mandatory EDI system at the ports identified below in the sequential order in which they are listed. Although further changes to this order are not currently anticipated, CBP will state in future notices if changes do occur. In any event, as mandatory ACE is phased in at these remaining ports, CBP will always provide 90 days' notice through publication in the **Federal Register** prior to requiring the use of ACE for the transmission of advance electronic truck cargo information at a particular group of ports.

The remaining ports at which the mandatory use of ACE will be phased in, listed in sequential order, are as follows:

1. All land border ports in the state of Maine.
2. All land border ports in the states of Alaska and Minnesota.

Dated: May 2, 2007

DEBORAH J. SPERO,
*Acting Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, May 8, 2007 (72 FR 25965)]

General Notices

9111-14

Notice of Revocation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Rosa E. Garcia	20053	Laredo

DATED: April 27, 2007

DANIEL BALDWIN,
*Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, May 8, 2007 (72 FR 26200)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 9, 2007

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings Office of Trade.*

PROPOSED MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN CHRISTMAS GARLANDS

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of proposed modification of two tariff classification ruling letters and revocation of treatment relating to the classification of certain Christmas garlands.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to modify two ruling letters relating to the tariff classification of a certain "Christmas Banner Garland" and a certain "Christmas Basket Garland" under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before June 22, 2007.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Herminio M. Castro, Tariff Classification and Marking Branch: (202) 572-8749

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other in-

formation necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify two ruling letters pertaining to the tariff classification of a certain "Christmas Banner Garland" and a certain "Christmas Basket Garland," the latter resembling a sprig. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter ("NY") K88100, dated August 5, 2004, (Attachment A), and NY K88101, also dated August 5, 2004, (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K88100, CBP determined that the subject "Christmas Banner Garland," was classifiable under subheading 6702.90.6500, HTSUS. Similarly, in NY K88101, CBP determined that the subject "Christmas Basket Garland," which resembles a sprig, was classifiable under subheading 6702.90.6500, HTSUS. Based upon our analysis of festive articles of heading 9505, HTSUS, we have determined that although NY K88100 and NY K88101 correctly classified the subject merchandise under subheading 6702.90.6500, HTSUS, their reasoning needs to be modified.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY K88100, NY K88101 and any other ruling not specifically identified, to reflect the proper classification of the "Christmas Banner Garland" and the "Christmas Basket Garland" according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") W967854, set forth as Attachment C to this document, and HQ W967855, set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously

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accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: May 2, 2007

GAIL A. HAMILL for MYLES B. HARMON,
Director;
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY K88100
August 5, 2004 CLA-2-67:RR:NC:SP:225 K88100
CATEGORY: Classification
TARIFF NO. 6702.90.6500

MS. PAMELA JOHNSON
STARBUCKS COFFEE COMPANY
TAX & CUSTOMS DEPARTMENT
2401 Utah Ave. South
Seattle, WA 98134

RE: The tariff classification of paper poinsettia garland from Hong Kong.

DEAR MS. JOHNSON:

In your letter dated July 21, 2004, you requested a classification ruling. The submitted photocopy of artificial poinsettia flowers is identified as item number SKU 186983, Christmas Banner Garland. The banner garland is composed of poinsettia leaves that are made of white paper. The paper leaves are attached to wire stems that have been wrapped with white paper. The poinsettia beads are made of styrofoam and coated with red colored lacquer. The leaves and beads are bound together with white paper to form the artificial flower. The flowers are attached together to form a garland that measures 27" x 3" x 11-1/2". The paper garland will be used to decorate in a commercial retail environment. This product will not be an item for resale. The paper leaves impart the essential character of the garland.

Your letter of inquiry states it is your belief that the poinsettia banner garland should be classified under heading 9505. The artificial poinsettia garland is a completed article for decorative purposes like wreaths and swags. However, classification under Heading 9505 as a festive article for the Christmas season is not applicable because the goods are not used to decorate the home. The artificial poinsettia garland will be classified under Heading 6702.

