

U.S. Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES: Application for Overflight Program/Advance Notice for Aircraft Landings

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0087

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Overflight Program/Advance Notice for Aircraft Landings. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 19098-19099) on April 27, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 30, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments

and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Overflight Program/Advance Notice for Aircraft Landings

OMB Number: 1651-0087

Form Number: CBP Forms 442 and 442A

Abstract: CBP Forms 442 and 442A are used by private flyers to obtain a waiver for landing requirements and normal CBP processing at designated airports along the southern border. The CBP regulations also require owners and operators of some commercial aircraft to request CBP permission to land at least 30 days before the first flight date. In addition, there is a requirement for pilots of private aircraft to submit notice of arrival and notice of departure information through Advance Passenger Information System (APIS) manifests no later than sixty (60) minutes prior to departure for flights arriving in to or departing from the United States.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension with change to the burden hours due to better estimates by CBP regarding time per response.

Affected Public: Individuals

Estimated Number of Respondents: 755, 462

Estimated Number of Total Annual Responses: 760,655

Estimated Time Per Response: 1.1 minutes

Estimated Total Annual Burden Hours: 13,928

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: June 25, 2009

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, June 30, 2009 (74 FR 31287)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Application for Identification Card**

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0008

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Identification Card (Form 3078). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 16229) on April 9, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 5, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Identification Card

OMB Number: 1651-0008

Form Number: CBP Form 3078

Abstract: CBP Form 3078 is used by licensed Cartmen, Lightermen, Warehousemen, brokerage firms, foreign trade zones, container station operators, and their employees requiring access to CBP secure areas to apply for an identification card so that they may legally handle merchandise which is in CBP custody.

Current Actions: This submission is being made to extend the expiration date. There is an increase in the burden hours due to a revised estimate by CBP in the number of respondents.

Type of Review: Extension (with change)

Affected Public: Businesses

Estimated Number of Respondents: 150,000

Estimated Number of Total Annual Responses: 150,000

Estimated Time Per Response: 17 minutes

Estimated Total Annual Burden Hours: 42,450

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: June 30, 2009

TRACEY DENNING,
*Agency Clearance Officer,
Customs and Border Protection.*

[Published in the Federal Register, July 7, 2009 (74 FR 32176)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Importer's ID Input Record**

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

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651-0064

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Importer's ID Input Record (Form 5106). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 16226) on April 9, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 6, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-5806.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Importer's ID Input Record

OMB Number: 1651-0064

Form Number: Form 5106

Abstract: Form 5106 is filed with the first formal entry or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. The number, name, and address conveyed on the Form 5106 is the basis for establishing bond coverage, release and entry of merchandise, liquidation, issuance of bills and refunds, and processing of drawback and FP&F actions.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Businesses

Estimated Number of Respondents: 500

Estimated Number of Annual Responses per Respondent: 2

Estimated Number of Total Annual Responses: 1000

Estimated Time Per Response: 6 minutes

Estimated Total Annual Burden Hours: 100

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229-1177, at 202-325-0265.

Dated: June 30, 2009

TRACEY DENNING,
Agency Clearance Officer;
Customs and Border Protection.

[Published in the Federal Register, July 7, 2009 (74 FR 32175)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, July 8, 2009

The following documents of U.S. 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 International Trade.

**PROPOSED MODIFICATION OF RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING
TO THE TARIFF CLASSIFICATION OF ELECTRIC
LIGHTING SETS**

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

ACTION: Notice of proposed modification of three ruling letters and proposed revocation of treatment relating to tariff classification of electric lighting sets.

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) proposes to modify one ruling letter relating to the tariff classification of electric light sets under the Harmonized Tariff Schedule of the

United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before August 29, 2009.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229-1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., 5th floor, Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325-0025

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 to provide any other information 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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the tariff classification of electric lighting sets. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 963264, dated May 4, 2001, (Attachment A), 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 one identified. 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 should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes 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 notice of this proposed action.

