

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
 - “New” means a new assistance award.
 - “Continuation” means an extension for an additional funding/budget period for a project with a projected completion date.
 - “Revision” means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For

multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

[FR Doc. 96-69 Filed 1-2-96; 8:45 am]

BILLING CODE 4910-62-P

Federal Aviation Administration

Airport Traffic Control Tower at Monroe County Airport, Bloomington, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of change.

Notice is hereby given that on or about January 7, 1996, the Airport Traffic Control Tower (ATCT) at Bloomington, Indiana will convert to a non-federal operation. The hours of operation will be 6:30 a.m. to 9:30 p.m. Services to the aviation public in the Bloomington area, formerly provided by the FAA will be provided by the Midwest ATC Services. This information will be reflected in the FAA organization statement the next time it is reissued.

William C. Withycombe,

Acting Regional Administrator, Great Lakes Region.

[FR Doc. 96-60 Filed 1-2-96; 8:45 am]

BILLING CODE 4910-13-M

Airport Traffic Control Tower at Delaware County Airport, Muncie, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of closing.

Notice is hereby given that on December 31, 1995, the Airport Traffic Control Tower (ATCT) at Muncie, Indiana will be permanently closed. Services to the aviation public in the Muncie area, formerly provided by the Indianapolis Center at Indianapolis, Indiana. This information will be

reflected in the FAA organization statement the next time it is reissued. William C. Withycombe, *Acting Regional Administrator, Great Lakes Region.*

[FR Doc. 96-59 Filed 1-2-96; 8:45 am]

BILLING CODE 4910-13-M

The Airport Traffic Control Tower at South Lake Tahoe, CA; Notice of Decommissioning

Notice is hereby given that on December 31, 1995, federal funding will be withdrawn for the Airport Traffic Control Tower at South Lake Tahoe, California. Decommissioning efforts will be initiated on January 1, 1996. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Lawndale, California on December 20, 1995

Lynore C. Brekke,

Acting Regional Administrator Western-Pacific Region.

FR Doc. 96-61 Filed 1-2-96; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96-7]

Tariff Classification of Imported Glassware

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

ACTION: Change of practice.

SUMMARY: This document sets forth Customs position regarding the scope of three classes of imported glassware:

“containers of glass used for the conveyance or packing of goods”, “preserving jars of glass” and “glass storage articles”. As part of Customs efforts to clearly and completely inform importers with regard to classification issues, it has been determined advisable to set forth guidelines which Customs will consider when determining whether merchandise falls within a particular class or kind of glassware.

EFFECTIVE DATE: Any changes in tariff classification resulting from the implementation of these guidelines and any revocation of inconsistent rulings will be effective regarding merchandise entered for consumption or withdrawn from a warehouse for consumption on or after February 2, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Beth McLoughlin, Metals and

Machinery Classification Branch, Office of Regulations and Rulings (202) 482-7030.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the Federal Register (59 FR 51659) on October 12, 1994, Customs proposed a change of practice involving the tariff classification of three classes of imported glass articles under the Harmonized Tariff Schedule of the United States (HTSUS). That notice examined subheadings 7010.90.50 and 7013.39, HTSUS, which read as follows:

7010.90.50 carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass: other containers (with or without their closures)

7013.39 glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): glassware of a kind used for table, (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: other

There are two types of classification by use:

(1) according to the use of the class or kind of goods to which the imported article belongs; and

(2) according to the actual use of the imported article.

Use according to the class or kind of goods to which the imported article belongs is more prevalent in the tariff schedule. A few tariff provisions expressly state that classification is based on the use of the class or kind of goods to which the imported article belongs. However, in most instances, this type of classification is inferred from the language used in a particular provision.

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 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 at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the

principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the U.S. Court of International Trade (CIT) has 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, the 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: *Kraft, Inc., v. United States*, USITR, 16 CIT 483, (June 24, 1992)(hereinafter *Kraft*); *G. Heilman Brewing Co. v. United States*, USITR, 14 CIT 614 (Sept. 6, 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.

