

U.S. Customs Service

General Notices

TERMINATION OF TEST REGARDING IMPORTER COMPLIANCE MONITORING PROGRAM

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The Importer Compliance Monitoring Program (ICMP), which allows interested importers to assess their own compliance with Customs laws and regulations, was developed by Customs under its regulatory audit authority and was implemented on a test basis starting in 1998. Customs has determined that the ICMP test should be discontinued in favor of an updated approach to importer self-assessment. This notice advises the public of the termination of the ICMP test.

DATE: The ICMP test will terminate on May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Russell Ugone, Director, Trade Agreements Branch, Regulatory Audit Division (202-927-0728).

SUPPLEMENTARY INFORMATION:

BACKGROUND

As a consequence of the passage of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057), the primary goal of Customs in the trade compliance process has been to maximize importer compliance with U.S. trade laws while, at the same time, facilitating the importation and entry of admissible merchandise. To meet this goal, Customs has made a comprehensive effort to review, improve, and redesign, on an ongoing basis, the trade compliance process using established business practices, re-engineered tools, and new methodologies that improve customer service without compromising the enforcement aspect of the Customs mission.

In order to enable interested importers to participate in a program that would allow them to assess their own compliance with Customs laws and regulations on a continuing basis, Customs on April 24, 1998, published in the Federal Register (63 FR 20442) a notice of a plan to conduct a test regarding the Importer Compliance Monitoring Program

(ICMP). The notice stated that the test would involve a limited number of importer participants and would run for a period of one year. On July 23, 2001, Customs published in the Federal Register (66 FR 38344) a notice announcing a second test of the ICMP. This notice invited increased importer participation, made some alterations to the earlier ICMP test procedures, and stated that, if Customs determines to end the program test, reasonable notice of the expiration date would be published in the Federal Register.

TERMINATION OF THE ICMP TEST

Although the notice announcing the second test of the ICMP was published in part in order to increase the participation in the test, participation has remained below the level envisaged by Customs when the test procedures were developed. Customs therefore has determined that the ICMP test should be discontinued in favor of a new program that continues the self-assessment principles of the ICMP but will be an updated approach using new methodologies. This new program, which is called the Importer Self Assessment Program, will be the subject of a separate notice to be published in the Federal Register in the near future.

Accordingly, the ICMP test, as described in the Federal Register on July 23, 2001, will terminate 30 days after publication of this notice in the Federal Register. All testing procedures, reporting requirements and other obligations assumed by importers by virtue of their participation in the ICMP test, and all benefits accruing to importers as a result of their participation in the ICMP test, will cease to apply upon termination of the ICMP test. However, importers are reminded that termination of the ICMP test has no effect on an importer's continuing obligation to comply with all applicable Customs laws and regulations.

Dated: April 24, 2002.

CYNTHIA A. COVELL,
Director,
Regulatory Audit Division.

[Published in the Federal Register, April 30, 2002 (67 FR 21322)]

FIRST PHASE OF AUTOMATED COMMERCIAL ENVIRONMENT
(ACE): ANNOUNCEMENT OF A NATIONAL CUSTOMS
AUTOMATION PROGRAM TEST FOR THE ACE ACCOUNT
PORTAL

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces Customs plan to conduct a National Customs Automation Program test of the first phase of the Automated Commercial Environment. This test will allow importers and authorized parties to access their Customs data via a web-based Account Portal. This test is the first step toward the full electronic processing of commercial importations in the Automated Commercial Environment with a focus on defining and establishing the importer's account structure. Customs plans to initially accept approximately forty importer accounts for participation in this test, and may expand the universe of participants during the test. This notice provides a description of the test, outlines the development and evaluation methodology to be used, sets forth the eligibility requirements for participation, invites public comment on any aspect of the planned test, and opens the application period for participation.

EFFECTIVE DATES: The test will commence no earlier than October 28, 2002. The test will run for approximately two years and may be extended or modified. Comments concerning this notice and all aspects of the announced test may be submitted at any time. Applications may also be submitted at any time; however, in order to be eligible as one of the initial participants, applications must be received by June 1, 2002.

