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**MEMORANDUM**

**Duty-Free Entry of Festive Articles – Latest Developments**

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By: Arthur W. Bodek ([abodek@gdlsk.com](mailto:abodek@gdlsk.com))

In a decision issued this week,<sup>1</sup> the U.S. Court of International Trade dismissed, on jurisdictional grounds, a challenge to the legality of Note 1(v) to Chapter 95 of the tariff schedule (which covers the duty-free “festive articles” provision). For tariff purposes, duty-free festive articles are those (1) incorporating a symbol closely associated with a festive occasion and (2) used or displayed principally during that festive occasion. In past cases, festive occasions were held to include holidays (*e.g.*, Christmas, Halloween, July 4<sup>th</sup>) or other celebratory events (*e.g.*, weddings, anniversaries and birthdays).

The challenged Note excludes the following items from consideration as festive articles: “tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function.”

The substance of the Chapter 95 Note (an issue not reached by the recent Court decision) is in direct conflict with past decisions holding that a variety of articles “having a utilitarian function” satisfy the tariff criteria for festive articles. An appeal of the Court’s decision is expected.

Nonetheless, the refund opportunities of which we previously advised still exist for qualifying articles. Importers of holiday-themed (or otherwise festive) merchandise need to file claims with Customs and / or in Court (depending upon the circumstances) in order to preserve their rights to duty refunds for qualifying merchandise. **A failure to act may result in otherwise valid claims being denied as untimely.**

Please contact our office for further information concerning the parameters of the festive articles provision and guidance in pursuing potential duty refunds with respect to past entries as well as those currently being filed.

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<sup>1</sup> Michael Simon Design, Inc. v. United States, Slip. Op. 09-75 (Ct. Int’l Trade July 20, 2009).