

Docket No. 33298, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW., Washington, DC 20423. In addition, a copy of each pleading must be served on Daniel A. LaKemper, Esq., Pioneer Railcorp, 1318 S. Johanson Road, Peoria, IL 61607.

Decided: November 25, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.
Vernon A. Williams,
Secretary.

[FR Doc. 96-30716 Filed 12-2-96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 96-80]

Crystallinity of Ceramic Floor and Wall Tile

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

ACTION: Final notice on testing of floor and wall tile for percent of crystallinity necessary to satisfy Harmonized Tariff Schedule of the United States criteria that a "ceramic article" be a shaped product "of crystalline or substantially crystalline structure."

SUMMARY: Customs has completed a review of the responses received as a result of our request for comments on the testing for the percent of crystallinity of certain articles of imported floor and wall tiles. These articles are classified for Customs purposes under subheadings covered by U.S. Note 1 to Chapter 69 of the Harmonized Tariff Schedule of the United States (HTSUS). There are many products imported under Chapter 69 that have vastly different physical requirements than floor and wall tiles. For this reason this study has been limited to the physical parameter of crystallinity of floor and wall tiles.

EFFECTIVE DATE: Any changes in Customs laboratory testing procedures will be effective regarding merchandise received for testing on or after December 3, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services, (504) 589-6311.

SUPPLEMENTARY INFORMATION:

Background

From time to time U.S. Customs Service employees take representative

samples from importations for the purpose of verifying that the importation is properly being entered into the commerce of the United States under the correct subheading of the Harmonized Tariff Schedule of the United States (HTSUS) and other pertinent laws and regulations. Additional U.S. Note 1 to Chapter 69 of the HTSUS states:

For the purposes of this chapter, a "ceramic article is a shaped article having a glazed or unglazed body of *crystalline or substantially crystalline structure*, the body of which is composed essentially of inorganic nonmetallic substances and is formed and subsequently hardened by such heat treatment that the body, if reheated to pyrometric cone 020, would not become more dense, harder, or less porous, but does not include any glass articles". [Emphasis added.]

As part of the Customs efforts to increase voluntary compliance with the law and regulations, inform the public, and involve the importing public in problem resolution, by a notice published in the Federal Register on September 6, 1995 (60 FR 46329), Customs stated that it wished to define the concept of "substantially crystalline" in scientific terms based on state-of-the-art ceramic technology. However, before making any changes, comments were invited on this issue.

Discussion of Comments

The following discussion and conclusion applies only to floor and wall tile described in Chapter 69, HTSUS. As a result of the notice, Customs received six responses. The respondents have offered several issues which are discussed individually.

Issue 1: The degree of crystallinity of a ceramic is not addressed in any of the major standards that govern the manufacture of ceramic articles.

Response: This comment was made by five of the six respondents. The American Society for Testing and Materials (over 30 ASTM standards including C373, most found in Volume 15.02), the International Standards Organization (ISO standards 13006 and 10454.1 through 10454.17), and the European Network (EN standards 87, 98-105, 121, 122, 155, 159, 163, 176-178, 186-188, and 202) each have either accepted standards or draft standards for the production of ceramic floor and wall tile. Each standard writing body has a definition for a ceramic floor and wall tile, but none address the issue of crystallinity in their definition.

According to one respondent, crystallinity is not an important factor to the industry. From all of the information gathered on this subject, Customs

acknowledges that the degree of crystallinity is not an issue to the tile industry. The fact that the issue is not as critical to the industry as the other criteria stated in U.S. Note 1, e.g., fired to pyrometric cone 020, porosity, etc. may lead Customs to lessen the weight of the crystallinity criteria for floor and wall tile. However, in the absence of legislative change to the wording of U.S. Note 1 to Chapter 69 the issue must be addressed for Customs purposes.

Issue 2: X-ray diffraction (XRD) is currently the technique of choice for determining the degree of crystallinity in these products.

Response: Four of the respondents noted this fact. Three went on to discuss the significant cost, skill and effort the method demands. One respondent notes that XRD should be viewed as a qualitative test for the purpose of determining crystallinity. Customs acknowledges that, with one exception, all of the facts presented by the respondents regarding XRD are true. The exception is that, if done properly, XRD can give quantitative results. It is possible that, due to the discussion of Issues 1 and 3, only a type of screening technique is required.

Issue 3: The purpose of the crystallinity criteria is to differentiate a ceramic tile from a glass article.