Tariff classification of goods controlled by actual use is specifically provided for in sections 10.131-10.139, Customs Regulations [19 CFR 10.131-10.139]. According to these regulations, an actual use provision is satisfied if: (1) such use is intended at the time of importation, (2) the article is so used, and (3) proof of such use is furnished within three years after the date the article has been entered.

Currently, tariff classification under both subheading 7010.90.50 and 7013.39, HTSUS, is determined by the use of the class or kind of articles to which the imported merchandise belongs. As such, they are considered provisions controlled by Additional U.S. Rule of Interpretation 1(a), HTSUS.

Customs proposed that subheadings 7010.90.50 and 7013.39 would remain principal use provisions. Therefore, for an imported good to be classifiable in either of these subheadings, it must be of a class or kind classifiable in these subheadings. Whether it is of the class or kind of articles classifiable in either subheading will be determined by its principal use. Principal use will, in turn, be determined by the specific criteria formulated to determine to what class or kind the imported goods belong.

In formulating the criteria, Customs considered its prior headquarters ruling letters and court cases, comments from the public and the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). The ENs, although not dispositive, or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-90, 54 FR 35127, 35128

(August 23, 1989). Based on the plain language of the provision, Customs proposed that subheading 7010.90.50 includes the classes "glass containers of a kind used for the conveyance or packing of goods" and "preserving jars of glass".

Containers of a Kind Used for the Conveyance or Packing of Goods

Customs proposed understanding of the principal use of this class and the factors which indicate acceptance of a particular article in the class, was that together, they provided specific identifiable characteristics which are indicative, but not conclusive of whether a particular glass article qualifies as part of the class "containers of glass of a kind used for the conveyance or packing of goods". These characteristics would include, containers, of all shapes and sizes:

1. Generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colorless or colored) and manufactured by machines which automatically feed molten glass into molds where the finished articles are formed by the action of compressed air;
2. In which the ultimate purchaser's primary expectation is to discard the container after the conveyed or packed goods are used;
3. Sold from the importer to a wholesaler/distributor who then packs them with goods;
4. Sold in an environment of sale that features the goods packed in the jar and not the jar itself;
5. Used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
6. Capable of being used in the hot packing process; and
7. Recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

Customs proposed that the physical characteristics of a particular glass article are the primary indicator of whether it belongs to the class "containers of a kind used for the conveyance or packing of goods". Additionally, we noted that whether a particular container is capable of being used in the "hot packing" process, is of limited utility when determining whether it is classifiable as a container of a kind used for the conveyance or packing of goods. Finally, Customs proposed one additional factor: that glass containers imported without their corresponding caps or lids was a physical characteristic that indicates that particular containers will be used for the conveyance or packing of goods.

Preserving Jars of Glass

Customs proposed that the principal use for the class "preserving jars of glass" is jars purchased and used for home canning only. Further, there are identifiable characteristics that are indicative, but not conclusive of the principal use of glass jars classifiable as "preserving jars of glass".

These would include glass articles of any shape that are between .23 and 2.2 liter sizes, and are the shape and height of regular and wide-mouth "Mason-type", threaded, home-canning jars with self-sealing lids. Generally, the standard jar mouth opening is about 2³/₈ inches with wide mouth jars having 3 inch openings. "Mason-type" jars have narrower sealing surfaces and are tempered less than most commercial pint and quart-size jars. The common self-sealing lid consists of a flat metal lid held in place by a metal screw band during processing. The flat lid is crimped around its bottom edge to form a trough, which is filled with a colored gasket compound. Glass articles with wire bails and glass or porcelain caps or lids were considered not classifiable as "preserving jars of glass" as their physical characteristics do not allow them to be recommended for home canning use.