The applicable subheading for the artificial poinsettia garland will be 6702.90.6500, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of artificial flowers, foliage and fruit and parts

BUREAU OF CUSTOMS AND BORDER PROTECTION

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thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Other. The rate of duty will be 17 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY K88101
August 5, 2004 CLA-2-67:RR:NC:SP:225 K88101
CATEGORY: Classification
TARIFF NO. 6702.90.6500

MS. PAMELA JOHNSON
STARBUCKS COFFEE COMPANY
TAX & CUSTOMS DEPARTMENT
2401 Utah Ave. South
Seattle, WA 98134

RE: The tariff classification of paper poinsettia sprigs from Hong Kong.

DEAR MS. JOHNSON:

In your letter dated July 21, 2004, you requested a classification ruling. The submitted sample of a poinsettia leaf sprig is identified as item number SKU 186985, Christmas Basket Garland. The poinsettia sprig leaves are made of white paper. The paper leaves are attached to wire stems that have been wrapped with white paper. The poinsettia sprig beads are made of styrofoam and coated with red colored lacquer. The wire stems are wrapped together with white paper to form an artificial flower. They are attached together to form a sprig that measures 10.25" x 6" x 2". The artificial poinsettia sprig is adorned with a red ribbon. The sprig can be hooked onto a basket. The paper leaves impart the essential character of the poinsettia sprig.

Your letter of inquiry states that the basket "garland" will be used in retail stores as Christmas decorations and will not be an item for resale. You also stated it is your belief that this product should be classified under Heading 9505. The artificial poinsettia sprig is not a completed article for decorative purposes like wreaths and swags. Further, the sprig is not used to decorate the home. Therefore, classification under Heading 9505 as a festive article for the Christmas season is not applicable. The artificial poinsettia sprig will be classified under Heading 6702.

Your sample is returned as you requested.

The applicable subheading for the artificial poinsettia sprig will be 6702.90.6500, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of artificial flowers, foliage and fruit and parts

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thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Other. The rate of duty will be 17 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ W967854
CLA-2 OT:RR:CTF:TCM W967854 HMC
CATEGORY: Classification
TARIFF NO.: 6702.90.6500

MS. PAMELA JOHNSON
STARBUCKS COFFEE COMPANY
TAX & CUSTOMS DEPARTMENT
2401 Utah Ave. South
Seattle, WA 98134

RE: Christmas Banner Garland; Reconsideration of New York Ruling K88100; Modified

DEAR MS. JOHNSON:

This is in response to your letter, dated July 21, 2005, on behalf of Starbucks Coffee Company, concerning your request for reconsideration of New York Ruling ("NY") K88100, dated August 5, 2004, issued by Customs and Border Protection ("CBP"), which classified a garland, identified as the "Christmas Banner Garland," under subheading 6702.90.6500 of the Harmonized Tariff Schedule of the United States ("HTSUS"). For the reasons set forth below, we hereby modify NY K88100.

FACTS:

On July 21, 2004, Starbucks Coffee Company ("Starbucks") requested CBP provide a classification ruling for the "Christmas Banner Garland" ("garland"), SKU 186983. The garland is described as composed of artificial "poinsettia" leaves made of white paper. The paper leaves are attached to wire stems that have been wrapped with white paper. The poinsettia beads are made of Styrofoam and coated with red colored lacquer. The leaves and beads are bound together with white paper to form the "poinsettia flower." The flowers are attached together to form the garland that measures 27" x 3" x 11 1/2".

In NY K88100, dated August 5, 2004, in response to Starbucks' original ruling request of July 21, 2004, CBP provided the classification of the garland. NY K88100 held that the applicable heading for the articles under con-

sideration was heading 6702, HTSUS, which provides for "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit."

Starbucks contends that the garland is classifiable under subheading 9505.10.50, HTSUS. A telephone conference was conducted with Starbucks' representatives and members of my staff on October 27, 2006, to discuss this matter.