Response: While only one respondent made note of the U.S. Tariff Commission Tariff Classification Study ("Schedule 5-Nonmetallic Minerals and Products," Nov. 15, 1960, pg 77-78) discussion of crystallinity as it applies to ceramic articles, the study is very important in determining the intent of the language of U.S. Note 1 to Chapter 69. The respondent states that the use of the concept of crystallinity is to differentiate a ceramic product from a glass product. From a technical standpoint, this is reasonable since glass articles are nearly completely amorphous, while ceramic goods normally contain some degree of crystallinity. Depending on the raw materials used to make the product and the manufacturing process used to engineer the physical qualities into the product that are necessary for its intended use, the degree of crystallinity may vary significantly. Furthermore, the HTSUS describes a different process for the manufacture of ceramics compared to the process of glass-making. This may be used to differentiate a ceramic article from a glass article for Customs purposes.

Issue 4: Court ruling regarding "substantially crystalline."

Response: One respondent refers to the *Eastalco* decision. In *Eastalco Aluminum Co. V. United States*, 13 CIT

864, 726 F. Supp. 1342 (1989), affirmed in 9 CAFC 16, 916 F. 2d 1568 (1990), the Court considered whether certain carbon blocks were "ceramic articles" for tariff classification purposes. The Court held that a low level of crystallinity (determined to be approximately 5%) was insufficient to meet the "substantially crystalline" requirement found in the tariff schedules. In responding to plaintiff's argument, the CIT stated, "[w]hile fifty percent may not be the appropriate dividing line on the issue of what constitutes substantial crystallinity * * * the quantitative test has shown that a very low level of crystallinity is involved * * *." Hence, the Court did not reach the question of the appropriate dividing line for determining substantial crystallinity. In any event, for technical reasons, Customs considers this case to be largely inapplicable here. Graphite (a crystalline form of carbon) was a constituent material used to fabricate the blocks at issue in *Eastalco*. These blocks are normally used to line ovens and furnaces that must handle extremely high temperatures. Floor and wall tiles have a vastly different construction and application; they will, therefore, have quite different physical characteristics. In sum, it is logical that the percent of crystallinity needed to satisfy the subjective term "substantially crystalline" may be different for products that are vastly different.

Issue 5: Professional opinion of percent of crystallinity.

Response: All but one of the respondents who are scientists/engineers state that, in their professional opinion, only a minimal level of crystallinity should be required for a floor or wall tile to be considered "substantially crystalline." One scientist did not offer an opinion on a minimum level of crystallinity. One of the ceramic engineers introduces a concept that the crystalline content of nearly all, if not all glass, "never exceeds a few percent (less than 5%)." Customs finds these opinions to be significant.

Conclusion

After careful consideration of all of the comments received concerning the issues noted above, as of the effective date of this notice in the Federal Register, in making decisions on tariff classification Customs will consider the term "crystalline or substantially crystalline" as used in U.S. Note 1 to Chapter 69, as it pertains to floor and wall tile, to be satisfied for articles having a level of crystallinity that is clearly discernable by x-ray diffraction or other analytical methodology that is

generally accepted by the scientific community. Normally, a qualitative analysis, using the XRD technique, that indicates some degree of crystallinity exists in the article would be sufficient to verify that the floor or wall tile article has a sufficient crystalline nature to satisfy the criteria "crystalline or substantially crystalline structure" for Customs purposes.

Dated: November 26, 1996.

George D. Heavey,
Director, Laboratories and Scientific Services.
[FR Doc. 96-30664 Filed 12-2-96; 8:45 am]
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UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed collection; Comment request.

SUMMARY: The United States Information Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection requirement concerning the public use form entitled "Surveys, Interviews, and Other Audience Research for Radio and TV Marti". This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3506(c)(2)(A)).

The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency in accordance with P.L. 98-11, the Radio Broadcasting to Cuba Act, to provide for the broadcasting of accurate information to the people of Cuba and for other purposes. In addition, Public Law 98-11 was amended by Public Law 101-246, which established the authority for TV Marti.

DATE: Comments are due on or before February 3, 1997.

COPIES: Copies of the Request for Clearance (OMB 83-I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information

Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619-4408; and OMB review: Ms. Victoria Wassmer, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503, Telephone (202) 395-3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116-0197) is estimated to average 1.15 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents will be required to respond only one time.

Comments are requested on the proposed information collection concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

CURRENT ACTIONS: USIA is requesting reinstatement of this collection for a three-year period and approval for a revision to the burden hours.

TITLE: Surveys, Interviews, and Other Audience Research for Radio and TV Marti.

ABSTRACT: Data from this information collection are used by USIA's Office of Cuba Broadcasting (OCB) in fulfillment of its mandate to evaluate effectiveness of Radio and TV Marti operations by estimating the audience size and composition for broadcasts; and assess signal reception, credibility and relevance of programming through this research.

Proposed Frequency of Responses: