

Bureau of Customs and Border Protection

General Notices

DEPARTMENT OF THE TREASURY

19 CFR PARTS 103, 178, AND 181

USCBP-2006-0090

RIN 1505-AB58

NAFTA: MERCHANDISE PROCESSING FEE EXEMPTION AND TECHNICAL CORRECTIONS

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The current regulations in title 19 of the Code of Federal Regulations allow CBP to collect a merchandise processing fee (MPF) on imported shipments to recoup administrative expenses. However, “originating merchandise” that qualifies to be marked as goods of Canada or of Mexico under the NAFTA are exempted from this fee. CBP is proposing to amend the regulations to clarify that an importer is subject to the same declaration requirement that is established for claiming NAFTA duty preference in order to claim the exemption of the MPF for goods that meet a NAFTA rule of origin even when the goods are unconditionally free.

In addition, CBP is proposing to make several technical corrections. CBP is proposing to amend the regulations to clarify that a Certificate of Origin is not required for a commercial importation for which the total value of originating goods does not exceed \$2,500. CBP is also proposing to remedy two incorrect addresses and an incorrect Code of Federal Regulations citation.

DATES: Comments must be received on or before October 23, 2006.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments via docket number USCBP-2006-0090.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Seth Mazze, Trade Agreements Branch, Office of Field Operations, (202) 344-2634.

SUPPLEMENTARY INFORMATION:

PUBLIC PARTICIPATION

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

BACKGROUND

On December 17, 1992, the United States, Canada, and Mexico entered into the North American Free Trade Agreement (NAFTA). Among the stated objectives of the NAFTA is the elimination of barriers to trade in, and the facilitation of the cross-border movement of, goods and services between the territories of the countries. The provisions of the NAFTA were adopted by the United States with the

enactment of the North American Free Trade Agreement Implementation Act (“the Act,” 19 U.S.C. 3301–3473). On September 6, 1995, Customs published Treasury Decision (T.D.) 95–68 (North American Free Trade Agreement) in the Federal Register (60 FR 46334), adopting amendments to the regulations in title 19 of the Code of Federal Regulations (CFR) to implement Customs-related aspects of the NAFTA. The final rule went into effect on October 1, 1995. Sections 403(1) and 411 of the Homeland Security Act of 2002 (Pub. L. 107–296) transferred the United States Customs Service and certain of 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 the “CBP.”

Merchandise Processing Fee (MPF) Exemption

As a means of recouping administrative expenses for the processing of imported shipments, CBP charges a merchandise processing fee (MPF), as provided for in 19 U.S.C. 58c. However, under 19 U.S.C. 58c(b)(10)(B), for goods qualifying under the rules of origin set out in 19 U.S.C. 3332, the fee may not be charged with respect to goods that qualify to be marked as goods of Canada or of Mexico (pursuant to Annex 311 of the NAFTA). In order to claim a NAFTA duty preference, an importer must make a declaration. The same declaration is used to claim the MPF exemption. That is, the importer must place the appropriate special program indicator (e.g., “CA” for goods of Canada and “MX” for goods of Mexico) opposite the good on the entry form. The proposal in this document addresses the situation in which an importer of an originating good has no duty preference incentive to make the required NAFTA declarations on the entry because the Normal Trade Relations rate of duty on the good is free (i.e., the good is unconditionally duty free). Accordingly, CBP is proposing to amend 19 CFR 181.21(a) to clarify, consistent with existing law and CBP practice, that in order to claim the MPF exemption for unconditionally free goods from a NAFTA country, an importer of an originating good must place the appropriate special program indicator opposite the good on the entry form even though the importer is not claiming a NAFTA duty preference.

Technical Corrections

Exemption From Providing Certificate of Origin

Section 181.22(b) of title 19, CFR (19 CFR 181.22(b)), requires an importer who claims preferential tariff treatment on a good under 19 CFR 181.21 to provide, at the request of the port director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. Certain importations are exempted from this requirement under 19 CFR 181.22(d). One of these exemptions, set

forth in section 181.22(d)(1)(iii) is for a commercial importation of a good whose value does not exceed \$2,500 if a signed statement is attached to the invoice or other documents accompanying the shipment.

CBP has determined that 19 CFR 181.22(d)(1)(iii) should be amended to clarify that the \$2,500 value refers to the total value of a shipment and not to the value of the individual goods in a shipment. Accordingly, CBP is proposing to amend 19 CFR 181.22(d)(1)(iii) to clarify that a Certificate of Origin is not required for a commercial importation consisting of originating goods, the total value of which does not exceed \$2,500, if the required statement is attached.