ISSUE:

Whether the Starbucks' "Christmas Banner Garland" made of artificial paper leaves should be classified in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:				
			*	*	*
6702.90	Of other materials:				
			*	*	*
	Other				
			*	*	*
6702.90.65	Other.				
		*		*	*
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:				
			*	*	*
9505.10	Articles for Christmas festivities and parts and accessories thereof:				
			*	*	*
	Other				
			*	*	*

9505.10.50 Other.

* * * *

In NY K88100, CBP determined that the garland was not a festive article and classified it as "other artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials" of subheading 6702.90.6500, HTSUS. NY K88100 found that classification under heading 9505, as a festive article was not applicable to the subject merchandise because it was not used to decorate the home. Starbucks believes that NY K88100, dated August 5, 2004, is not correct. Instead, Starbucks contends that the garland should be classified as other articles of Christmas festivities and parts and accessories thereof of subheading 9505.10.5020, HTSUS. Starbucks is of the view that the garland satisfies the criteria used to classify merchandise as festive articles. The chapter notes to Chapter 95, HTSUS, do not exclude artificial flowers and foliage. Similarly, the chapter notes to Chapter 67, HTSUS, do not exclude festive articles.¹

We are thus left with the question as to whether the garland in question is classifiable in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit. If the article in question is prima facie classifiable in headings 9505 and 6702, we believe that GRI 3 must be consulted. We must therefore first determine whether the subject garland qualifies as a festive article of heading 9505, HTSUS.

In *Midwest of Cannon Falls, Inc. v. United States*, 20 C.I.T. 123 (Ct. Int'l Trade, 1996), *aff'd in part*, *rev'd in part*, 122 F.3d 1423 (Fed. Cir. 1997) (hereinafter *Midwest*), the Court addressed the scope of heading 9505, HTSUS, specifically the class or kind of merchandise termed "festive articles," and provided guidelines for classification of such goods in the heading.

Previously, CBP has noted that several items composed of artificial foliage satisfy the *Midwest* guidelines and are recognized as festive articles for the Christmas holiday. These items include evergreen branches, poinsettia, pine cone, pine needle leaves, holly leaves, laurel leaves, holly berries or mistletoe, which are incorporated into a wreath, centerpiece, candle ring, garland, swag or sprig. See HQ 967237, dated September 9, 2004; See also, NY I89773, dated January 27, 2003.

When examining the garland, as a whole, it must be evident that the merchandise is associated or used with the particular festival of Christmas. Furthermore, in HQ 950999, dated April 16, 1992, garlands with artificial foliage were classified in 9505.10.40, HTSUS, as festive articles for Christmas festivities. The following is the language from HQ 950999 wherein CBP ex-

¹Note 1(e) to Chapter 67, HTSUS, does not specifically exclude festive articles from Chapter 67, HTSUS. It states that "1. [t]his chapter does not cover: (e) [t]oys, sports equipment, or carnival articles (chapter 95); . . ." Also, Note 3 to Chapter 67, HTSUS, states that "Heading 6702 does not cover: (b) Artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by molding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, gluing, fitting into one another or similar methods." Inasmuch as the subject merchandise is artificial flowers or foliage consisting of parts assembled by binding, gluing, fitting into one another or similar methods, it is not excluded from heading 6702, HTSUS.

plained which types of garlands, wreaths, etc. would be classifiable in 9505.10, HTSUS, as festive articles for Christmas festivities.

Those artificial foliage items which qualify as Christmas articles of sub-heading 9505.10 include wreaths, garlands, candle rings, centerpieces — complete articles — made up of foliage commonly and traditionally associated with Christmas [i.e., artificial poinsettias, pine cones, pine needle leaves, evergreen branches, holly berries, holly leaves, laurel leaves, or mistletoe (singly or combination thereof)]. (This largely restates Customs position under the TSUS). These articles can be further decorated with plastic sleighs, miniature Santas, glass balls, ribbon, etc. Stylized/modern versions of Christmas wreaths, garlands, etc. (i.e., those articles decorated with neon poinsettias, mauve glass balls, etc.) also qualify as festive.