ADDRESSES: Written comments regarding this notice may be submitted to Ms. Hedwig Lock at U.S. Customs Service, 2850 Eisenhower Ave.—First Floor, Alexandria, Virginia 22314; e:mail address: eisenhower@customs.treas.gov; FAX number: (703) 329-5235. Applications to participate will only be accepted via e:mail sent to eisenhower@customs.treas.gov

FOR FURTHER INFORMATION CONTACT: Ms. Hedwig Lock, U.S. Customs Service, Office Of Field Operations, Trade Programs, Commercial Compliance, Account Management; Tel. (703) 317-3657; e:mail address: eisenhower@customs.treas.gov

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Modernization Program has been created to improve efficiency, increase effectiveness, and reduce costs for Customs and all of its communities of interest. The ability to meet these objectives depends heavily on successfully modernizing Customs business functions and the information technology that supports those functions.

The initial thrust of the Customs Modernization Program focuses on Trade Compliance and the development of the Automated Commercial Environment (ACE) through the National Customs Automation Program (NCAP). ACE is not only a replacement system for the Automated Commercial System (ACS); it is an effort to streamline business processes to facilitate the growth in trade and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations.

The ACE development strategy consists of partitioning ACE into four major increments. Each increment, while individually achieving critical business needs, also lays the foundation for subsequent increments. This test will be part of the first phase of ACE.

This test is the first step towards changing the way that the world interacts with U.S. Customs. This test will allow account holders to view integrated data for their account information from multiple system sources. It will enable Customs and account holders to interact via newly created account portals. This test accommodates both Customs and the trade. The Account Portal has the ability to access, manage and disseminate information in an efficient and secure manner. As an example, when a trade participant enters ACE, the Account Portal will present data specific to that participant's account transactions.

Participants in this test will eventually have the opportunity to use the account management functions such as account access to their profile and transactional data via the web portal. Eventually the account owner will also have the option to delegate portal access. In the initial phase of the test program participants will only have access to static data and basic account profile information necessary to establish an account. In the later stages of the test participants will have access to more extensive operational transaction data through the web portal.

This test will be delivered in a phased approach, with primary deployment scheduled for no earlier than October 28, 2002. The timeline for ACE is subject to change based on funding and technical requirements. Future phases of the Automated Commercial Environment (ACE) will be developed and deployed throughout the ACE development period, for use by the trade and Customs personnel selected to test the Account Portal.

Customs plans to select approximately forty importer accounts from the list of qualified applicants for the initial deployment of this test. A primary benefit for the initial participants will be an early opportunity to provide direct input into the initial design of the Account Portal. Additional participants may be selected throughout the duration of this test.

ELIGIBILITY CRITERIA

To be eligible for participation in this test, an importer must:

1. Participate in the Customs Trade Partnership Against Terrorism (C-TPAT). C-TPAT is a joint government-business initiative to build cooperative relationships that strengthen overall supply

chain and border security. For further information, please refer to the Customs website at <http://www.customs.gov/enforcem>; and

2. Have the ability to connect to the Internet.

Customs expects to select a broad range of importers representing various industries. Applications will be considered from all volunteers; however, priority consideration for selection of the initial participants will be given to:

1. Importers that use carriers that participate in the Customs Industry Partnership Programs (IPP). IPP consists of several partnership programs that aim to engage the trade community in a cooperative relationship with Customs in the war on drugs and terrorism, such as the Carrier Initiative Program and the Business Anti-Smuggling Coalition. For further information on Industry Partnership Programs, please refer to the Customs website at <http://www.customs.gov/enforcem>; and

2. Importers who have participated in the Account Management Program for at least one year and who are managed by a full-time Account Manager.

APPLICATION PROCESS

Each application for participation in this test must include the following information:

1. Importer name,
2. Unique importer number (e.g., SSN, EIN, Customs Assigned Importer #, DUNS #),
3. Statement certifying participation in C-TPAT, and
4. Statement certifying the capability to connect to the Internet.

In order to be eligible as one of the initial participants, completed applications must be received by June 1, 2002. Applicants will be notified by Customs of the status of their application, whether it is held pending further expansion or accepted for initial participation. An applicant who does not meet the eligibility criteria or who provides an incomplete application will be notified and given the opportunity to resubmit their application.

Upon selection into the test, Customs may request additional information for the account profile. Participants incur a continuing obligation to provide Customs with any updates or changes to the information they submit. All data submitted and entered into the Account Portal is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential and subject to the appropriate levels of governmental control and protection. While the test is scheduled to begin October 28, 2002, participation in this test may be delayed due to funding and technological constraints. Future phases of ACE may also be tested; however, the eligibility criteria may differ from the criteria listed in this notice. Acceptance into this test does not guarantee eligibility for, or acceptance into future technical tests.

Each participant will designate one person as the account owner for the company's portal account information. The account owner will be

responsible for safeguarding the company's portal account information, controlling all disclosures of that information to authorized persons, authorizing user access to the Account Portal and ensuring that access to the company's portal account information by authorized persons is strictly controlled.

AUTHORIZATION FOR THE TEST

Pursuant to Customs Modernization provisions in the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2170 (December 8, 1993), Customs amended its regulations (19 CFR chapter I), in part, to enable the Commissioner of Customs to conduct limited test programs or procedures designed to evaluate planned components of the National Customs Automation Program. Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP programs or procedures. See T.D. 95-21. This test is established pursuant to that regulatory provision.

MISCONDUCT UNDER THE TEST

If a test participant fails to follow the terms and conditions of this notice, fails to exercise reasonable care in the execution of participant obligations, fails to abide by applicable laws and regulations, misuses the Account Portal, engages in any unauthorized disclosure or access to the Account Portal, or engages in any activity which interferes with the successful evaluation of the new technology, the participant may be subject to civil and criminal penalties, administrative sanctions, and/or suspension from this test. Any decision proposing suspension of a participant may be appealed in writing to Ms. Hedwig Lock within 15 days of the decision date. Such proposed suspension will apprise the participant of the facts or conduct warranting suspension. Should the participant appeal the notice of proposed suspension, the participant should address the facts or conduct charges contained in the notice and state how compliance will be achieved. However, in the case of willfulness or where public health interests or safety are concerned, the suspension may be effective immediately.

TEST EVALUATION CRITERIA

To ensure adequate feedback, participants are required to participate in an evaluation of this test. Customs also invites all interested parties to comment on the design, conduct and implementation of the test at any time. The final results will be published in the Federal Register and the CUSTOMS BULLETIN as required by § 101.9(b) of the Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis.
2. Questionnaires from both trade participants and Customs addressing such issues as:
 - Workload impact (workload shifts/volume, cycle times, etc.);
 - Cost savings (staff, interest, reduction in mailing costs, etc.);
 - Policy and procedure accommodation;
 - Trade compliance impact;
 - Problem resolution;
 - System efficiency;
 - Operational efficiency;
 - Other issues identified by the participant group.

Dated: April 26, 2002.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, May 1, 2002 (67 FR 21800)]



NOTICE OF REVOCATION OF CUSTOMS BROKER LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

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 111.45(a)], the following Customs broker license is revoked by operation of law.

<i>Name</i>	<i>License</i>	<i>Port</i>
KPMG Peat Marwick LLP	20760	New York

Dated: April 22, 2002.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, May 3, 2002 (67 FR 22500)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, May 1, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
“GONDOLA” HURRICANE CANDLEHOLDERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of “Gondola” Hurricane Candleholders under the Harmonized Tariff Schedule of the United States (“HTSUS”).

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 intends to revoke a ruling and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of “Gondola” Hurricane Candleholders. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before June 14, 2002.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings. Attention: Regulations Branch, 1300 Pennsylvania Avenue.N.W, Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 927-2318.

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 Customs 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 Customs 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 information necessary to enable Customs 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 Customs intends to revoke New York Ruling Letter (NY) G85001, dated December 21, 2000, which pertains to the tariff classification of “Gondola” Hurricane Candleholders. NY G85001 is set forth as “Attachment A” to this document.