In HQ 963264, CBP determined that the subject lighting sets were classified in subheading 9405.80.00, HTSUS, as "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: Other electric lamps and lighting fittings: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify HQ 963264 with respect to the classification of items one through nine, and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the subject lighting sets according to the analysis contained in proposed Headquarters Ruling Letter H066795, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

DATED: July 1, 2009

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 963264
May 4, 2001
CLA-2 RR:CR:GC 963264 TF
CATEGORY: Classification
TARIFF NO.: 9405.40.80; 9505.10.25

PORT DIRECTOR OF CUSTOMS
610 S. Canal Street
Chicago, IL 60607

RE: Protest 3901-99-101340; electric garlands; light sets

DEAR PORT DIRECTOR:

The following is our decision regarding Protest 3901-99-101340 filed against your classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain electric garlands. The three entries under protest were liquidated on July 16, 1999, July 23, 1999, and July 30, 1999, and the protest was timely filed on October 4, 1999. In preparing this decision, consideration was also given to a supplemental submission by counsel for the protestant dated December 21, 2000.

FACTS:

The articles under protest consist of various styles of electric light sets which are composed of a wire harness incorporating different numbers of sockets and light bulbs. The articles are described as follows:

UL 50 Clear STS Indoor/Outdoor Light (Item #873644) UL 50 STS Indoor/Outdoor Light (Item #873645) UL 105 Motion Clear Chasing Light (Item #897095) UL 105 Motion Multiple Color Chasing Light (Item #987096) UL 70 Solid Red Light Set (Item #896661) UL 70 Solid Blue Light Set (Item #896662) UL 70 Solid Green Light Set (Item #896663) UL 150 STS Indoor/Outdoor Clear Light (Item #899234) UL 150 STS Outdoor Multi Light (Item #899235) UL 150 Curtain Light Ice (Item #899229) UL 100 Curtain Light Ice (Item #899231) UL 100 Orange Light with 20 Halloween light covers (Item # 896853) 9" Angel Tree Top 10L/1F, Clear Bulb with Porcelain Head/arms (Item #886461) 9" Black Angel Tree Top 10L/1F Clear Bulb, Black Porcelain Face & Hands (Item #890022) 20" Plastic Sculpture w/50L Clear Bulbs in the shape of various objects, such as a reindeer, Santa, a tree, an angel, a candle and a wreath (Item #889029) Clear and multi-colored grid lights Battery operated Plain Lite Set (Item #88047) 5 Light Candelier (Item #897146) In a letter of May 22, 2000, the protestant requested that Protest 3901-99-101340 serve as the lead protest for the following protests:

1001-99-185524
3901-99-110181

1512-99-100097
3901-99-101198

1703-99-100198
3901-99-101340

1703-99-100208
3901-99-101475
2704-99-102300
3901-99-101527
2704-99-102361
3901-99-101547
2704-99-102417
3901-99-101556
2704-99-102848
4503-99-100034
2704-99-102855
4503-99-100037
2704-99-103000
4503-99-100041
2809-99-100676
4503-99-100045
2809-99-100677
4909-99-100065
2809-99-100678
4909-99-100066
2809-99-100693
4909-99-100071
2809-99-100708
5301-99-100249
2809-99-100749
5301-99-100275
2809-99-100835
5301-99-100342
2809-99-100883

The protestant entered the merchandise on various dates in July, August, September and October 1998 under subheading 9405.40.80, HTSUS, which provides for other electric lamps and lighting fittings, other than of base metal. The entries were liquidated under subheading 9405.30.00, HTSUS, which provides for "lighting sets of a kind used for Christmas trees".

ISSUE:

Whether the subject light articles are classifiable as lighting sets of a kind used for Christmas trees in subheading 9405.30.00, HTSUS, or as other electric lamps and lighting fittings, other than of base metal, in subheading 9405.40.80, HTSUS, or as festive articles in heading 9505, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of

GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings and legal notes under consideration are as follows:

Chapter 94, This chapter does not cover:

Note 1(l) (l) Toy furniture or toy lamps or lighting fittings (heading 9503), billiard tables or other furniture specially constructed for games (heading 9504), furniture for magic tricks or decorations (other than electric garlands) such as Chinese lanterns (heading 9505).

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:

9405.30.00 Lighting sets of a kind used for Christmas trees

9405.40 Other electric lamps and lighting fittings:

9405.40.80 Other

* * * * *

Chapter 95, Note 1(t) This chapter does not cover electric garlands of all kinds (heading 9405).