We must determine nevertheless whether the Starbucks decorative article under consideration can be classified as a festive article in heading 9505, HTSUS, in light of the *Midwest* decisions. In making this determination, we must analyze whether the decoration under consideration fits the criteria for festive articles that are classified in heading 9505, HTSUS. The Court of International Trade in *Midwest* was aided by the criteria established in the case *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter “*Carborundum*”). Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the item moves, the environment of the sale (accompanying accessories and the manner in which the item is advertised and displayed), the use in the same manner as merchandise which defines the class, the economic practicality of so using the import, and recognition within the trade of this use. In considering the *Midwest* standards, we believe that the garland is not classifiable in heading 9505, HTSUS.

It is our view that the garland under consideration in this instance is not immediately recognizable as a Christmas decoration. Although Starbucks has presented evidence to show that it was intended for use as a decoration in its stores during Christmas time, we believe that based on its appearance, the garland does not seem to be exclusively associated with Christmas celebrations. In other words, in our judgment, there seems to be no reason why it could not be used as a decoration at another time of the year. The garland that is under consideration in this instance is not the customary garland that is typically exhibited as Christmas decorations. It is not made of tinsel nor does it have the usual customary Christmas colors of red and green. Although it is made of white paper and is supposed to resemble poinsettia leaves and flowers, we do not believe that most people would be able to discern that the white paper leaves are supposed to be artificial poinsettia leaves and flowers that are connected with the Christmas celebration. While the garland is certainly used by Starbucks as a decoration during the Christmas holiday, if it was set apart from other Christmas decorations, we do not think that it would immediately stand out as an item that would only be seen at Christmas time. Rather, in our judgment, the garland could be easily used to decorate an area during other celebratory occasions besides the Christmas holidays. Thus, we believe that it would not be aberrant to display the garland as a decoration at times during the year other than Christmas.

Starbucks claims that the garland was used in its stores as a decoration only during the Christmas holiday season and that it had no other use. Starbucks further claims that the chapter notes and ENs to heading 9505, HTSUS, do not exclude articles from the heading if they are not primarily for use in the home. To support this point, Starbucks submitted a copy of instructions that were issued to its stores from a Holiday 2004 Workbook concerning the display of the holiday decorations. These instructions indicate that all stores will receive the Starbucks holiday trim to create a festive atmosphere with a unified theme. The holiday trim will be used from holiday setup through December 25, and on December 26, it will be removed. The instructions further explained that the holiday decorations will be removed and SKU'd for sale, but that the holiday trim is not to be sold prior to December 26.

Although we recognize that, on a case-by-case basis, an article displayed outside the house may be found to be a festive article, such consideration is unnecessary in this case. We disagree with Starbucks's contention that the subject garland was intended as a decoration only during the Christmas holiday season and that it had no other use. As stated above, in this instance, the fact that the subject merchandise is used during the Christmas holidays did not make it a festive article of heading 9505, HTSUS. We note that the garland was offered for sale to consumers after the Christmas holiday. Thus, it is not unreasonable to conclude that consumers other than Starbucks could buy the garland and subject it to a different use. The garland, we therefore believe, is not closely associated with the Christmas holiday as it may be equally used and displayed on occasions other than the Christmas holidays. Accordingly, we find that the garland in this case is not classified as a festive article in heading 9505, HTSUS, but instead in heading 6702, HTSUS, which provides for: "Artificial flowers, foliage and fruit and parts thereof: articles made of artificial flowers, foliage or fruit."² The ENs to heading 6702, HTSUS, which provides for artificial foliage, support the classification of the subject garland as an article made of artificial flowers, foliage or fruit.³

²See HQ W968134, dated March 13, 2007, for a similar finding on other articles imported into the U.S., which were the subject of a protest by Starbucks.

³The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). The EN to heading 6702, HTSUS, which states, in pertinent part:

This heading covers:

- (1) Artificial flowers, foliage and fruit in forms resembling the natural products, made by assembling various parts (by binding, glueing, assembling by fitting into one another or similar methods). This category also includes conventional representations of flowers, foliage or fruit made up in the manner of artificial flowers, etc.
- (2) Parts of artificial flowers, foliage or fruit (e.g., pistils, stamens, petals, calyxes, leaves and stems).
- (3) Articles made of artificial flowers, foliage or fruit (e.g., bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling artificial flowers, foliage or fruit.