Glassware of a Kind Used for Table or Kitchen Purposes: Glass Storage Articles

Based on the plain language of the heading, Customs stated that subheading 7013.39 provides for the class "glassware of a kind used for table or kitchen purposes". This class includes articles principally used to hold or store other articles in the home. Furthermore, among these articles, certain glass storage jars may also be principally used in this fashion. Therefore, Customs proposed that glass articles which are principally used to store articles in the home are classifiable under subheading 7013.39 and identified the following characteristics which were indicative, but not conclusive of glassware of a kind used for table or kitchen purposes; glass household storage articles. They are glass articles:

1. Made of ordinary glass, lead crystal glass, glass having a low coefficient of expansion (e.g., borosilicate glass) or of glass ceramics (the latter two in particular, for kitchen glassware). They may also be colorless, colored or of flashed glass, and may be cut, frosted, etched or engraved;
2. Having a decorative motif consistent with a kitchen decor (e.g., geese, "country theme", etc.);

3. Which the consumer purchases primarily to use for storage in the home;

4. Sold from the importer to a wholesaler/distributor who then sells them to a retailer;

5. Sold in an environment of sale that emphasizes the article's use or reuse as a storage article;

6. Sold to the ultimate purchaser empty;

7. Which are recognized in the trade as primarily having a household storage use; and

8. Which are imported with their caps or lids.

Analysis of Comments

Six comments were received in response to the notice, four from importing interests and two from domestic manufacturers of glassware. Substantive legal arguments contained in the comments are discussed below.

Relative Specificity of Headings 7010 and 7013

Regarding the classification of glass articles capable of both conveyance or packing of goods and household storage, a commenter has suggested that the question of classification is determined not by a use comparison, but by the specific statutory exclusion of articles classifiable in heading 7010 from classification in heading 7013. According to the commenter, the language in heading 7013 excludes all merchandise described in heading 7010. Therefore, heading 7013's relative specificity is well indicated by the statutory language itself.

Customs agrees that the language of heading 7013 excludes from classification articles classifiable in heading 7010. However, that language is qualified by the holding of *Group Italglass U.S.A. v. United States*, 17 CIT 226. In that case, the CIT specifically held that: "[t]he language in heading 7010, 'of a kind used for' explicitly invokes use as a criterion for classification and under heading 7010 principal use is controlling." *Id* at 228. As both headings contain the language 'of a kind used for', Customs position is that the principal use of a particular article will determine whether it belongs to one of the classes or kinds described by heading 7010, or heading 7013. Principal use of a particular article will, in turn, be determined by the specific criteria formulated for the classes or kinds described in headings 7010 and 7013.

Should it be determined that the principal use of a particular article indicates it is classifiable within a class or kind provided for in heading 7010 the language of heading 7013 precludes

that particular article from classification in heading 7013. Should it be determined that the principal use of a particular article indicates that it does not belong to a class or kind provided for in heading 7010, it is not precluded from classification in heading 7013.

Containers of a Kind Used for the Conveyance or Packing of Goods

Application of the Proposed Criteria

Several commenters indicated concern that the various criteria provided would be applied as "bright line" rules.

Customs position is that generally, the principal use criteria provided are merely characteristics, indicators of, or tools to indicate, whether a specific piece of glassware is principally used in the same manner as the class or kind the criteria describe. Additionally, the statement that the principal use criteria are merely indicative and not conclusive, clearly demonstrates that the characteristics are guidelines and not a "litmus test" or "bright line" rules for classification purposes.

As a general rule, a glass article's physical form will indicate its principal use and thus to what class or kind it belongs. Examples of characteristics indicative, but not conclusive of, the physical form of articles belonging to the class or kind "containers of a kind used for the conveyance or packing of goods" are enumerated in EN 70.10 and under the "physical characteristics" criteria. Should, however, an exception arise and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Physical Description

It has been suggested that the first criterion, the physical characteristics of the class "containers of glass used for the conveyance or packing of goods" is too narrow for the entire class. Rather, the entire class includes 4 different types of containers used for the commercial conveyance of liquid and solid products. These types are described in the ENs to heading 7010, and include:

(A) Carboys, demijohns, bottles (including syphon vases), phials, and similar containers * * * of all shapes and sizes * * * used as containers for * * * (see list).

(B) Jars, pots, and similar containers * * * used for the commercial conveyance of certain foodstuffs, cosmetic or toilet preps, pharmaceutical products, polishes, cleaning preps, etc.

(C) Ampoules usually obtained from drawn glass and intended to serve after sealing as containers for serums, etc.

(D) Tubular containers and similar containers.