Other Technical Corrections

CBP is also proposing to make several other technical corrections to the regulations. In CBP Dec. 05–32, an Interim Rule published in the *Federal Register* (70 FR 58009) on October 5, 2005, CBP redesignated 19 CFR 12.132 as 102.25. However, there is a reference to § 12.132 in § 181.21(a). Accordingly, CBP is proposing to make a minor conforming amendment to update this reference. In addition, because CBP Dec. 05–32 removed the declaration requirement referenced in §§ 12.130(c) and 12.132, CBP is proposing to remove the entries for these sections in the list of OMB control numbers in § 178.2. CBP is also proposing to amend an incorrect citation to 19 CFR 181.72(a)(2)(iii) in 19 CFR 181.74(a). The correct citation is to § 181.72(a)(3)(iii). In addition, CBP is proposing to amend the address in 19 CFR 181.74(e) for providing notification when the Canadian or Mexican customs administration intends to conduct a NAFTA verification visit in the U.S. in order to determine whether a good imported into the U.S. qualifies as an originating good. The correct address is: “Bureau of Customs and Border Protection, Office of Field Operations, Special Enforcement Division, 1300 Pennsylvania Ave. NW, Washington, DC 20229.” CBP is also proposing to amend the National Commodity Specialist Division (NCS) address in 19 CFR 181.93(a) for the submission of advance ruling requests under the NAFTA. The correct NCS address is: “National Commodity Specialist Division, Bureau of Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119.” This address is also corrected in the list of public reading rooms in 19 CFR 103.1.

SIGNING AUTHORITY

The signing authority for this document falls under 19 CFR 0.1(a)(1).

PAPERWORK REDUCTION ACT

Because those changes with possible paperwork implications proposed in this document are merely clarifications of existing require-

ments, there is no need to amend the paperwork burden for the number previously approved by OMB for part 181 of title 19, CFR. The clearance number for part 181 is 1651-0098.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Pursuant to the provisions of the Regulatory Flexibility Act (6 U.S.C. 601 *et seq.*), it is certified that the proposed amendments will not have a significant economic impact on a substantial number of small entities. CBP is proposing to merely clarify, consistent with existing law and CBP practice, that an importer is subject to the same declaration requirement that is established for claiming NAFTA duty preference in order to claim the exemption of the MPF for goods that meet a NAFTA rule of origin even when the goods are unconditionally free. CBP is also proposing to merely clarify, consistent with current CBP practice, that a Certificate of Origin is not required for a commercial importation consisting of originating goods, the total value of which does not exceed \$2,500, if the required statement is attached. Lastly, CBP is proposing to make other technical corrections to correct two incorrect addresses and an incorrect Code of Federal Regulations citation. For the same reasons, this document does not meet the criteria for a significant regulatory action under Executive Order 12866.

LIST OF SUBJECTS

19 CFR PART 103

Administrative practice and procedure, Freedom of information.

19 CFR PART 178

Collections of information, Paperwork requirements, Reporting and recordkeeping requirements.

19 CFR PART 181

Canada, Customs duties and inspection, Imports, Mexico, Trade agreements (North American Free-Trade Agreement).

PROPOSED AMENDMENTS TO THE REGULATIONS

It is proposed to amend 19 CFR parts 103, 178, and 181 as set forth below.

PART 103 - AVAILABILITY OF INFORMATION

1. The authority citation for part 103 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

2. Amend § 103.1 by removing the address citation “New York, 6 World Trade Center, New York, New York 10048” and adding in its place the address citation “New York, One Penn Plaza, 10th Floor, New York, NY 10119”.

PART 178 - APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

3. The authority citation for part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

4. Amend § 178.2 by removing the entries for 12.130(c) and 12.132.

PART 181 - NORTH AMERICAN FREE TRADE AGREEMENT

5. The authority citation for part 181 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314.

6. Revise § 181.21(a) to read as follows:

§ 181.21 Filing of claim for preferential tariff treatment upon importation.

(a) Declaration. In connection with a claim for preferential tariff treatment, or for the exemption from the merchandise processing fee, for a good under the NAFTA, the U.S. importer shall make a written declaration that the good qualifies for such treatment. The written declaration may be made by including on the entry summary, or equivalent documentation, the symbol “CA” for a good of Canada, or the symbol “MX” for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in 19 CFR 181.22 and except in the case of a good to which Appendix 6.B to Annex 300-B of the NAFTA applies (see also 19 CFR 102.25), the declaration shall be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

* * * * *

7. Amend § 181.22(d)(1)(iii) by removing the phrase “of a good whose value”, and replacing it with the phrase “for which the total value of originating goods”.

