

U.S. Customs and Border Protection

CBP Decisions

19 CFR PART 122

[CBP Dec. 07-83]

TECHNICAL AMENDMENTS TO LIST OF USER FEE AIRPORTS

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

ACTION: Final rule; technical amendments.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations by revising the list of user fee airports to reflect those that have been currently designated by the Commissioner. User fee airports are those airports which, while not qualifying for designation as international or landing rights airports, have been approved by the Commissioner of CBP to receive, for a fee, the services of CBP officers for the processing of aircraft entering the United States, and the passengers and cargo of those aircraft.

EFFECTIVE DATE: October 23, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Captain, Office of Field Operations, 703-261-8516.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title 19, Code of Federal Regulations (CFR), sets forth at Part 122 regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport, and, if landing rights

are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 98–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international airport or a landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of Homeland Security¹ as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Commissioner of CBP as delegated by the Secretary of Homeland Security determines that the volume of business at the airport is insufficient to justify customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing. As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Commissioner of CBP in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Commissioner of CBP to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee for which the users of the airport are to reimburse the airport/airport authority. The airport/airport authority agrees to set and periodically review the charges to ensure that they are in accord with the airport's expenses.

The Commissioner of CBP designates airports as user fee airports pursuant to 19 U.S.C. 58b. See 19 CFR 122.15. If the Commissioner decides that the conditions for designation as a user fee airport are satisfied, a Memorandum of Agreement (MOA) is executed between the Commissioner of CBP and the local responsible official signing on behalf of the state, city or municipality in which the airport is lo-

¹Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107–296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection," also referred to as "CBP."

cated. In this manner, user fee airports are designated on a case-by-case basis. Section 19 CFR 122.15 sets forth the grounds for withdrawal of a user fee designation and sets forth the list of designated user fee airports. Periodically, CBP updates the list of user fee airports at 19 CFR 122.15(b) to reflect those that have been currently designated by the Commissioner. This document updates that list of user fee airports by adding new airports, deleting certain former airports, and reflecting changes that have occurred in the names of certain existing user fee airports.

INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely lists those user fee airports already designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

SIGNING AUTHORITY

This document is limited to technical corrections of CBP regulations. Accordingly, it is being signed under the authority of 19 CFR 0.1(b).

LIST OF SUBJECTS IN 19 CFR PART 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

AMENDMENTS TO REGULATIONS

Part 122, Code of Federal Regulations (19 CFR part 122) is amended as set forth below:

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122, 19 CFR, continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

2. Section 122.15(b) is amended by revising the list of airports to read as follows: Sec. 122.15 User fee airports.

* * * * *

(b) List of user fee airports. * * *

Location	Name
Addison, Texas	Addison Airport.
Ardmore, Oklahoma	Ardmore Industrial Airpark.
Bakersfield, California	Meadows Field Airport.
Bedford, Massachusetts	L.G. Hanscom Field.
Broomfield, Colorado	Jefferson County Airport.
Carlsbad, California	McClellan-Palomar Airport.
Daytona Beach, Florida	Daytona Beach International Airport.
Decatur, Illinois	Decatur Airport.
Egg Harbor Township, New Jersey	Atlantic City International Airport.
Englewood, Colorado	Centennial Airport.
Fort Worth, Texas	Fort Worth Alliance Airport.
Fresno, California	Fresno Yosemite International Airport.
Gypsum, Colorado	Eagle County Regional Airport.
Hillsboro, Oregon	Hillsboro Airport.
Johnson City, New York	Binghamton Regional Airport.
Leesburg, Florida	Leesburg Regional Airport.
Lexington, Kentucky	Blue Grass Airport.
Manchester, New Hampshire	Manchester Airport.
Mascoutah, Illinois	MidAmerica St. Louis Airport.
McKinney, Texas	Collin County Regional Airport.
Melbourne, Florida	Melbourne Airport.
Mesa, Arizona	Williams Gateway Airport.
Midland, Texas	Midland International Airport.
Morristown, New Jersey	Morristown Municipal Airport.
Moses Lake, Washington	Grant County International Airport.
Myrtle Beach, South Carolina	Myrtle Beach International Airport.
Orlando, Florida	Orlando Executive Airport.
Palm Springs, California	Palm Springs International Airport.
Riverside, California	March Inland Port Airport.
Rochester, Minnesota	Rochester International Airport.
Rogers, Arkansas	Rogers Municipal Airport.
Roswell, New Mexico	Roswell Industrial Center.
San Bernardino, California	San Bernardino International Airport.
Santa Maria, California	Santa Maria Public Airport.
Sarasota, Florida	Sarasota/Bradenton International Airport.
Scottsdale, Arizona	Scottsdale Airport.
Sugar Land, Texas	Sugar Land Regional Airport.
Trenton, New Jersey	Trenton Mercer Airport.
Victorville, California	Southern California Logistics Airport.
Waterford, Michigan	Oakland County International Airport.
Waukegan, Illinois	Waukegan Regional Airport.
West Chicago, Illinois	Dupage County Airport.