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:

Christmas ornaments:

Other:

9505.10.25 Other

9505.90 Other

9505.90.60 Other:

* * * * *

The protestant claims that items 1 through 9 are electric garlands not limited to those “of a kind used for Christmas trees” as provided by subheading 9405.30.00. Further, the protestant asserts that items 13 through 16 are festive articles classifiable in heading 9505 and that all of the liquidated articles’ classification is inconsistent with *Primal Lite, Inc. v. United States*, 15 F.Supp. 2d 915 (Ct. Int’l Trade 1998), *aff’d* 182 F.3d 1362 (CAFC 1999).

Webster’s 3rd New International Dictionary of the English Language (unabridged) (1993) defines a garland as “a wreath or festoon of leaves or flowers to be worn on the head or used to decorate an object”. *Id.* at 936. An article is an electric garland if it is able to be hung or displayed and is composed of lights which are powered by an electrical source attached by a

power cord to a battery or plug. See also HQ 952832, dated February 19, 1993, (describing a “Holiday Carousel” electric music garland).

As items 1 through 9 qualify as electric garlands as defined above, the legal notes set forth direct classification in heading 9405 at GRI 1. We note that EN 94.05(I)(3) states that heading 9405 provides, in pertinent part, for “electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees)”.

In their argument, the protestant contends that there are important similarities between the instant articles and the goods of the Primal Lite decision. The protestant contends that as the instant articles and the Primal Lite articles are non-Christmas articles which involve the same competing subheadings—9405.30.00 and 9405.50.80—the instant articles’ are erroneously classified in subheading 9405.30.00, which provides for lighting sets of a kind used for Christmas trees.

Both the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) agreed in Primal Lite that the importations were inappropriately classified in subheading 9405.30.00, as the plaintiff’s affidavit indicated that the goods were not created as Christmas tree decorations nor for use during the Christmas holiday. Considering subheading 9405.30.00 as a “use” provision, the CAFC noted “[b]ecause the classification turns on whether the imported lighting sets are of a kind used for Christmas trees”, subheading 9405.30.00 requires the “use in connection with Christmas trees [to] be the predominant or principal use of those goods that are commercially fungible with the imported goods. See Primal Lite at 1362.

The CAFC also referred to Additional Rule of Interpretation 1 (ARI 1) of the HTSUS which governs tariff classifications which are controlled by use. ARI 1 provides, in pertinent part, as follows:

1. In the absence of special language or context which otherwise requires—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.

Principal use can be defined as an article’s use which exceeds any other single use. See HQ 083885, dated July 18, 1989. To prove principal use, the protestant must demonstrate that the subject light sets’ principal use is of a kind used for other than Christmas trees.

With respect to the items 1 through 9 (items # 873644; 873645; 897095; 987096; 896661; 896662; 896663; 899234; 899235) (photographs provided), indicate that they are designed for outdoor and indoor use. We agree with the protestant and find this to be sufficient information that the articles’ principal use is other than as lighting sets of a kind for Christmas trees. Thus, we find that these articles are classifiable as “other electric lamps and lighting fittings, other than of base metal.” within subheading 9405.40.80.

The protestant describes the 100, 150 curtain or ice lights and 100 Orange Light with 20 Halloween light covers (items 10 through 12— # 899229, 899231 and 896853), as articles designed for home exteriors in that the long strand of lights may affix horizontally to the roofline and the shorter light strands may hang vertically to produce the appearance of hanging icicles. Further, the sample photos depict the merchandise hanging on a home’s ex-

terior and describe them as “superbrite bulbs and clear white wire” which “connect up to 3 sets of lights to create a dramatic 19 [and] 26 feet curtain of lights . . . capable of “expand[ing] to 19 feet of curtain lights”. We agree with the protestant and find that their principal use is as indoor/outdoor electric lights for other than Christmas trees. Therefore, they are classifiable in subheading 9405.40.80. The protestant contends that the tree toppers (items 13 and 14) and the grid light articles (item 16) are classifiable as festive articles in heading 9505 and that the articles’ classification within heading 9405 is inconsistent with Primal Lite.