8. Amend § 181.74 by:

a. In paragraph (a), removing the citation “181.72(a)(2)(iii)” and adding in its place the citation “181.72(a)(3)(iii)”; and

b. In paragraph (e), removing the address citation “Project North Star Coordination Center, P.O. Box 400, Buffalo, New York 14225–

0400” and adding in its place the address citation “Bureau of Customs and Border Protection, Office of Field Operations, Special Enforcement Division, 1300 Pennsylvania Ave. NW, Washington, DC 20229”.

9. Amend § 181.93(a) by removing the address citation “National Commodity Specialist Division, United States Customs Service, 6 World Trade Center, New York, NY 10048” and adding in its place the address citation “National Commodity Specialist Division, Bureau of Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119”.

Dated: August 17, 2006

DEBORAH J. SPERO,
*Acting Commissioner,
Customs and Border Protection.*

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, August 23, 2006 (71 FR 49391)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, August 23, 2006,

The following documents of the Bureau of 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,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

GENERAL NOTICE

19 CFR PART 177

PROPOSED MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A CERTAIN AIRBORNE DIGITAL SENSOR SYSTEM

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

ACTION: Notice of proposed modification of one ruling letter and revocation of treatment relating to the classification of a certain airborne digital sensor system.

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) intends to modify one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of the Leica ADS40 airborne digital sensor system. Similarly, CBP proposes 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 October 6, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Av-

enue, N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 572-8768.

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, this notice advises interested parties that CBP intends to modify one ruling letter relating to the tariff classification of the Leica ADS40 digital sensor system. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter (HQ) 967142, dated September 17, 2004 (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 rulings 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 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 with 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 967142, CBP classified the ADS40 airborne digital sensor system in subheading 9015.40.8000, HTSUSA, which provides for, *inter alia*: "Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliance, excluding compasses; . . . : Photogrammetrical surveying instruments and appliances: Other." Based on our recent review of HQ 967142, we have determined that the tariff classification set forth for the airborne digital sensor system is incorrect. It is now CBP's view that the proper tariff classification is subheading 9015.40.4000 HTSUSA, which provides for, *inter alia*: "Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliance, excluding compasses; . . . : Photogrammetrical surveying instruments and appliances: Electrical."

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke HQ 967142 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) 968303 (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 that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED : August 18, 2006

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967142
September 17, 2004
CLA-2-RR:CR:GC 967142 IOR
CATEGORY: Classification
Tariff No.: 9015.40.80

PORT DIRECTOR
CUSTOMS AND BORDER PROTECTION
Attn: EMILY GROSS, S.I.S.
610 S Canal St.
Chicago, IL 60607

Re: Protest AFR No. 3901-04-100443; airborne digital sensor system

DEAR PORT DIRECTOR:

This is our decision on the application for further review (AFR) of protest no. 3901-04-100443, filed against your classification of the ADS40, an airborne digital sensor system, under the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise was entered on April 3, 2003. The entry was liquidated on January 9, 2004, and this protest and AFR was timely filed on March 12, 2004.

FACTS:

The ADS40 is an airborne digital sensor system, designed for aerial surveying and mapping applications to replace the conventional film camera and offer additional capability and accuracy and eliminate the need for chemical processing and digitizing. The literature provided describes the ADS40 as "photogrammetric accuracy and remote sensing insight combined." The protestant describes the ADS40 as follows:

The output of the conventional film camera is typically chemically processed, then scanned to produce a digitized image that is used by digital photogrammetry software for aerial surveying and mapping. The output of the ADS40 is a high quality digital picture, already in the digital form for viewing and for immediate use for the same aerial surveying and mapping purposes. The ADS40 is a digital aerial camera for the purpose of aerial surveying and should be classified accordingly.

Nothing in the literature provided with the ADS40 refers to it being a camera. The ADS40 contains three CCD (charge-coupled device) line scanner digital linear arrays. There is no film-based camera incorporated in the ADS40. The functionality in the accompanying literature is described as "end-to-end digital dataflow" and "direct digital workflow" as opposed to "film-based workflow." The accompanying literature specifically distinguishes the ADS40's ability to capture three different views (forwards, nadir and backwards) simultaneously, from the capturing of overlapping images with a conventional film camera.

