

U.S. Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, May 30, 2007

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 Trade.*

PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MICRO SILICA SAND

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of micro silica sand.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke one ruling letter relating to the tariff classification of micro silica sand under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also proposing 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 July 13, 2007.

FOR FURTHER INFORMATION CONTACT: Kelly Herman,
Tariff Classification and Marking Branch: (202) 572-8713.

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 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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of micro silica sand. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 955742, dated April 7, 1994 (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., 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 HQ 955742, CBP ruled that micro silica sand was classified in heading 2620, HTSUS, which provided for “Ash and residues (other than from the manufacture of iron or steel) containing metals or metal compounds.”¹ Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 955742 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of micro silica sand according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H003743, set forth as Attachment B. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends 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: May 23, 2007

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

Attachments

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[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ 955742
April 4, 1994
CLA-2 CO:R:C:M 955742 KCC
CATEGORY: Classification
TARIFF NO.: 2620.90.90

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
300 S. Ferry St. Entry Team 3, Rm. 1015
Terminal Island, California 90731

RE: Protest 2704-93-103276; micro silica sand; EN 26.20; 2621.00.00; EN 26.21; 6815.99.44; EN 68.15

DEAR DISTRICT DIRECTOR:

This is regards to Protest 2704-93-103276, which pertains to the tariff classification of micro silica sand under the Harmonized Tariff Schedule of the United States (HTSUS).

¹Heading 2620 in the 2007 HTSUS provides for “Slag, ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds.”

FACTS:

The product at issue is micro silica sand, D-124 Litefil, which is a lightweight mineral filler used as a partial replacement of heavyweight fillers, i.e., replacement of heavyweight aggregates used in hydraulic cement based slurries for oil/gas well drilling. Upon importation, the entries of the micro silica sand were liquidated on August 13, 1993, under subheading 6815.99.40, HTSUS, as other articles of stone or of other mineral substances, not elsewhere specified or included.

This determination was based on Customs Laboratory report #7- 93-21132-001 dated July 9, 1993, which found that “[t]he sample, an off-white powder identified as “D-124 Litefil”, is composed of mineral substances predominantly of silica. In our opinion, it is further processed and does not have the characteristics of natural sand.” In a protest timely filed on October 21, 1993, the protestant contends that the micro silica sand is properly classified under subheading 2621.00.00, HTSUS, as other slag and ash. The protestant states that its product is not a manufactured article, but is part of the composition of fly ash, a waste material derived from the combustion of coal at power stations. The power station disposes of the flyash by sluicing it into an ash storage dam. The lightweight portion of the ash separates from the heavyweight portion by floating to the surface of the water in the ash dam. The lightweight ash is then extracted from the ash dam, allowed to dewater, dried, screened and packaged for shipment. The protestant states that the chemical composition of its product is 55% silica, 43% alumina and less than 1% iron.

The competing subheadings are as follows:

2621.00.00 Other slag and ash, including seaweed ash (kelp).

6815.99.40 Articles of stone or of other mineral substances (including articles of peat), not elsewhere specified or included . . . Other articles . . . Other . . . Other.

ISSUE:

What is the tariff classification of the micro silica sand under the HTSUS?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUS, states, in part, that “for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes”

Upon further examination of the micro silica sand and the information submitted by the protestant, we are of the opinion that the micro silica sand is classified under subheading 2620.90.90, HTSUS, which provides for “Ash and residues (other than from the manufacture of iron or steel) containing metals or metal compounds . . . Other . . . Materials not provided for elsewhere in this heading . . . Other.”

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, although not dispositive, are to be used to determine the proper interpretation of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). EN 26.20 (pg. 210), states that:

This heading covers ash and residues (other than those of heading 26.18 or 26.19) which contain metal or metal compounds, and which are of a kind used in industry either for the extraction of metal or as a basis for the manufacture of chemical compounds of metals. They result from the treat-

ment of ores or intermediate metallurgical products (such as mattes) or from electrolytic, chemical or other processes which do not involve the mechanical working of metal (emphasis in original).

In this case, the micro silica sand is a residue containing metal compounds, i.e., aluminum oxides, which is obtained from burning coal, not the manufacture of iron or steel. The micro silica sand has been advanced in value or condition by a flotation separation process and by the subsequent drying and screening. Therefore, it is classified as other ash and residues containing metals or metal compounds, not from the manufacture of iron or steel under subheading 2620.90.90, HTSUS.