HOLDING:

By application of GRI 1, the "Christmas Banner Garland" is classified in heading 6702, HTSUS. It is specifically provided for in subheading 6702.90.6500, HTSUS, which provides for: "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: other." The column one duty rate is 17 percent. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K88100, dated August 5, 2004, is modified with respect to its legal analysis. The classification of the item described therein is unchanged.

MYLES B. HARMON,

Director;

Commercial and Trade Facilitation Division.

[ATTACHMENT D]

HQ W967855

CLA-2 OT:RR:CTF:TCM W967855 HMC

CATEGORY: Classification

TARIFF NO.: 6702.90.6500

MS. PAMELA JOHNSON
STARBUCKS COFFEE COMPANY
TAX & CUSTOMS DEPARTMENT
2401 Utah Ave. South
Seattle, WA 98134

RE: Christmas Basket Garland; Sprig; Reconsideration of New York Ruling K88101; Modified

DEAR MS. JOHNSON:

This is in response to your letter, dated July 21, 2005, on behalf of Starbucks Coffee Company, concerning your request for reconsideration of New York Ruling ("NY") K88101, dated August 5, 2004, issued by Customs and Border Protection ("CBP"), which classified a sprig, identified as the "Christmas Basket Garland" under subheading 6702.90.6500 of the Harmonized Tariff Schedule of the United States ("HTSUS"). For the reasons set forth below, we hereby modify NY K88101.

FACTS:

On July 21, 2004, Starbucks Coffee Company ("Starbucks") requested CBP provide a classification ruling for a sprig identified as the "Christmas Basket Garland," SKU 186985, ("sprig"). The sprig is composed of "poinsettia" leaves made of white paper. The paper leaves are attached to wire stems that have been wrapped with white paper. The poinsettia sprig beads are made of Styrofoam and coated with red colored lacquer. The wire stems are bound together with white paper to form an artificial flower. They are attached together to form a sprig that measures 10.25" x 6" x 2." The artificial poinsettia sprig is adorned with a red ribbon. The sprig can be hooked onto a basket. There is no dispute that the paper leaves impart the essential character to the poinsettia sprig.

In NY K88101, dated August 5, 2004, in response to Starbucks' original ruling request of July 21, 2004, CBP provided the classification of the sprig. NY K88101 held that the applicable heading for the articles under consideration was heading 6702, HTSUS, which provide for "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit."

Starbucks contends that the sprig is classifiable under subheading 9505.10.50, HTSUS. A telephone conference was conducted with Starbucks' representatives and members of my staff on October 27, 2006, to discuss this matter. We note that CBP recently issued protest decision HQ W968134, dated March 13, 2007, in which it classified identical merchandise under subheading 6702.90.65, HTSUS, as "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials: other: other."

ISSUE:

Whether the Starbucks' sprig, made of artificial paper leaves should be classified in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:	* * *
6702.90	Of other materials:	* * *
	Other	* * *
6702.90.65	Other.	* * *
		* * * * *
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:	* * *
9505.10	Articles for Christmas festivities and parts and accessories thereof:	* * *

Other

* * *

9505.10.50

Other.

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In NY K88101, CBP determined that the sprig was not a festive article and classified it as “other artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: of other materials” of subheading 6702.90.6500, HTSUS. NY K88101 found that classification under heading 9505, as a festive article was not applicable to the subject merchandise because it was not a complete article for decorative purposes like wreaths and swags and because it was not used to decorate the home. Starbucks believes that NY K88101, dated August 5, 2004, is not correct. Instead, Starbucks contends that the sprig should be classified as other articles of Christmas festivities and parts and accessories thereof of subheading 9505.10.5020, HTSUS. Starbucks is of the view that the sprig is a complete article and satisfies the criteria used to classify merchandise as festive articles. The chapter notes to Chapter 95, HTSUS, do not exclude artificial flowers and foliage. Similarly, the chapter notes to Chapter 67, HTSUS, do not exclude festive articles.¹

We are thus left with the question as to whether the sprig in question is classifiable in heading 9505, HTSUS, as a festive article or in heading 6702, HTSUS, as an article made of artificial flowers, foliage or fruit. If the article in question is prima facie classifiable in headings 9505 and 6702, we believe that GRI 3 must be consulted. We must therefore first determine whether the subject sprig qualifies as a festive article of heading 9505, HTSUS.