According to the literature submitted, the ADS40 consists of the following components:

SH40 Sensor Housing which contains and protects the linear arrays;
DO64 Digital Optics which is the lens; CU40 Control Unit which is the personal computer running the operating system, and has a fiber optics link to

the SH40, and includes a Position and Orientation System (POS), and a Global Positioning System (GPS); MM40 Mass Memory, a removable array of high performance hard disks which receives the data from the SH40; OI40 Operator Interface, which is a graphical user interface; and Flight & Sensor Control Management System (FCMS) software which runs the ADS40 system.

All of the foregoing components are installed in an aircraft for the flight. After the flight, the MM40 is removed from the CU40 and connected to a personal computer workstation for ground processing. The POS and image data are downloaded from the MM40, and that data is then rectified using the position and attitude data for the sensor supplied by the POS, using additional software. The rectification process resolves any discrepancies in the advance between lines caused by variations in the forward motion of the aircraft. Thereafter the data passes to conventional digital photogrammetric processes. The flowchart of the processing in the literature shows that the processing can result in digital terrain models, orthophotos, mapping, revision, visualization image analysis and classification.

ISSUE:

Whether the airborne digital sensor system is classified as a photographic camera in heading 9006, HTSUS, or as surveying (including photogrammetrical surveying) instruments and appliances in heading 9015, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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 subheadings under consideration are as follows:

Photographic (other than cinematographic) cameras; photographic flashlight apparatus and flashbulbs other than discharge lamps of heading 8539; parts and accessories thereof:

Cameras specially designed for underwater use, for aerial survey, or for medical or surgical examination of internal organs; comparison cameras for forensic or criminological purposes

Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof:

Photogrammetrical surveying instruments and appliances:

Other

Heading 9006, HTSUS, does not apply because the terms of the heading refer to "photographic" (i.e., chemical process) cameras, and not digital cameras. Moreover, note 1(h) to Chapter 90, HTSUS, provides that the chapter does not cover digital cameras. The ADS40 is a digital instrument, as is clear from its name, an airborne digital sensor system, and the description given by the protestant in the protest (output is a digital picture). Thus, if it were a camera, it would be a digital camera, and precluded from classification in Chapter 90, HTSUS, or heading 9006, HTSUS.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (Ens) may be utilized. Ens, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs and Border Protection (“CBP”) believes the Ens should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN General note (I) on General Content and Arrangement of Chapter 90, states that the Chapter includes “in particular” instruments and apparatus designed for certain specifically defined uses, giving surveying as an example. Heading 9015, HTSUS, includes “photogrammetrical surveying” instruments and appliances. The HTSUS does not define the terms “surveying” or “photogrammetry,” however EN 90.15 describes “Photogrammetrical Instruments and Appliances” as follows:

These are mainly used for plotting topographic, archaeologic, etc., maps, but they are also used for other purposes (e.g., study of tides, ground-swells, etc.). The maps, etc., are plotted from photographs or digital images taken from two different viewpoints a known distance apart, which must then be “restituted” (to obtain accurate information in respect of the shape, size and co-ordinates of objects in the image or photograph).

The terms “photogrammetry” and “surveying” themselves are not specifically defined.

A tariff term that is not defined in the HTSUS or in the Ens is construed in accordance with its common and commercial meanings, which are presumed to be the same. *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).

“Surveying” is defined as “[t]he measurement of dimensional relationships, as of horizontal distances, elevations, directions and angles, on the earth’s surface esp. for use in locating property boundaries, construction layout, and mapmaking.” *American Heritage Dictionary* 1224 (2d College ed. 1982). “Photogrammetry” is defined as “1.[t]he process of making maps or scale drawings by aerial or other photography. 2. [t]he process of making precise measurements by the use of photography.” *Id.* At 933. The website of the Aerial Archive, <http://www.univie.ac.at/Luftbildarchiv/index.htm>, (the Aerial Archive is located at the Institute for Prehistory and Protohistory of the University of Vienna) provides an introduction to photogrammetry, and describes it as the technique of measuring objects (2D or 3D) from photographs or imagery stored electronically on tape or disk taken by video or CCD cameras. According to the introduction, the results of photogrammetry can be coordinates of the required object-points, topographical and thematical maps, and rectified photographs (orthophoto). According to the Aerial Archive website, the most important feature of photogrammetry is that the objects are measured “without being touched”, and another term for the process is “remote sensing.” The term “remote sensing” is stated to have been originally confined to work with aerial photographs and satellite images. Another website, <http://www.digitalhistory.ca/photogrammetry.htm>, describes the digital photogrammetry process, and describes the first step in the process as a “photographic survey.”