Although in this notice Customs is specifically referring to one ruling, NY G85001, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, other than the referenced rulings (see above), should advise Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the HTSUS or other relevant statutes. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer’s failure to advise Customs 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 his agents for importations of merchandise subsequent to this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY G85001, and any other ruling not specifically identified, to reflect the

proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 964842 (*see* "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 25, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 21, 2000.
CLA-2-70:RR:NC:2:226 G85001
Category: Classification
Tariff No. 7013.99.5000

MR. PETER J. FITCH
FITCH, KING AND CAFFENTZIS
116 John Street
New York, NY 10038

Re: The tariff classification of a decorative glass article from India.

DEAR MR. FITCH:

In your letter dated December 5, 2000, on behalf of your client, The Pomeroy Collection, Ltd., you requested a tariff classification ruling. A representative sample of the item was submitted with your ruling request.

The submitted sample is a large glass vessel that measures approximately eight inches in height and five and one-half inches in diameter at the opening, and seven inches in diameter at the base. A removable gold-colored swing-like metal frame, which serves as a candleholder, is suspended inside the glass vessel. A scented candle measuring two and one-half inches in height and three inches in diameter sits on the metal candleholder.

You indicated in your letter that the glass vessel, the hanging metal frame and candle will be imported from India. You stated in a telephone conversation that the glass vessel with hanging metal frame and the candle will be packaged together for retail sale in their imported condition.

In your presentation you suggest that the glass vessel with hanging metal frame should be regarded as a candleholder classifiable in subheading 9405.50.40, Harmonized Tariff Schedule of the United States (HTS), which provides for non-electrical lamps and lighting fittings. We do not regard this type of article as a candleholder because it has the form of a general-purpose decorative glass article. A candle is only one of the many items that this type of product is capable of holding; for example, your enclosed picture shows the item holding potpourri.

The essential character of the glass vessel with metal hanging frame and candle is represented by the glass vessel. You indicated that the unit value of the glass vessel will be \$1.50.

The applicable subheading for the glass article with hanging metal frame and candle will be subheading 7013.99.5000, HTS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes * * *: other glassware: other: other: valued over \$0.30 but not over \$3 each. The rate of duty will be 30 percent ad valorem. The rate of duty will remain unchanged in 2001.

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 Jacob Bunin at 212-637-7074.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 964842 AML
Category: Classification
Tariff No. 9405.50.40

MR. PETER J. FITCH
FITCH, KING AND CAFFENTZIS
116 John Street
New York, NY 10038

Re: Reconsideration of NY G85001; "Gondola" Hurricane Candleholder; iron and glass candleholder.

DEAR MR. FITCH:

This is in reply to your letter of December 28, 2000, to the Customs National Commodity Specialist Division, New York, on behalf of the Pomeroy Collection, Ltd., requesting reconsideration of New York Ruling Letter ("NY") G85001, dated December 21, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of the "Gondola" Hurricane Candleholder (an iron and glass candleholder). NY G85001 classified the article under subheading 7013.99.50, HTSUS, which provides for glassware of a kind used for * * * indoor decoration or similar purposes * * * other glassware: other: other: valued over thirty cents but not over three dollars each. As you know, your request was forwarded to this office for reply. A sample, photograph, packaging materials and descriptive literature were provided for our consideration. We have reviewed NY G85001 and believe that the classification set forth is incorrect. We regret the delay.

Facts:

Based upon the information and sample provided, the "Gondola" Hurricane Candleholder consists of four components: a glass article, a pronged metal article, flame retardant, scented "botanicals," and a scented candle. The large glass article resembles a vase and measures approximately 5¾ inches at the opening and 7 inches at the base. The body constricts to approximately 5 inches in diameter below the opening and increases in diameter toward the base. The glass article is approximately 8¼ inches in height.

The sample and photograph contain and depict a metal frame candleholder that rests on the lip of the glass article and suspends the candle approximately 6 inches below the opening of the glass article. The sample has two prongs and that depicted the photograph has three prongs. In your letter, you state that the articles will be packaged together with a candle upon importation and that the metal frame candleholder will be the three-pronged model. The prongs suspend a candleholder: a concave, metal disk approximately 3¾ inches in diameter and ½ inch in depth.

Also contained in the package are "botanicals"—a potpourri of what appear to be dried flowers, buds and leaves which are described as pear scented and treated with a flame retardant chemical.

The final component is a scented candle that measures approximately 2½ inches in height and 2¾ inches in diameter. You state that the candle will be packaged and imported with the other components.

In your request for reconsideration, you state that the article, "consisting of a glass container, a cast iron candle support, and a candle," is packaged, imported and sold as a candleholder.

Issue:

Whether the composite article should be classified under subheading 7013.99.50, HTSUS, as a decorative glass article; or subheading 9405.50.40, HTSUS, as a candleholder?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). 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[.]" GRI 3(b) provides, in pertinent part, that "goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable." GRI 3(c) provides that "when goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

The applicable HTSUS provisions under consideration are as follows:

3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
*	* * * * *
3406.00.00	Candles, tapers and the like.
*	* * * * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Other glassware:
7013.99	Other:
	Other:
	Other:
7013.99.50	Valued over \$0.30 but not over \$3 each.
*	* * * * *
9405	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 fixed light source, and parts thereof not elsewhere specified or included:
9405.50	Non-electrical lamps and lighting fittings:
	Other:
9405.50.40	Other.

The four distinct articles are imported in the same package; hence, we are unable to resolve the classification of the articles at GRI 1. GRI 2 is not applicable here except insofar as it provides that "[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3."

GRI 3 provides as follows:

When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by

reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the ENs should always be consulted. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN (IX) to GRI 3(b) provides:

For purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

EN (VIII) to GRI 3(b) provides:

The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

Pursuant to GRI 3(a), the article is a composite good *prima facie* classifiable under more than a single heading, *i.e.*, headings 3307 (scented botanicals/potpourri), 3406 (candle), 7013 (the glass container), 8306 (the metal stand) and 9405, HTSUS (as a composite article comprising a candleholder).

Headings 7013 and 9405, HTSUS, as applicable to the merchandise under consideration, are controlled by use (other than actual use) (see *Group Italglass U.S.A., Inc. v. United States*, 17 CIT 1177, 839 F. Supp. 866 (1993); *E.M. Chemicals v. United States*, 923 F. Supp. 202 (CIT 1996); *Stewart-Warner Corp. v. United States*, 3 Fed. Cir. (T) 20, 25, 748 F.2d 663 (1984)). In such provisions, articles are classifiable according to the use of the class or kind of goods to which the articles belong. If an article is classifiable according to the use of the class or kind of goods to which it belongs, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that:

In the absence of special language or context which otherwise requires—(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

In other words, the article's principal use in the U.S. at the time of importation determines whether it is classifiable within a particular class or kind (principal use is distinguished from actual use; a tariff classification controlled by the latter is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered (U.S. Additional Note 1(b); 19 C.F.R. §10.131-10.139)).

The Courts have provided factors, which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *Lenox Collections v. United States*, 19 CIT 345, 347 (1995); *Kraft, Inc. v. United States*, 16 CIT 483 (1992), *G. Heileman Brewing Co. v. United States*, 14 CIT 614 (1990); and *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979 (1976).

Note 1(e) to Chapter 70, HTSUS, provides that the Chapter does not cover "lamps or light fittings * * * or parts thereof of heading 9405[.]" The General ENs to Chapter 70 contain an identical provision. Thus, if it is determined that the essential character of the article is that of a candleholder, the article cannot be classified under heading 7013, HTSUS.

The EN to heading 9405, HTSUS, states that lamps and light fittings of this group can be composed of any material and use any source of light, including candles. In addition, EN 9405 states that this heading covers “in particular: (6) [c]andelabra, candlesticks, and candle brackets[.]”