In *Midwest of Cannon Falls, Inc. v. United States*, 20 C.I.T. 123 (Ct. Int’l Trade, 1996), *aff’d in part, rev’d in part*, 122 F.3d 1423 (Fed. Cir. 1997) (hereinafter *Midwest*), the Court addressed the scope of heading 9505, HTSUS, specifically the class or kind of merchandise termed “festive articles,” and provided guidelines for classification of such goods in the heading.

Previously, CBP has noted that several items composed of artificial foliage satisfy the *Midwest* guidelines and are recognized as fes-

¹Note 1(e) to Chapter 67, HTSUS, does not specifically exclude festive articles from Chapter 67, HTSUS. It states that “1. [t]his chapter does not cover: (e) [t]oys, sports equipment, or carnival articles (chapter 95);...” Also, Note 3 to Chapter 67, HTSUS, states that “Heading 6702 does not cover: (b) Artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by molding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, gluing, fitting into one another or similar methods.” Inasmuch as the subject merchandise is artificial flowers or foliage consisting of parts assembled by binding, gluing, fitting into one another or similar methods, it is not excluded from heading 6702, HTSUS.

tive articles for the Christmas holiday. These items include evergreen branches, poinsettia, pine cone, pine needle leaves, holly leaves, laurel leaves, holly berries or mistletoe, which are incorporated into a wreath, centerpiece, candle ring, garland, swag or sprig. See HQ 967237, dated September 9, 2004; See also, NY I89773, dated January 27, 2003.

When examining the sprig, as a whole, it must be evident that the merchandise is associated or used with the particular festival of Christmas. Furthermore, in HQ 950999, dated April 16, 1992, garlands with artificial foliage were classified in 9505.10.40, HTSUS, as festive articles for Christmas festivities. The following is the language from HQ 950999 wherein CBP explained which types of garlands, wreaths, etc. would be classifiable in 9505.10, HTSUS, as festive articles for Christmas festivities.

Those artificial foliage items which qualify as Christmas articles of sub-heading 9505.10 include wreaths, garlands, candle rings, centerpieces — complete articles — made up of foliage commonly and traditionally associated with Christmas [i.e., artificial poinsettias, pine cones, pine needle leaves, evergreen branches, holly berries, holly leaves, laurel leaves, or mistletoe (singly or combination thereof)]. (This largely restates Customs position under the TSUS). These articles can be further decorated with plastic sleighs, miniature Santas, glass balls, ribbon, etc. Stylized/modern versions of Christmas wreaths, garlands, etc. (i.e., those articles decorated with neon poinsettias, mauve glass balls, etc.) also qualify as festive.

We must determine nevertheless whether the Starbucks decorative article under consideration can be classified as a festive article in heading 9505, HTSUS, in light of the *Midwest* decisions. In making this determination, we must analyze whether the decoration under consideration fits the criteria for festive articles that are classified in heading 9505, HTSUS. The Court of International Trade in *Midwest* was aided by the criteria established in the case *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter "*Carborundum*"). Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the item moves, the environment of the sale (accompanying accessories and the manner in which the item is advertised and displayed), the use in the same manner as merchandise which defines the class, the economic practicality of so using the import, and recognition within the trade of this use. In considering the *Midwest* standards, we believe that the sprig is not classifiable in heading 9505, HTSUS.