Additional descriptions of how each kind of container or jar is produced, its typical closure design and decorative features are included in these breakouts. Based on these expressed concerns, it has been suggested that reference to the ENs with an explanation, should replace this criterion. Customs agrees with the commenters' observations and reiterates its position that the physical description provided in the proposed notice, together with the descriptions found in EN 70.10, are indicative, but not conclusive, physical characteristics of glass articles belonging to the class "containers of a kind used for the conveyance or packing of goods".

Ultimate Purchaser's Expectation

A commenter has suggested that this criterion be eliminated because the language "***discard containers after use" prevents recyclable containers from classification as containers of a kind used for the conveyance or packing of goods.

Customs position is that for heading 7010 purposes, the term "discards" in the phrase ". . . to convey or pack a product to a consumer who uses the product and then discards the container" includes glass articles otherwise described as "containers" which are "discarded" for recycling.

Importer-Wholesaler/Distributor

A commenter has suggested that this criterion is a misapplication of Additional U.S. Rule of Interpretation 1(a) because it refers to the distribution by "importers". The commenter indicates that Additional U.S. Rule 1(a) states that review applies to all goods of the class or kind, whether imported or not. Additionally, the commenter contends that this criterion suggests the application of actual use to the classification of glassware. Finally, the commenter requests guidance on what evidence Customs would expect importers to provide regarding channels of trade.

Customs agrees with the comments regarding Additional U.S. Rule of Interpretation 1(a). Additionally, Customs position is that this criterion is an explanation of the pattern or channel of trade that goods of this class generally follow. While not all goods of this class follow this channel of trade, Customs believes that enough do for this pattern to be considered indicative but not conclusive of articles belonging to the class. Finally, Customs believes

evidence will be solicited on a case-by-case basis.

Environment of Sale/Channel of Trade

According to one commenter, this criterion ignores the commercial realities of the food and beverage market in that containers are often a vehicle used by the packager to differentiate its product from others.

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRIs). GRI 1, states, in pertinent part, that for legal purposes, classification shall be determined according to the terms of the headings and any heading or chapter notes. While the "commercial realities" of the glass container market may require redesign of glass articles, for tariff classification purposes, the application of the GRIs together with Additional U.S. Note 1(a), requires that if the article's form is altered in a way that no longer indicates it is principally used as a container, it must be reclassified. While, as one of its uses, a glass article may be used to pack and convey a good to a consumer, that use must be its principal one for it to belong to the class "glass articles of a kind used for the conveyance or packing goods".

Lids

Commenters claim that Customs addition of a factor relating to the importation of lids with containers is in direct conflict with the statutory language of heading 7010, which states, in pertinent part, "***with or without their lids". They believe that the heading language makes it clear that Congress intended that closures be disregarded when determining the class of a given container. Additionally, use of this criterion could lead to a container being classified differently depending upon whether it was imported with or without a lid. Finally, they assert that this is, in effect, an actual use test.

Instead of reviewing lids, the commenters suggest considering a container's finish, the portion of the container where the cap or lid will be attached. Designs include threaded, beaded and a variety of other finishes. Because closures are created to match standard finishes, the commenters suggest that the proposed criterion should state that all containers with a "standard finish" are classifiable as containers used for the conveyance or packing of goods. The commenters agree that it is generally true that containers for the conveyance or packing of goods are imported without their lids. They believe, however, that there is a danger of undue focus on the presence or

absence of a lid, as a lid's presence or absence is one of the easily identifiable criteria. Finally, this criterion would increase the possibility that drinking glasses which are always imported without lids, would be classified incorrectly.

Finally, one commenter has requested that Customs clarify its distinction by stating that the absence of lids or caps is only a "plus" factor pointing toward classification in heading 7010, but that the presence of a lid or cap in no way points against heading 7010 classification. The commenter then suggests that ultimately, the absence or presence of a lid does not affect the "reusability" or "function" of a container and therefore should not carry much weight in determining a container's classification.

After careful consideration of the comments, Customs withdraws this criterion.

Preserving Jars of Glass

Class or Kind vs. eo nomine

One commenter disagrees with Customs characterization of preserving jars of glass as a use provision and instead claims that the provision is *eo nomine*. According to the commenter, the general rule for classification under an *eo nomine* provision is that the provision includes all forms of the named article. The commenter further states that bail and trigger jars are well known in commerce as having been designed for use in the preserving of foodstuffs. Therefore, it is irrelevant whether the jars are principally used as such.