Heading 9505, HTSUS, provides inter alia, for festive, carnival or other entertainment articles. The ENs to heading 9505 state, in pertinent part, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

(1) Decorations such as festoons, garlands, Chinese lanterns, etc., as well as various decorative articles made of paper, metal foil, glass fiber, etc., for Christmas trees (e.g., tinsel, stars, icicles), artificial snow, colored balls, bells, lanterns, etc. Cake and other decorations (e.g., animals, flags) which are traditionally associated with a particular festival are also classified here.

The tree topper articles (items 13 and 14) are three-dimensional decorations placed on the top of a Christmas tree. Each is comprised of porcelain head and arms, a plastic body and an acrylic halo that contains electric lights at the back of the head. Customs has previously classified tree toppers as festive articles within subheading 9505.10.25, HTSUS. See HRL 962647, dated April 5, 2000 (holding a 5 Point Star Tree Topper and 11 light Mini-wreath Tree Topper, both comprised of 11 electric bulbs as festive articles within subheading 9505.10.25, HTSUS.) Tree toppers are customarily Christmas tree decorations. The instant articles, although enhanced by decorative electric lights, are not classifiable as Chapter 94 lighting fixtures because they do not possess the draping characteristics associated with garlands. Thus, they are classifiable in heading 9505, as they are not excluded by Note 1(t) to Chapter 95 which excludes electric garlands of all kinds. *Id.* (referring also to NYRL C81254, dated April 30, 1998, which ruled on similar merchandise). Therefore, the instant tree toppers (items 13 and 14) are classifiable within subheading 9505.10.25, HTSUS.

With respect to item 15, the 20” Plastic Tree Top Sculpture w/50L Clear Bulbs, designed in various shapes of objects (such as a reindeer, Santa, a tree, an angel, a candle and a wreath), Customs has previously treated light sculpture articles as festive articles within subheading 9505.10.25. This item is similar to light sculptures because it incorporates a string of electric lights (which are not capable of being draped or hung) which are affixed around a wire frame. As this item is of the same class of merchandise principally, if not exclusively, used to decorate the home during the Christmas holiday and meets festive criteria outlined in *Midwest of Cannon Falls, Inc. v. United States*, 122 F.3d 1423 (Fed. Cir. 1997) and *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979, it is classifiable within subheading 9505.10.25. See also HQ 963198 dated September 26, 2000 (classifying light sculptures cre-

ated in styles of doe, buck, Santa Claus, snowman, sleigh, angel and North Pole within subheading 9505.10.25).

With respect to the clear and multi-colored grid lights, (item 16), they are described as multiple strands of lights sold in quantities of 100, 150, 200 and 150 sets. They are electric garlands and are excluded from heading 9505. However, we find insufficient evidence that their principal use on Christmas trees exceeds any other use. Unlike the articles in Primal Lite which were not advertised nor intended for use on Christmas trees, the subject lights' advertisement show both use on Christmas trees and on a bush. Therefore, the clear and multi-colored grid lights are classifiable within subheading 9405.40.80. In the case of the Battery Operated Plain Lite Set (item 17) (hereinafter referred to as "B/O Plain Lite Set"), the protestant argues that the articles' design, which is composed of a "short string of battery operated lights", precludes it from draping a Christmas tree. The protestant adds, "[its] predominate use is as a decoration for small items where an electrical outlet is not available." We agree and believe that the article is used to decorate small areas such as mantles and windows, not Christmas trees.

Further, the protestant refers to NYRL D89330, dated April 8, 1999, in which Customs classified another B/O 10 light set (item #W74C8727) which was composed of 45% plastic, 20% brass, 20% glass and 15% paper, within subheading 9405.40.80. We find the description of the subject B/O Plain Lite Set to be same as the B/O light set in NYRL D89330. Therefore, we believe that the protestant has established that the B/O Plain Lite Set is not light articles of a kind principally used on Christmas trees. Therefore, the article is classifiable in subheading 9405.40.80, HTSUS.

With respect to item 18, a 5 Light Candolier (Item #897146), upon liquidation, the article was classified as a lighting set of a kind for Christmas trees within subheading 9405.30, HTSUS. The protestant contends that the subject candolier is substantially similar to the 9-1/4" 3 Light Candolier and 9-1/4" 3 Light Candolier in HQ 962647 dated April 5, 2000, which was classified in subheading 9505.10.25. We agree with the protestant that the instant candoliers are similar to the candoliers in HQ 962647. Both articles are principally decorative as they do not "give off enough light to illuminate a room". Further, neither contain an accepted symbol of a recognized holiday but meet the use requirement outlined Carborundum. In accordance with the determination in HQ 962647, we find the instant candoliers are classifiable in subheading 9505.10.25, HTSUS.

