

Glue and Adhesives Definitions

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Area Director of Customs
New York, New York 10048

Director, Classification and Value Division

Internal Advice Request No. 154/82 Relates to the Question Whether the Heat Sealing Method of Assembly of Artificial Flowers or Foliage is a Permissible Method of Assembly Under Item 748.21, Tariff Schedules of the United States (TSUS)

FACTS:

The merchandise involved is a 42 frond polyester fern. Each frond is composed of a textile leaf assembled to a plastic coated wire stem by heat-sealing the parts together. While the specifics as to the fabrication and assembly of the sample fern were not provided by the inquirer, it is clear that an application of heat and pressure results in a molten flow of the underside of the plastic stem which upon cooling bonds the leaf to the stem.

The inquirer maintains that the instant merchandise is classifiable under the provision for other artificial flowers, trees, foliage *** in item 748.21(EN), Tariff Schedules of the United States (TSUS). The rationale for this position is that the ferns are assembled by heat-sealing which is a method similar to gluing. Such a method of assembly does not preclude the classification of the ferns under item 748.21, TSUS, by virtue of Schedule 7, Part 7, Subpart B, Headnote 1(iii), TSUS.

ISSUE:

Whether assembly by heat sealing is a method of assembly similar to gluing within the purview of Schedule 7, Part 7, Subpart B, Headnote 1(iii), TSUS?

LAW AND ANALYSIS:

Schedule 7, Part 7, Subpart B, Headnote 1(iii).

1. The provisions of item 748.20 and 748.21 do not include

(iii) articles consisting of parts assembled otherwise than by binding with flexible materials, such as wire, paper, textile material, or foil, or by gluing, or by similar methods;

In support of his position the inquirer cites the case of *First American Artificial Flowers Inc. v. United States*, 66 Cust. Ct. 150, C.D. 4185 (1971), wherein the court stated its understanding of the term gluing in the context of the Subpart B headnotes as follows:

"Gluing implies to us in the present context the use of glue or adhesive to join separate parts."

Consequently, the inquirer urges that the meaning of the terms glue and adhesive are highly relevant in deciding the issue and offers the following definitions from Webster's New International Dictionary of the U.S. language, second edition (1960):

Adhesive

1. An adhesive substance
2. A substance that causes bodies to adhere to each other, a glue, sealing wax, etc., also a cement.

Glue

1. To join with glue or a viscose substance; to cause to stickfast, as if with glue; to fix or fasten.

The inquirer points out that it is clear from these definitions of adhesive and glue that heat sealing method uses an adhesive or gluing technique in assembling the polyester leaf to the branches and stems of artificial flowers.

Specifically, the plastic which has been heated is the adhesive which binds the polyester leaf to the branches and stems. In addition, the inquirer notes that although the plastic adhesive must be heated, it is not dissimilar to other glues or adhesives commonly used. For example, sealing wax which is an adhesive is heated into a liquid before it is used.

In the *First American*, case, *supra*, the court found that molding, a process where by the molded parts of a fern were reinserted in a mold and then subjected to a pouring of plastic which joined the parts and produced a whole fern is not a method of assembly by gluing or similar methods. The inquirer maintains that the heat sealing method of assembly is different from the molding type process of assembly before the court in that the plastic in the heat sealing method does not fix the polyester leaf to the branches or stems by encasing the part but rather the adhering qualities of the plastic fixes the polyester leaf to the branch.

It is fundamental principle of Customs law that terms in the tariff in the absence of statutory definition are to be construed in accordance with their common or commercial meaning which are presumed to be the same. Also the courts may and do consult dictionaries, lexicons, scientific authorities, and other reliable sources of information as an aid to their knowledge. *United States v. John B. Stetson Company*, 21 C.C.P.A. 3, T.D. 46319 (1933); *United States v. Mercantil Distribuidor, et al*, 43 C.C.P.A. 111, C.A.D. 617 (1956); *United States v. C. J. Tower & Sons of Buffalo, NY*, 48 C.C.P.A. 87, C.A.D. 770 (1961).

The McGraw Hill Encyclopedia of Science and Technology, Volume 6, 1977, states:

Glue

A crude impure, amber colored form of commercial gelatin of unknown detailed composition and with an indefinite melting point. The term glue is erroneously used to include any material with adhesive properties such as vegetable glue, casein glue and phenol-formaldehyde resin glue.

The McGraw Hill definition of glue illustrates how a definition can be rather narrow in meaning or as in Webster's definition much broader in scope. It is therefore important to recognize that while courts have looked at lexicons for common meaning, issues also have been decided "according to the common or ordinary use of the word by people in general." *United States v. Sears, Roebuck & Company*, 11 Ct. Cust. Appls 412, T.D. 39323 (1922).

As previously stated, the court in *First American*, supra, interpreted the term "glue" as it appears in Schedule 7, Part 7, Subpart B, Headnote 1(iii), TSUS, supra, as the use of glue or adhesive to join separate parts. The court would not characterize a plastic used to encase three branches of a term as a glue or adhesive. The inquirer in describing the plastic stem of the sample as an adhesive draws a distinction between the molding type process of fabrication before the court and the heat sealing method of assembly which he contends is indistinguishable from gluing. We do not agree with this reasoning. While the court's comments referred to a particular process there is no reason to assume that a different conclusion would have been reached had the plastic been in the form of a stem that was meant to be heat sealed to a leaf.

In *Modern Plastics Encyclopedia*, Volume 57, No. 10A, 1980-1981 at page 434, the subject of assembly methods of fabricated parts is discussed. Adhesive bonding is but one of a number of methods that includes: Electro-magnetic bonding, friction joining, magnetic heat sealing, mechanical fastening, flow molding, thermal sealing and ultrasonic assembly. Thermal sealing is described as a process where molten plastic solidifies to produce a high strength bond with the advantage over conventional methods that no adhesive or foreign material such as screws, rivets, staples, solvents or glues are used. (Emphasis added).

A reading of the Tariff Classification Study Volume 2, CIE (1/64, January 2, 1964, at page 634 indicates that paragraph 1518, the predecessor provision to items 748.20 and 748.21, was intended primarily for products of a handcraft industry. To that end the scope of items 748.20 and 748.21 is limited by exclusionary headnotes to Subpart B. It is our view that this demonstrates an intent to a rather restricted interpretation of what constitutes a "similar method" of assembly for tariff purposes within the context of Schedule 7, Part 7, Subpart B, Headnote 1(iii), TSUS, supra.

Additionally, it is our observation that inherent in the process of gluing separate articles together is the presence of a separate material. For example, the application of glue or adhesive between two surfaces in order to bind them together. In the instant case, there is no separate material. The plastic coated stem and the leaves are not bonded together by a separate material.

HOLDING:

The assembly of a textile leaf to the plastic coated wire stem by heatsealing is not a method of assembly similar to gluing within the purview of Schedule 7, Part 7, Subpart B, Headnote 1(iii), TSUS, supra.

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