As previously discussed in the relative specificity section, Customs position is that *Italglass* requires the application of principal use to all classes in heading 7010.

Scope of the Class "Preserving Jars of Glass"

Another commenter argues that Customs definition of preserving jars of glass as home canning jars is too restrictive. Customs definition was: to prepare food for future use, as by canning or salting to treat fruit or other foods so as to prevent decay. The commenter suggests a broader definition: preserving means "food preservation". Food preservation should be defined as the protection of food from spoilage. Therefore, any glass container used to protect food from spoilage is a preserving jar.

Customs is of the opinion that its proposed definition is the common dictionary and trade definition of preserving. Customs does not agree with

the commenter's definition of preserving as it is entirely too broad. EN 70.10's inclusion of the phrase "* * * Jars, pots, and similar containers * * * used for the commercial conveyance of certain foodstuffs" clearly indicates that not all glass articles capable of protecting food from spoilage belong to the class "preserving jars of glass". This language and application of the ENs clearly indicate that the commenter's broad definition was not the intent of the EN drafters. Furthermore, Congress' adoption of a separate class for preserving jars, clearly demonstrates their intent to narrow the scope of both the conveyance and packing provision and the preserving jar provision.

USDA Bulletin

Several commenters state that Customs should not rely on the U.S. Department of Agriculture, Extension Service, Complete Guide to Home Canning: Guide 1 Principals of Home Canning (Agricultural Information Bulletin No. 539-1, May 1989), [USDA bulletin] because it does not explain why bail and trigger jars are not recommended for home canning. They suggest that replacement gaskets may no longer be manufactured for use with the jars and that a higher risk of contamination exists with these jars because they have to be sealed by pushing down the clamp after being removed from the canner. Also, reliance on the USDA pamphlet is severely limited by the findings of *Nestle Refrigerated Food Co. v. United States*, U.S. CIT, Slip Op. 94-118 (July 20, 1994). The court stated that administrative interpretations not related to tariff purposes are not determinative of Customs classification disputes. Reference is also made to different sources on preserving which indicate bail and trigger jars are usable for home canning purposes. One commenter suggests that the following should be the standards for preserving jars:

1. The jars are specifically designed, as evidenced by patents or other reliable documents, for use as home canning or preserving jars;
2. Instructions for using the jars in the home preserving process are provided; and
3. Rubber seals or lids are readily available at the start of each home canning season from the sources where the consumer purchased the jars.

Customs position is that reliance on the USDA bulletin does not conflict with the holding of *Nestle Refrigerated Food Co. v. United States*. The definition of preserving, was not provided by the USDA bulletin, but

rather by consulting the dictionary and the common and commercial meaning. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982). Customs has cited the USDA bulletin because various home canning nutritionists and food scientists consulted stated that the USDA bulletin provided the guidelines that home canners, and those who create the necessary jars, rely on to create the preserves as well as the jars themselves.

Moreover, Customs has independently reviewed the scientific studies relied upon for the conclusion drawn regarding wire and bail trigger glass jars in the USDA bulletin. Customs position is that the scientific evidence supports the conclusion that wire bail and trigger jars should not be principally used as home canning jars. Therefore, the jars cannot be classified as such.

Glassware of a Kind Used for Table or Kitchen Purposes: Glass Storage Articles

Scope of Heading 7013

One commenter states that Customs misunderstands the scope of heading 7013. That commenter believes that none of the exemplars in EN 70.13 relate to the holding or storage of any article in the home. Rather, the commenter contends that all but one of the articles listed in EN 70.13(1) are articles which are used to prepare and serve food. Therefore, glass household storage articles are not classifiable in heading 7013.