The protestant contends that the micro silica sand is classifiable under subheading 2621.00.00, HTSUS, as other slag and ash. EN 26.21 (pg. 211), states that heading 2621, HTSUS, “. . . covers slag and ash not falling in heading 26.18, 26.19 or 26.20, derived from the working of ores or from metallurgical processes, as well as those derived from any other material or process (emphasis in original).” Furthermore, EN 26.21 states that the products covered by heading 2621, HTSUS, include “[a]sh and clinker of mineral origin (e.g., coal, lignite or pet ashes).” As stated previously, the micro silica sand is properly classified under heading 2620, HTSUS. Therefore, the micro silica sand is excluded from classification under subheading 2621.00.00, HTSUS, as other slag and ash.

Subheading 6815.99.44, HTSUS, provides for other articles of stone or of other mineral substances, not elsewhere specified or included. EN 68.15 (pg. 909), states that “[t]his heading covers articles of stone or of other mineral substances, not covered by the earlier headings of this Chapter and not included elsewhere in the Nomenclature . . . (emphasis in original).” As stated previously, the micro silica sand is classified elsewhere in the Nomenclature, subheading 2620.90.90, HTSUS. Therefore, it is not classifiable under subheading 6815.99.44, HTSUS.

HOLDING:

The micro silica sand, D-124 Litefil, is classified under subheading 2620.90.90, HTSUS, as other ash and residues containing metals or metal compounds, not from the manufacture of iron or steel.

Since the rate of duty under the classification indicated above is more than the liquidated rate, the protest should be DENIED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed, with the Customs Form 19, by your office 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 of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Lexis, Freedom of Information Act, and other public access channels. John Durant, Director

JOHN DURANT,
Director.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ H003743
CLA-2 OT:RR:CTF:TCM H003743 KSH
CATEGORY: Classification
TARIFF NO.: 2621.90.0000

MR. GREG KONESKI
RANDY INTERNATIONAL LTD.
1031 W. Manchester Blvd. #D
Inglewood, CA 90301

RE: Revocation of Headquarters Ruling Letter (HQ) 955742, dated April 7, 1994; Classification of micro silica sand.

DEAR MR. KONESKI:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 955742, issued to you on behalf of your client, Microcell Australia, on April 7, 1994, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of micro silica sand. The micro silica sand was classified under heading 2620, HTSUS, which provided for “[a]sh and residues (other than from the manufacture of iron or steel) containing metals or metal compounds.”¹ We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 955742.

HQ 955742 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 955742 when notice of denial 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 1001-93-105468, but will be applicable to any unliquidated entries, or future importations of similar merchandise 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN, unless an earlier date is requested pursuant to 19 CFR 177.12(e)(2)(ii).

FACTS:

¹Heading 2620 in the 2007 HTSUS provides for “Slag, ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds.”

The product at issue is micro silica sand, D-124 Litefil, which is a lightweight mineral filler used as a partial replacement of heavyweight fillers, *i.e.*, replacement of heavyweight aggregates used in hydraulic cement based slurries for oil/gas well drilling. It is a by-product of fly ash, a waste material derived from the combustion of coal at power stations. The power station disposes of the fly ash by sluicing it into an ash storage dam. The lightweight portion of the ash separates from the heavyweight portion by floating to the surface of the water in the ash dam. The lightweight ash is then extracted from the ash dam, allowed to de-water, dried, screened and packaged for shipment. The chemical composition of the micro silica sand is 55% silica, 43% alumina and less than 1% iron.

ISSUE:

Whether the micro silica sand is classified in heading 2620, HTSUS, as “Slag, ash and residues (other than from the manufacture of iron or steel), containing arsenic, metals or their compounds”, or in heading 2621, HTSUS, as “Other slag and ash, including seaweed ash (kelp).”

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined 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 GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the HTSUS at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protections’ (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 2620, HTSUS, provides for “Slag, ash and residues (other than from the manufacture of steel or iron), containing arsenic, metals or their compounds.”

The EN to heading 2620, HTSUS, provide in relevant part:

This heading covers slag, ash and residues (**other than** those of heading **26.18**, **26.19** or **71.12**) which containing (sic) metals, arsenic (whether or not containing metals), their compounds, and which are of a kind used in industry either for the extraction of arsenic or metals or as a basis for the manufacture of their chemical compounds. They result from the treatment of ores or intermediate metallurgical products (such as mattes) or from electrolytic, chemical or other processes which do not involve the mechanical working of metal. . . .

The micro silica sand contains metals, namely aluminum oxides. However, the micro silica sand is not of a kind used in industry for the extraction of arsenic, metals or as a basis for the manufacture of chemical compounds. Rather, it is used as a filler in cement or as an extender for plastic compounds. Moreover, it does not result from the treatment of ores or intermediate metallurgical products (such as mattes) or from electrolytic, chemical or

other processes which do not involve the mechanical working of metal. Accordingly, the micro silica sand cannot be classified in heading 2620, HTSUS.