GRI 2(a) in part extends the terms of a heading to include incomplete or unfinished articles provided that, at importation, they have the essential character of the complete or finished article. Section XVI, Note 4, HTSUS, covers machines consisting of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapters 84 or 85. The whole, in such cases, is classified in the heading appropriate to that function. Chapter 90, Note 3, HTSUS, applies Note 4 to Section XVI, to goods of Chapter 90. Section XVI, Note 4, HTSUS, is the authority under GRI 1 for classifying a series of machines or components in a 4-digit heading describing a clearly defined function performed by the goods. Given the relationship between GRI 1 and GRI 2(a) in determining the scope of the headings, GRI 2(a) may also be applied to determine whether under GRI 1 a series of machines or components may qualify for classification under Section XVI, Note 4, even if imported incomplete or unfinished.

The ADS40, imported without the separate personal computer and software for ground processing, constitutes an incomplete or unfinished functional unit, with the imported components imparting to the whole the essential character of a good of heading 9015, because the function of the ADS40 is to provide the precise image and POS data on which the photogrammetrical surveying is based. See HQ 965638, dated July 16, 2002, and related cases. The image provided by the ADS40 is specifically suited for use in photogrammetry.

We find that the components of the ADS40 are intended to contribute together to the clearly defined function of photogrammetrical surveying by means of an aerial digital survey which is used for obtaining the end results of mapping, digital terrain models, orthophotos, etc. Consistent with the EN General Note (I) on General Content and Arrangement of Chapter 90, the ADS40 is designed for the specifically defined use of photogrammetry given the specialized images obtained combined with GPS and POS data, which are used in the processing of the image data. Therefore, by application of GRI 2(a) and Section XVI, Note 4, HTSUS, as applied by Chapter 90, Note 3, HTSUS, we find that the ADS40 is a photogrammetrical surveying instrument and appliance classifiable in heading 9015, HTSUS.

HOLDING:

By application of GRI 2(a) and Section XVI, Note 4, HTSUS, as applied by Chapter 90, Note 3, HTSUS, the ADS40 is provided for in heading 9015, HTSUS. It is classified in subheading 9015.40.8000, HTSUSA, as "Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof: Photogrammetrical surveying instruments and appliances: Other" with a column one, general duty rate of 3%. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at www.usitc.gov.

The protest should be denied. In accordance with the Protest/Petition Processing Handbook (CIS HB 3500-08, June 2002, pp. 18 and 21), you are to mail this decision, together with the CBP Form 19, 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 make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968303
CLA-2 RR:CTF:TCM 968303 HkP
CATEGORY: Classification
TARIFF NO.: 9015.40.4000

MR. LEONARD FLEISIG
TROUTMAN SANDERS, LLP
ATTORNEYS AT LAW
401 9th Street, NW, Suite 1000
Washington, DC 20004

RE: Modification of HQ 967142; Protest no. 3901-04-100443; Leica ADS40 airborne digital sensor system

DEAR MR. FLEISIG:

This is in reference to Headquarters Ruling Letter ("HQ") 967142, dated September 17, 2004, in which the tariff classification of the Leica ADS40 airborne digital sensor system ("ADS40") was determined under the Harmonized Tariff Schedule of the United States ("HTSUS"). U.S. Customs and Border Protection ("CBP") classified the ADS40 in subheading 9015.40.8000, HTSUSA, as a photogrammetrical surveying instrument or appliance, "Other". We have reconsidered HQ 967142 and determined that the tariff classification of the ADS40 is not correct.

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 that was the subject of Protest 3901-04-100443 was final on both the protestant and CBP. Therefore, while we may review the law and analysis of HQ 967142, any decision taken herein would not impact the entries subject to that decision.

FACTS:

The ADS40 is an airborne digital sensor system, designed for aerial surveying and mapping applications, and was described in HQ 967142 as consisting of: a SH40 Sensor Housing which contains and protects the linear arrays; a lens (DO64 Digital Optics); a CU40 Control Unit – the personal computer running the operating system, and has a fiber optics link to the SH40, and includes a Position and Orientation System (POS), and a Global Positioning System (GPS); a MM40 Mass Memory, a removable array of high performance hard disks which receives the data from the SH40; a OI40 Operator Interface, which is a graphical user interface; and, Flight & Sensor

Control Management System (FCMS) software which runs the ADS40 system. CBP classified the ADS40 in subheading 9015.40.8000, HTSUS, as other photogrammetrical surveying instruments and appliances.