As further evidence that glass household articles are not classifiable in heading 7013, the commenter cites to heading 6911 and claims that headings 7013 and 6911 are *ejusdem generis* and therefore their ENs should "mirror" each other. However, the commenter notes, EN 69.11, specifically provides for storage jars. Because EN 70.13 does not, the commenter believes it was the drafters intent to omit glass household storage articles from heading 7013. The commenter suggests that the drafters clearly included ceramic preserving jars and storage jars within the scope of headings 6911 and 6912, and excluded them from heading 6909. According to the commenter, the similarity to the exemplars in ENs 69.11, 69.12 and 70.13

is striking. Therefore, the omission of preserving and storage jars from EN 70.13 is significant. The commenter believes that glass storage jars are included in the scope of glass preserving jars and states that this follows from the fact that the storage of food products prevents spoilage (drawing moisture, infestation with vermin, etc.).

Customs position is that the exemplars from EN 70.13 are merely that, examples. They are not all inclusive. Additionally, Customs believes that the following EN 70.13 exemplars all are used to store various food stuffs or articles in the home:

- (1) Table or kitchen glassware, e.g. * * * decanters, infants' feeding bottles, pitchers, jugs, * * * cake-stands, * * * butter dishes, oil or vinegar cruets, * * * salt cellars, * * * sweetmeat boxes, graduated kitchenware, * * * ice-buckets.

Furthermore, Customs believes that the commenter's direct comparison of the ENs 69.09, 69.11 and 69.12 to 70.10 and 70.13 was clearly not the intent of the EN authors. Were that the authors' intent, they would have applied the ENs for headings 69.09 and 69.13 *mutatis mutandis* to those of headings 70.10 and heading 70.13.

Customs position is that heading 7013 provides for glass storage articles within the class glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes.

Decorative Motif

One commenter was concerned because many household storage articles are very simple, strictly utilitarian and have no decorative motif. Because the criterion of a decorative motif is objective and easily determined, the commenter contends that there is a risk of it being given undue importance or becoming the sole criterion. Additionally, examples of specific decorative motifs are unacceptable because of a danger that household storage jars having unlisted motifs will be misclassified. Therefore, criterion 2 should be eliminated and the following be added to criterion 1: "painted or otherwise having a decorative motif". Customs agrees with the comment and has made the change.

Distribution Channels

One commenter was concerned about this criterion because while it may identify the most common distribution channels for articles imported for ultimate sale in the retail market, it excludes articles imported directly by large retail chains.

Customs recognizes that the distribution channel described is a general rule and does not preclude from consideration for this class glassware distributed through other channels.

Lids

One commenter states that Customs lid criterion creates the expectation that heading 7013 articles are always imported with their lids. Although it is true that glass containers imported for use in conveying or packing goods are generally imported without their lids, it does not follow that table or kitchen storage containers are necessarily imported with their lids. The commenter believes the only clear statement that can be made about lids is that glass household storage articles are imported without their lids less frequently than are containers for the conveyance or packing of goods. As previously noted, this criterion has been withdrawn.

Conclusion

After careful review and consideration of all the comments received in response to the notice of proposed position, a review of Customs implementation of its prior understanding of the 3 classes and a review of Customs rulings, Customs adopts, with some modification, its proposed position.

Subheadings 7010.90.50 and 7013.39; Relative Specificity

Based on the *Italglass* holding, Customs concludes that the language "of a kind used for" explicitly indicates that the principal use of a particular article will determine whether it belongs to one of the classes or kinds described by heading 7010 or heading 7013. Principal use of a particular article will, in turn, be determined by the specific criteria formulated for the classes or kinds described in headings 7010 and 7013.

Should it be determined that the principal use of a particular article indicates it is classifiable within a class or kind provided for in heading 7010, the language of heading 7013 precludes that particular article from classification in heading 7013. Should it be determined that the principal use of a particular article indicates that it does not belong to a class or kind provided for in heading 7010, it is not precluded from classification in heading 7013.