Heading 2621, HTSUS, provides for among other things, "Other slag and ash, including seaweed ash (kelp)."

The EN to heading 2621, HTSUS, provides in relevant part:

This heading covers slag and ash **not falling in heading 26.18, 26.19 or 26.20**, derived from the working of ores or from metallurgical processes, as well as those derived from any other material or process. Although many of the products are used as fertilisers they are classified here and not in Chapter 31 (**except** in the case of basic slag).

The products covered include:

* * *

(1) Ash and clinker of mineral origin produced primarily from burning coal, lignite, peat or oil in utility boilers. Its principal uses are as a raw material for cement manufacture, as a supplement to cement in concrete, in mine backfill, as a mineral filler in plastics and paints, as a lightweight aggregate in building block manufacture and in civil engineering structures such as embankments, highway ramps and bridge abutments. It includes:

- (a) Fly ash – finely divided particles entrained in furnace flue gases and removed from the gas stream by bag or electrostatic filters;
- (b) Bottom ash – more coarse ash removed by settlement from the gas stream immediately after leaving the furnace;
- (c) Boiler slag – coarse residues removed from the bottom of the furnace;
- (d) Fluidised bed combustor ash (FBC-ash) — inorganic residues from burning coal or oil in a fluidised bed of limestone or of dolomite.

The micro silica sand is derived from fly ash, a waste material derived from the combustion of coal at power stations. The micro silica sand is then extracted from the ash dam, allowed to de-water, dried, screened and packaged for shipment. The EN to heading 2621, HTSUS, explicitly states that the products of this heading are of, among other products, mineral origin, e.g. coal. Accordingly, the micro silica sand is classified in heading 2621, HTSUS.

HOLDING:

The micro silica sand is classified in heading 2621, HTSUS. It is provided for in subheading 2621.90.0000, HTSUS, which provides for "Other slag and ash, including seaweed ash (kelp); ash and residues from the incineration of municipal waste: Other." The general column one rate of duty is free.

EFFECT ON OTHER RULINGS:

HQ 955742 is hereby revoked.

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

19 CFR PART 177

**MODIFICATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN MIRRORED GLASS DECORATIVE APPLIQUÉS**

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the classification of certain mirrored glass decorative appliqués, without backing.

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 U.S. Customs and Border Protection (CBP) is modifying a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of mirrored glass decorative appliqués, without backing. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 41, No. 16, on April 11, 2007. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 12, 2007.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572-8828.

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 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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 41, No. 16, on April 11, 2007, proposing to modify Headquarters Ruling Letter (HQ) 958837 relating to the tariff classification of certain mirrored glass decorative appliqués, without backing. No comments were received in response to this notice. As stated in the proposed notice, this modification will cover any rulings on the subject 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 ruling identified above. 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 have advised 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised 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.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ 958837 to reflect the proper tariff classification of the mirrored glass decorative appliqués, without backing, under subheading 7013.99, HTSUSA, which provides for, *inter alia*: "Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than of heading 7010 or 7018): Other glassware: Other," pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 968359

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(Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

In accordance with 19 U.S.C. §1625(c), this action will become effective 60 days after publication in the Customs Bulletin.

DATED: May 29, 2007

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

[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ W968359
CLA-2 OT:RR:CTF:TCM W968359 HkP
CATEGORY: Classification
TARIFF NO.: 7013.99

PORT DIRECTOR
PORT OF SAN FRANCISCO
U.S. CUSTOMS AND BORDER PROTECTION
555 Battery Street
San Francisco, CA 94111

RE: Modification of HQ 958837; mirrored glass decorative appliqués

DEAR PORT DIRECTOR:

This is in reference to Headquarters Ruling Letter ("HQ") 958837, dated June 18, 1996, in which the tariff classification of certain mirrored glass decorative appliqués, with and without backing, was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have reconsidered HQ 958837 and have determined the tariff classification of the mirrored glass decorative appliqués without backing is not correct. The tariff classification of the mirrored glass appliqués with backing is not in issue.

As an initial matter we note that under San Francisco Newspaper Printing Co. v. United States, 9 CIT 517, 620 F. Supp. 738 (1985), the decision on the merchandise which was the subject of Protest 5201-00-100573 was final on both the protestant and the U.S. Customs Service (now, U.S. Customs and Border Protection ("CBP")). Therefore, while we may review the law and analysis of HQ 958837, any decision taken herein would not impact the entries subject to that ruling.

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, 2186 (1993), notice of the proposed modification was published on April 11, 2007, in the Customs Bulletin, Volume 41, No. 16. No comments were received in response to this notice.