Wheeling, Illinois	Chicago Executive Airport.
Wilmington, Ohio	Airborne Air Park Airport.
Yoder, Indiana	Fort Wayne International Airport.
Ypsilanti, Michigan	Willow Run Airport.

* * * * *

DATE: October 18, 2007

W. RALPH BASHAM,
*Commissioner,
 Customs and Border Protection.*

[Published in the Federal Register, October 23, 2007 (72 FR 59943)]

General Notice

DEPARTMENT OF HOMELAND SECURITY,
 OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, October 24, 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.*

GENERAL NOTICE

19 CFR PART 177

**REVOCAION OF RULING LETTERS AND OF TREATMENT
RELATING TO CLASSIFICATION OF AN LCD VIDEO
PROJECTOR LAMP ASSEMBLY UNIT**

AGENCY: U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

ACTION: Notice of revocation of ruling letters and treatment relating to the classification of an LCD video projector lamp assembly unit.

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 CBP is revoking a ruling concerning the classification of an LCD video projector lamp assembly unit, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP revokes any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on August 22, 2007, in Volume 41, Number 35, of the CUSTOMS BULLETIN. No comments were received in response to this notice opposing the proposed revocation.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 6, 2008.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 572–8784.

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), 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), a notice was published in the August 22, 2007, in Volume 41, Number 35, of the CUSTOMS

BULLETIN, proposing to revoke New York (NY) Ruling Letter 814533, dated September 19, 1995, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this issue that may exist but have not been specifically identified. 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 issue subject to this notice, should have advised CBP during the notice period.

In NY 814533, CBP ruled that an LCD video projector lamp unit is classified in subheading 9405.40.60, HTSUS, which provides for: "Lamps and lighting fitting including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Other electric lamps and lighting fittings: of base metal: Other."

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to section 625(c)(1), is revoking NY 814533, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967918, which is set forth as the Attachment to this notice. Additionally, pursuant to section 625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: October 16, 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 W967918
October 16, 2007
CLA-2 OT:RR:CTF:TCM W967918 ARM
CATEGORY: Classification
TARIFF NO.: 8529.90.99

SUZANNE I. OFFERMAN
BAKER & MCKENZIE LLP
1114 Avenue of the Americas
New York, NY 10036

RE: Reconsideration of NY 814533

DEAR MS. OFFERMAN:

This is in response to your colleague's letter, dated September 27, 2005, on behalf of Epson America, requesting reconsideration of New York (NY) Ruling Letter 814533, dated September 19, 1995, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a LCD projector lamp unit, imported from Japan. You have since informed Customs and Border Protection ("CBP") that you are now the assigned attorney to this case.

Pursuant to section 625(c), 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), a notice was published in the August 22, 2007, in Volume 41, Number 35, of the CUSTOMS BULLETIN, proposing to revoke New York (NY) Ruling Letter 814533, dated September 19, 1995, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The merchandise consists of LCD lamp projector units. The projector lamp units consist of a lamp, cemented inside a glass housing. Attached to the lamp is a housing, PCB and a wiring harness unit. The lamp projector units are exclusively designed for placement in, and solely used with, a multimedia projector. The lamp projects computer-generated images or images generated from a video source, such as a DVD player or satellite television receiver.

ISSUE:

Are these LCD lamp projector units specialized lamps of heading 9405, HTSUS, or parts of a multimedia projector of heading 8529, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS at the international level. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8529 Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:

8529.90 Other:

Other:

8529.90.99 Other . . .

* * * * *

9405 Lamps and lighting fitting including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:

9405.40 Other electric lamps and lighting fittings:

Of base metal:

9405.40.60 Other . . .

Chapter 94, Note 1(f) states that the chapter does not cover “lamps or lighting fittings of Chapter 85.” In HQ 964268, dated October 19, 2001, citing HQ 963720, dated December 19, 2000, we found that substantially similar merchandise was indeed classified in Chapter 85 as a part of a machine classified in headings 8525 to 8528, HTSUS.

The instant lamp assembly units are similar to those found in HQ 964268 in that they are solely used in a multimedia machine, most often a video projector or the like. These lamp assemblies are necessary components of a projector so that one may visualize the projected image. Moreover, these lamp assemblies cannot be used as lamps or in any fashion other than as a component of a projector. Video projectors are classified in heading 8528 (see HQ 964043, dated July 25, 2000, and HQ 964159, dated July 25, 2000, classifying LCD projectors in heading 8528, HTSUS). Therefore, the lamp assembly, which is a part suitable for use solely or principally with video projectors, is classified in heading 8529, HTSUS. As such, the lamp assemblies are excluded from classification in heading 9405, HTSUS, by virtue of Chapter 94, note 1(f).

HOLDING:

By application of GRI 1, LCD lamp assembly units are classified in heading 8529, HTSUS, specifically subheading 8529.90.99, HTSUS, which provides for: “Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other: Other.”

EFFECT ON OTHER RULINGS:

NY 814533 is revoked. HQ rulings 963720 and 964268 are affirmed.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Gail A. Hamill for MYLES B. HARMON,
Director,
Classification and Trade Facilitation Division.