Containers of a Kind Used for the Conveyance or Packing of Goods

Customs concludes that as a general rule, a glass article's physical form will indicate its principal use and thus to

what class or kind it belongs. Examples of physical forms indicative, but not conclusive of, articles belonging to the class or kind "containers of a kind used for the conveyance or packing of goods" are enumerated in EN 70.10 and under the "physical characteristics" criterion. When an exception arises and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Customs concludes that generally, the principal use criteria provided are merely characteristics, indicators of, or tools to indicate, whether a specific piece of glassware is principally used in the same manner as the class or kind the criterion describe. Further, Customs adopts the following criteria as indicative, but not conclusive of whether a particular glass article qualifies as part of the class "containers of glass of a kind used for the conveyance or packing of goods":

1. Generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colourless or coloured) and manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air;
2. The ultimate purchaser's primary expectation is to discard/recycle the container after the conveyed or packed goods are used;
3. Sold from the importer to a wholesaler/distributor who then packs the container with goods;
4. Sold in an environment of sale that features the goods packed in the container and not the jar itself;
5. Used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
6. Capable of being used in the hot packing process; and
7. Recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

Preserving Jars of Glass

Customs concludes that the term "preserving" is described, in pertinent part, as "to prepare food for future use, as by canning or salting; to treat fruit or other foods so as to prevent decay".

Based upon the above definition, the reliance on the guidelines espoused in the U.S. Department of Agriculture, Extension Service, Complete Guide to Home Canning; Guide 1 Principals of Home Canning (Agricultural Information Bulletin No. 539-1, May

1989), by various home canning nutritionists and food scientists consulted, and an independent review of the scientific evidence the USDA guidelines are based upon, Customs concludes that there are identifiable characteristics that are indicative, but not conclusive of the principal use of glass jars classifiable as "preserving jars of glass". They include glass articles that are between .23 and 2.2 liter sizes and are the shape, round or square, (eg: not multi-sided, faceted or decorated) and height of regular and wide-mouth "Mason-type" jars.

Generally, the standard jar mouth opening is about 2³/₈ inches with wide mouth jars having 3 inch openings. "Mason-type" jars have narrower sealing surfaces and are tempered less than containers belonging to the class "containers of a kind used for the conveyance or packing of goods". The common self-sealing lid consists of a flat metal lid held in place by a metal screw band during processing. The flat lid is crimped around its bottom edge to form a trough, which is filled with a colored gasket compound.

Customs concludes, therefore, that jars with wire bail and trigger closures are not included within the scope of the class "preserving jars of glass" but rather within the scope of the class "glassware of a kind used for table or kitchen purposes" classifiable under heading 7013. The physical form of the wire bail and trigger jar indicates its principal use as a storage article.

Glassware of a Kind Used for Table or Kitchen Purposes: Glass Storage Articles

Customs concludes that as a general rule, a glass article's physical form will indicate its principal use and thus to what class or kind it belongs. Examples of physical forms indicative, but not conclusive of, articles belonging to the class or kind "containers of a kind used for the conveyance or packing of goods" are enumerated in EN 70.13 and under the "physical characteristics" criterion. When an exception arises and an article's physical form does not indicate to what class or kind it belongs or its physical form indicates it belongs to more than one class or kind, Customs considers the other enumerated principal use criteria.

Customs concludes that heading 7013 includes the class "glass storage articles". Additionally, Customs adopts the following principal use criteria:

1. Made of ordinary glass, lead crystal glass, glass having a low coefficient of expansion (e.g., borosilicate glass) or glass ceramics (the latter two in particular, for kitchen glassware). They

may also be colorless, colored or of flashed glass, and may be cut, frosted, etched, engraved, painted or otherwise have a decorative motif.

2. The consumer purchases primarily to use for storage;

3. Sold from the importer to a wholesaler/distributor who then sells them to a retailer;

4. Sold in an environment of sale that emphasizes the article's use or reuse as a storage article;

5. Sold to the ultimate purchaser empty; and

6. Recognized in the trade as primarily having a storage use.

Effect on Rulings: This document revokes Headquarters Ruling Letters, 951721 dated January 12, 1993; 952675 dated January 15, 1993; 953280 dated February 5, 1993; 951991 dated March 2, 1993; 954293 dated June 30, 1993; 954792 dated November 24, 1993; 953952 dated September 21, 1994, and any other rulings which are not consistent with these guidelines.

EFFECTIVE DATE: Any changes in tariff classification resulting from the

implementation of these guidelines and any revocation of inconsistent rulings will be effective regarding merchandise entered for consumption or withdrawn from a warehouse for consumption on or after February 2, 1996.

George J. Weiss,
Commissioner of Customs.

Approved: November 29, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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