FACTS:

HQ 958837 described the articles under consideration as follows:

The subject articles consist of mirrored glass decorative appliqués of various shapes. They are between 4 and 6" long and 2 and 4" wide. All are backed with a thin metallic coating. Some are additionally backed with wood, cut to shape. The mirrored glass portion is decorated over the entire surface and has low reflective properties. These articles are designed for mounting on the frames of standard mirrors of domestic origin to provide an ornate finished product.

Based on this information, this office classified the subject articles in heading 7006, HTSUS, which provides for worked glass of heading 7003, 7004, or 7005, but not framed or fitted with other materials, after concluding that the appliqués were specifically excluded from heading 7009, HTSUS, because they had surfaces that were worked after manufacture and were articles that would be used to decorate the edges of mirrors.

For the reasons below, it is now our position that the mirrored glass decorative appliqués are provided for in heading 7013, HTSUS, as glassware of a kind used for indoor decoration.

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined 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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7006.00 Glass of heading 7003, 7004 or 7005, bent, edge-worked, engraved, drilled, enameled or otherwise worked, but not framed or fitted with other materials:

* * *

Other:

* * *

7006.00.40 Other

7006.00.4010 Having an absorbent or reflecting layer

7009 Glass mirrors, whether or not framed, including rear-view mirrors:

* * *

Other:

7009.91 Unframed:

7009.91.1000 Not over 929 cm² in reflecting area

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:

Legal Note 2 to Chapter 70, HTSUS, provides, in pertinent part:

For the purposes of heading 7003, 7004 and 7005:

* * *

(c) The expression “absorbent, reflecting or non-reflecting layer” means a microscopically thin coating of metal or of a chemical compound (for example, metal oxide) which absorbs, for example, infrared light; or which improves the reflecting qualities of the glass while still allowing it to retain a degree of transparency or translucency; or which prevents light from being reflected on the surface of the glass.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

Glass of headings 7003, 7004, and 7005, is classified in heading 7006, HTSUS, if it is further worked, but not fitted or framed with other material. While such glass may possess reflective qualities, Legal Note 2(c) requires it to retain a degree of transparency or translucency. The articles in question are described as mirrored glass decorative appliqué. It is now our position that mirrored glass has no degree of transparency or translucency and we find, therefore, that decorative appliqué made from mirrored glass are precluded from classification in heading 7006, HTSUS, by application of Legal Note 2(c). For a general discussion on this issue see HQ 968221, dated July 31, 2006.

Heading 7009, HTSUS, is an *eo nomine* provision for glass mirrors. *Eo nomine* provisions usually include all forms of the article. EN 70.09 explains that glass mirrors of heading 7009, HTSUS, are “glass, one surface of which has been coated with metal (usually silver, sometimes platinum or aluminum) to give a clear and brilliant reflection.” The ENs further explain: “[t]his heading covers mirrors in sheets, whether or not further worked. It also includes shaped mirrors of any size, for example, mirrors for furniture, for interior decoration, for railway carriages, etc. . . .” The appliqué are made of mirrored glass and are therefore potentially classifiable in this heading. However, EN 70.09, also explains, in relevant part:

This heading also covers mirrors, whether or not framed, bearing printed illustrations on one surface, provided they retain the essential character of mirrors. However, once the printing is such as to preclude use as a mirror, these goods are classifiable in heading 70.13 as decorative articles of glass. (Original emphasis.)

Because the mirrored glass of the subject appliqué is decorated over its entire surface and has low reflective properties, we find that it has lost the essential character of a mirror and is precluded from use as a mirror. Accordingly, we find that these qualities preclude the appliqué from classification in heading 7009, HTSUS.

Heading 7013, HTSUS, provides for glassware of a kind used for decoration. EN 70.13 provides, in pertinent part:

This heading covers the following types of articles, most of which are obtained by pressing or blowing in moulds:

* * *

On the other hand, this heading covers decorative articles which are in the form of mirrors, but cannot be used as mirrors due to the presence of printed illustrations; otherwise they are classified in heading 70.09. (Original emphasis.)

Based on all of the foregoing, we find that the subject mirrored glass appliqués are decorative in nature and unusable as mirrors. They are therefore classified in heading 7013, HTSUS, as glassware of a kind used for decoration.

HOLDING:

By application of GRI 1 and Legal Note 2(c) to Chapter 70, the mirrored glass decorative appliqués without backing are properly classified in heading 7013, HTSUS, as “glassware of a kind used for . . . indoor decoration or similar purposes” and are specifically provided for in subheading 7013.99, HTSUS, as “other glassware, other”, with exact classification depending on the nature of the decoration and the value of the appliqués.

EFFECT ON OTHER RULINGS:

HQ 958837, dated June 18, 1996, is modified with respect to the classification of the mirrored glass decorative appliqués without backing. The tariff classification of the other items described in HQ 958837 is unchanged. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