We have previously considered the definitions of the terms used in the heading and EN. In Headquarters Ruling Letter (HQ) 957412, dated August 1, 1995, we stated that:

[T]hese rulings (HQ 954308 dated June 6, 1994, HQ 955935 dated May 16, 1994, HQ 953016 dated April 27, 1993, HQ 088742 dated April 22, 1991, and HQ 089054 dated August 2, 1991) held that the terms “candlestick”, “candlestick holder”, and “candle holder” are interchangeable. Candleholder has been defined as a candlestick, *Webster’s II New Riverside University Dictionary*, pg. 224 (1st ed. 1984), and as a holder for a candle; candlestick, *The Random House Dictionary of the English Language*, pg. 216 (1st Ed. 1983). Candlestick has been defined as a utensil for supporting a candle, whether elaborately made or in the common form of a saucer with a socket in the center, *Webster’s New International Dictionary*, pg. 390 (2d ed. 1939). Reference to lexicographic authorities is proper when determining the meaning of a tariff term. *Hasbro Industries, Inc. v. U.S.*, 703 F. Supp. 941 (CIT 1988), *aff’d*, 879 F.2d 838 (1989); *C.J. Tower & Sons of Buffalo, Inc. v. U.S.*, 69 CCPA 128, 673 F.2d 1268 (1982).

The glass component of the article under consideration resembles a glass container or vase, neither of which is of the forms, shapes or dimensions considered in the March 25, 1998, CUSTOMS BULLETIN. However, it suspends what is designed and manufactured to be a metal candleholder. The promotional literature for the article indicates that the environment of sale of the article is one for candleholders, not general-purpose decorative glassware. Imported separately, the glass article would be classifiable within heading 7013, HTSUS, as a decorative glass article. This determination would hold true as well were the glass article imported as a potpourri vase, see HQ 955857, dated August 11, 1994. The glass component functions in a similar manner to the wrought iron pedestals in the rulings referred to below; its form indicates a use to suspend the candleholder within the article as well as function as a hurricane lamp by preventing wind or breeze from extinguishing the flame of the candle.

The four discrete articles make up a composite article for purposes of GRI 3(b). That is, they are, *prima facie*, classifiable in different headings (see above), they are put together to meet a particular need or carry out a specific activity (that of serving as a decorative candle holder), and they are put up in a manner suitable for sale directly to users without repacking (see, *e.g.*, Headquarters Ruling (HQ) 962090, dated June 11, 1999). Pursuant to GRI 3(b), classification of the composite article is determined on the basis of the component that imparts the essential character to the whole. EN Rule 3(b)(VII) lists as factors to help determine the essential character of such goods the nature of the materials or components, their bulk, quantity, weight or value, and the role of the constituent materials or components in relation to the use of the goods.

Recently, there have been several decisions on “essential character” for purposes of GRI 3(b). These cases have looked primarily to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed*, 119 F.3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), *motion for rehearing and reconsideration denied*, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co. v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pilloutex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *affirmed* 171 F.3d 1370 (Fed. Cir. 1999).

Based on the foregoing, we conclude that in an essential character analysis for purposes of GRI 3(b), the role of the constituent materials or components in relation to the use of the goods is generally of primary importance, but the other factors in EN Rule 3(b)(VII) should also be considered, as applicable. In this case, we are unable to discern the “indispensable function” (*Better Home Plastics, supra*) of the article. While the argument can be made that the essential character of the composite good is to “hold” or “contain” a candle (as shown in the packaging and photograph provided) and that the metal component performs this function, the glass container serves the function of “suspending” the three-pronged, metal candleholder and “housing” the scented, flame retardant botanicals. Imported separately from any other article, the glass container, the glass container or vase would be classifiable under subheading 7013.99, HTSUS. Insofar as the other factors (quantity, bulk, weight and value) are concerned, the available evidence is not definitive. In accordance with GRI 3(b), we conclude that the glass and metal components of the ar-

ticle contribute equally to the essential character of the article, and resort (in accordance with GRI 3(c)) to the heading “which occurs last in numerical order among those which equally merit consideration.” Thus, pursuant to GRI 3(c), we conclude that the article is of the class or kind principally used as a non-electrical lamp and lighting fitting in heading 9405, HTSUS, and is classifiable under that heading.

Holding:

Pursuant to GRI 3(c), the composite article will be classified within subheading 9405.50.40, HTSUS, as a candleholder.

Effect on Other Rulings:

NY G85001 is revoked.

JOHN DURANT,
 Director,
 Commercial Rulings Division.