Since issuing HQ 967142, CBP has learned that the linear array components of the ADS40 are rows of CCDs (charge coupled devices), that is, electronic devices capable of transforming a light pattern (image) into an electric charge pattern (an electronic image). A CCD consists of several individual elements that have the capability of collecting, storing and transporting electrical charge from one element to another. Each photosensitive element represents a picture element (pixel). One or more output amplifiers at the edge of the chip collect the signals from the CCD. The output amplifier converts the charge into a voltage. External electronics transform this output signal into a form suitable for monitors or frame grabbers. In a color image sensor an integral RGB color filter array provides color responsivity and separation. Choices for array type include linear array, frame transfer area array, full frame area array, and interline transfer area array. See video-equipment.globalspec.com/LearnMore/Sensors_Transducers_Detectors/Vision_...

ISSUE:

Whether the ADS40 airborne digital sensor system is an electrical photogrammetrical surveying instrument or appliance.

LAW AND ANALYSIS:

Classification under the HTSUS is made 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:

9015 Surveying (including photogrammetrical surveying), hydrographic, oceanographic, hydrological, meteorological or geophysical instruments and appliances, excluding compasses; rangefinders; parts and accessories thereof:

* * *

9015.40 Photogrammetrical surveying instruments and appliances:

9015.40.4000 Electrical

9015.40.8000 Other

For the reasons set forth in HQ 967142, we find that the ADS40 is properly classified in heading 9015, HTSUS. Such reasoning is hereby incorporated by reference.

CBP previously classified the ADS40 in subheading 9015.40.8000, HTSUSA, as a photogrammetrical surveying instrument or appliances, "Other". Leica has argued that the ADS40 is an electrical photogrammetrical surveying instrument or appliance and should be classified in subheading 9015.40.4000, HTSUSA.

GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings

and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

Additional U.S. Note 2 to Chapter 90, HTSUS, provides:

For the purposes of this chapter, the term “electrical” when used in reference to instruments, appliances, apparatus and machines, refers to those articles the operation of which depends on an electrical phenomenon which varies according to the factor to be ascertained.

Leica has explained that one of the factors to be ascertained is the luminous intensity of an object. When light generated by the object being surveyed hits the photosensitive diodes of the CCD chip, it causes the chip to generate an electrical impulse. The analog digital conversion process converts the impulses for each image dot into digital values for brightness. Photons impinging on an individual CCD element cause an analog electrical signal to be created in proportion to the intensity of the incoming radiation. This explanation is supported by the product literature. For instance, the Technical Reference Manual for the ADS40, in describing the ADS40 “filter transmission characteristics” states:

In order to acquire multispectral data with the ADS40 one must attempt to isolate the desired wavelengths of light that reach the CCDs. The answer lies in the isolation of wavelengths through filtration, using specifically designed straight edged narrow band color and NIR filters.

The literature further explains that the ADS40 spectral bands, when measured in wavelengths of light (“nm”) are: Panchromatic 465–680 nm; Blue 430–490 nm; Green 535–585 nm; Red 610–660 nm; and Near infrared 835–885 nm. This split light is directed to the three CCD lines for RGB.

Because exposure to light causes the CCDs housed in the ADS40 to generate an electric impulse for the creation of images, and because the electric impulse generated varies according to the intensity of the light source (the wavelengths of light), we find that the ADS40 is an electrical instrument or appliance within the meaning of Additional U.S. Note 2 to Chapter 90, HTSUS. Accordingly, we find that the ADS40 is properly classified in subheading 9015.40.4000, HTSUSA.

HOLDING:

By application of GRI 1 and GRI 6, the Leica ADS40 digital sensor is classified in heading 9015, HTSUS, as a surveying instrument or appliance, and is specifically provided for in subheading 9015.40.4000, HTSUSA, which provides for: “Surveying (including photogrammetrical surveying) . . . instruments and appliances, . . . : Photogrammetrical surveying instruments and appliances: Electrical.” The general column one rate of duty is Free.

EFFECT ON OTHER RULINGS:

HQ 967142 dated September 17, 2004, is hereby modified in accordance with the above analysis.

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