HOLDING:

Items 1-12, 16 and 17 are classifiable in subheading 9405.40.80, HTSUS, which provides for "other electric lamps and lighting fittings, other than of base metal." Items 13, 14, 15, and 18 are classifiable within subheading 9505.10.25, HTSUS, which provides for "festive, carnival or other entertainment articles . . . parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments:other: other."

The protest should be ALLOWED.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later

than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

[ATTACHMENT B]

HQ H066795
CLA-2 OT:RR:CTF:TCM H066795 CkG
CATEGORY: Classification
TARIFF NO.: 9405.30.0010

PORT DIRECTOR
CUSTOMS AND BORDER PROTECTION
PORT OF CHICAGO
*9915 Bryn Mawr
Rosemont, IL 60018*

Re: Modification of HQ 963264; classification of Christmas light sets

DEAR PORT DIRECTOR,

This is in reference to Headquarters Ruling Letter (HQ) 963264, issued to the Port Director in Chicago, Illinois, on May 4, 2001, with regard to Protest # 3901-99-101340, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of electric light sets. The articles were classified in subheading 9405.40.80, HTSUS, which provides for other electric lamps and lighting fittings, other than of base metal. Since the issuance of that ruling, Customs and Border Protection (CBP) has reviewed the classification of these items and has determined that the cited ruling is in error.

HQ 963264 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, Customs Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 963264 when notice of disposition of the protest was received by the protestant. *See, San Francisco Newspaper Printing Co. v. U.S.*, 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which

were the subject of Protest 3901-99-101340, but will be applicable to any entries of similar merchandise made 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN.

FACTS:

At issue in HQ 963264 were eighteen styles of electric light sets composed of a wire harness incorporating different numbers of sockets and light bulbs. This modification pertains only to nine of the styles at issue in HQ 963264. The nine articles are described as follows:

1. UL 50 Clear STS Indoor/Outdoor Light (Item #873644)
2. UL 50 STS Indoor/Outdoor Light (Item #873645)
3. UL 105 Motion Clear Chasing Light (Item #897095)
4. UL 105 Motion Multiple Color Chasing Light (Item #987096)
5. UL 70 Solid Red Light Set (Item #896661)
6. UL 70 Solid Blue Light Set (Item #896662)
7. UL 70 Solid Green Light Set (Item #896663)
8. UL 150 STS Indoor/Outdoor Clear Light (Item #899234)
9. UL 150 STS Outdoor Multi Light (Item #899235)

The protestant entered the merchandise under subheading 9405.40.80, HTSUS, which provides for other electric lamps and lighting fittings, other than of base metal. The entries were liquidated under subheading 9405.30.00, HTSUS, which provides for "lighting sets of a kind used for Christmas trees". In HQ 963264 the articles at issue were determined to be classified in subheading 9405.40.80, HTSUS.

ISSUE:

Whether the subject light sets are classified as lighting sets of a kind used for Christmas trees under subheading 9405.30.00, HTSUS, or as other electric lamps and lighting fittings under subheading 9405.40.80, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions under consideration are as follows:

- 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:
- 9405.30.00 Lighting sets of a kind used for Christmas trees. . . .
- 9405.40 Other electric lamps and lighting fittings:
- 9405.40.80 Other. . . .

* * * * * * *

At GRI 1, there is no dispute that the instant merchandise is described by and is thus classifiable in heading 9405, HTSUS, as a lamp or lighting fitting, not elsewhere specified or included. The issue arises at the eight-digit

level. Therefore, we begin the analysis using GRI 6. The issue is whether, at GRI 6, the instant lighting sets are of a kind used for Christmas trees.