As stated in HQ W968134, dated March 13, 2007, it is our view that the sprig under consideration in this instance is not immediately recognizable as a Christmas decoration. Although Starbucks has presented evidence to show that it was intended for use as a decoration in its stores during Christmas time, we believe that based on its appearance, the sprig does not seem to be exclusively associated with Christmas celebrations. In other words, in our judgment, there seems to be no reason why it could not be used as a decoration at another time of the year. The sprig that is under consideration in this instance is not the customary sprig that is typically exhibited as

Christmas decorations. It is not made of tinsel nor does it have the usual customary Christmas colors of red and green. Although it is made of white paper and is supposed to resemble poinsettia leaves and flowers, we do not believe that most people would be able to discern that the white paper leaves are supposed to be artificial poinsettia leaves and flowers that are connected with the Christmas celebration. While the sprig is certainly used by Starbucks as a decoration during the Christmas holiday, if it was set apart from other Christmas decorations, we do not think that it would immediately stand out as an item that would only be seen at Christmas time. Rather, in our judgment, the sprig could be easily used to decorate an area during other celebratory occasions besides the Christmas holidays. Thus, we believe that it would not be aberrant to display the sprig as a decoration at times during the year other than Christmas.

Starbucks claims that the sprig was used in its stores as a decoration only during the Christmas holiday season and that it had no other use. Starbucks further claims that the chapter notes and ENs to heading 9505, HTSUS, do not exclude articles from the heading if they are not primarily for use in the home. To support this point, Starbucks submitted a copy of instructions that were issued to its stores from a Holiday 2004 Workbook concerning the display of the holiday decorations. These instructions indicate that all stores will receive the Starbucks holiday trim to create a festive atmosphere with a unified theme. The holiday trim will be used from holiday setup through December 25, and on December 26, it will be removed. The instructions further explained that the holiday decorations will be removed and SKU'd for sale, but that the holiday trim is not to be sold prior to December 26.

Although we recognize that, on a case-by-case basis, an article displayed outside the house may be found to be a festive article and that sprigs may be considered complete articles, such considerations are unnecessary in this case. We disagree with Starbucks's contention that the subject sprig was intended as a decoration only during the Christmas holiday season and that it had no other use. As stated above, in this instance, the fact that the subject merchandise is used during the Christmas holidays did not make it a festive article of heading 9505, HTSUS. We note that the sprig was offered for sale to consumers after the Christmas holiday. Thus, it is not unreasonable to conclude that consumers other than Starbucks could buy the sprig and subject it to a different use. The sprig, we therefore believe, is not closely associated with the Christmas holiday as it may be equally used and displayed on occasions other than the Christmas holidays. Accordingly, we find that the sprig in this case is not classified as a festive article in heading 9505, HTSUS, but instead in heading 6702, HTSUS, which provides for: "Artificial flowers, foliage and fruit and parts thereof: articles made of artificial flowers, foliage or fruit."² The ENs to heading 6702, HTSUS, which provides for artificial foliage, support the classification of the subject sprig as articles made of artificial flowers, foliage or fruit.³

² For a similar finding see HQ W968134, dated March 13, 2007, a protest decision involving the same merchandise considered in this case.

³ The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on

HOLDING:

By application of GRI 1, the sprig, identified as the "Christmas Basket Garland" is classified in heading 6702, HTSUS. It is specifically provided for in subheading 6702.90.6500, HTSUS, which provides for: "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: other." The column one duty rate is 17 percent. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY K88101, dated August 5, 2004, is modified with respect to its legal analysis. The classification of the item described therein is unchanged.

MYLES B. HARMON,
Director;
Commercial and Trade Facilitation Division.

the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989). The EN to heading 6702, HTSUS, which states, in pertinent part:

This heading covers:

- (1) Artificial flowers, foliage and fruit in forms resembling the natural products, made by assembling various parts (by binding, glueing, assembling by fitting into one another or similar methods). This category also includes conventional representations of flowers, foliage or fruit made up in the manner of artificial flowers, etc.
- (2) Parts of artificial flowers, foliage or fruit (e.g., pistils, stamens, ovaries, petals, calyces, leaves and stems).
- (3) Articles made of artificial flowers, foliage or fruit (e.g., bouquets, garlands, wreaths, plants), and other articles, for use as trimmings or as ornaments, made by assembling artificial flowers, foliage or fruit.

* * *