We initially note that subheading 9405.30.00, HTSUS, is a principal use provision. *See Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff'd* 182 F. 3d 1362, 1364 (Fed. Cir. 1999). In *Primal Lite*, the Court of Appeals for the Federal Circuit concluded that subheading 9405.30.00, HTSUS, is a principal use provision and therefore subject to Additional U.S. Rule of Interpretation 1(a), HTSUS. Therefore, classification under the subheading is controlled by the principal use of goods of that class or kind to which the imported goods belong in the United States at or immediately prior to the date of the importation. In determining the principal use of a product, CBP considers a variety of factors including general physical characteristics, the expectation of the ultimate purchaser, channels of trade, and the environment of sale (accompanying accessories, manner of advertisement and display). *See United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

Additionally, the Court of Appeals for the Federal Circuit in *Primal Lite*, in discussing principal use, held that “it is the use of the class or kind of goods being imported that is controlling, rather than the specific use to which the importation itself is put,” *i.e.*, goods need not be actually used in the same manner as the entire class or kind in order to be recognized as part of that class or kind. “Thus, a classification covering vehicles principally used for automobile racing would cover a race car, even if the particular imported car was actually used solely in an advertising display.” *Primal Lite*, 182 F.3d at 1364. CBP has repeatedly upheld this analysis by defining principal use as the use of the class or kind of the merchandise at issue that exceeds any other use. *See e.g.*, HQ 964954, dated, April 18, 2002, and HQ 963032, dated July 24, 2000.

CBP held in HQ 963264 that the instant light sets were classifiable in subheading 9405.40, HTSUS rather than 9405.30 because they were capable of indoor and outdoor use. CBP has repeatedly classified electric string lights capable of both indoor and outdoor use under subheading 9405.30.00, HTSUS, when it was determined that they were of the class or kind of merchandise that was principally used for decorating Christmas trees. *See* HQ 967408, dated February 9, 2005; HQ 967008, dated June 29, 2004; HQ 966882, dated March 10, 2004; NY N027154, dated May 21, 2008; NY N006432, dated February 22, 2007; NY I83154, dated July 17, 2002; NY I83156; dated July 17, 2002, NY J89048; dated November 7, 2003; NY I83157, dated July 10, 2002; NY I82127, dated July 1, 2002; and NY I82362, dated July 1, 2002.

The lighting sets under reconsideration in the instant case are of the same class and kind as those which have been consistently classified in subheading 9405.30.00, HTSUS, as lighting sets “of a kind used for Christmas trees.” They share the physical characteristics as the lighting sets classified as Christmas tree lights in the above opinions: a string of single or multi-colored lights, of varying lengths but long enough to wind around a Christmas tree, and usually featuring 50–100 light bulbs. They are clearly distinct from the light sets at issue in *Primal Lite*, which included plastic covers sized to fit over the light bulbs and depicting various objects including fruits, vegetables, hearts, horses, and American flags, none of which had any particular connection to the Christmas season. The instant light sets also clearly differ from lights strands which CBP has recognized as not being of

the class or kind of merchandise that is principally used for decorating Christmas trees because of their physical characteristics. *See* NY J84195, dated June 19, 2003 (light sets consisting of light bulbs in the center of artificial poinsettias); NY I83486, dated August 5, 2002 (lawn-edge net light sets); NY I81176, dated May 20, 2002 (lighting set consisting of electric lights in the shape of icicles); and HQ 962901, dated September 28, 2001 (electric garland with plastic covered light covers in the form of dreidels, a recognized symbol of Chanukah).

As noted in HQ 963264 with regard to items 10–12, “curtain” or “ice” lights and orange lights with Halloween light covers are also not of the class or kind of merchandise that is principally used for decorating Christmas trees. The curtain lights are articles designed for home exteriors in that the long string of lights is affixed horizontally to the roofline and the shorter light strings hang vertically to produce the appearance of hanging icicles. The orange lights with Halloween covers clearly indicate an intended use outside of the Christmas season. These items were thus correctly classified in subheading 9405.40.80, HTSUS.

Items 1 through 9, however, were incorrectly classified as “other electric lamps and lighting fittings” of subheading 9405.40.80, HTSUS. They are properly classified in subheading 9405.30, as “lighting sets of a kind used for Christmas trees.”

HOLDING:

By application of GRI 1 and 6, the instant light sets are classified in subheading 9405.30.00, HTSUS, which provides for: “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Lighting sets of a kind used for Christmas trees.” The 2009 column one, general rate of duty is 8% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

HQ 963264, dated May 4, 2001, is hereby modified with respect to the classification of items 1 through 9.

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

