

SUBCHAPTER A—MISCELLANEOUS REGULATIONS

PART 301—INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

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AUTHORITY: Sec. 6(c), Pub. L. 89-651, 80 Stat. 897, 899; Sec. 2402, Pub. L. 106-36, 113 Stat. 127, 168.

SOURCE: 47 FR 32517, July 28, 1982, unless otherwise noted.

§ 301.1 General provisions.

(a) *Purpose.* This part sets forth the regulations of the Department of Commerce and the Department of the Treasury applicable to the duty-free importation of scientific instruments and apparatus by public or private nonprofit institutions.

(b) *Background.* (1) The Agreement on the importation of Educational, Scientific and Cultural Materials (Florence Agreement; “the Agreement”) is a multinational treaty, which seeks to further the cause of peace through the freer exchange of ideas and knowledge across national boundaries, primarily by eliminating tariffs on certain educational, scientific and cultural materials.

(2) Annex D of the Agreement provides that scientific instruments and apparatus intended exclusively for educational purposes or pure scientific research use by qualified nonprofit insti-

tutions shall enjoy duty-free entry if instruments or apparatus of equivalent scientific value are not being manufactured in the country of importation.

(3) The Annex D provisions are implemented for U.S. purposes in Subchapter X, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS).

(c) *Summary of statutory procedures and requirements.* (1) U.S. Note 1, Subchapter X, Chapter 98, HTSUS, provides, among other things, that articles covered by subheadings 9810.00.60 (scientific instruments and apparatus), 9810.00.65 (repair components therefor) and 9810.00.67 (tools for maintaining and testing the above), HTSUS, must be exclusively for the use of the institutions involved and not for distribution, sale, or other commercial use within five years after entry. These articles may be transferred to another qualified nonprofit institution, but any commercial use within five years of entry shall result in the assessment of applicable duties pursuant to §301.9(c).

(2) An institution wishing to enter an instrument or apparatus under tariff subheading 9810.00.60, HTSUS, must file an application with the Secretary of the Treasury (U.S. Customs Service) in accordance with the regulations in this section. If the application is made in accordance with the regulations, notice of the application is published in the FEDERAL REGISTER to provide an opportunity for interested persons and government agencies to present views. The application is reviewed by the Secretary of Commerce (Director, Statutory Import Programs Staff), who decides whether or not duty-free entry may be accorded the instrument and publishes the decision in the FEDERAL REGISTER. An appeal of the final decision may be filed with the U.S. Court of Appeals for the Federal Circuit, on questions of law only, within 20 days after publication in the FEDERAL REGISTER.

(3) Repair components for instruments or apparatus admitted duty-free

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under subheading 9810.00.60, HTSUS require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

(4) Tools specifically designed to be used for the maintenance, checking, gauging or repair of instruments or apparatus admitted under subheadings 9810.00.65 and 9810.00.67, HTSUS, require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

(d) *Authority and delegations.* The Act authorizes the Secretaries of Commerce and the Treasury to prescribe joint regulations to carry out their functions under U.S. Note 6, Subchapter X, Chapter 98, HTSUS. The Secretary of the Treasury has delegated authority to the Assistant Secretary for Enforcement, who has retained rulemaking authority and further delegated administration of the regulations to the Commissioner of the U.S. Customs Service. The authority of the Secretary of Commerce has been delegated to the Assistant Secretary for Import Administration who has retained rulemaking authority and further delegated administration of the regulations to the Director of the Statutory Import Programs Staff.

[47 FR 32517, July 28, 1982; 47 FR 34368, Aug. 9, 1982, as amended at 66 FR 28832, May 25, 2001]

§ 301.2 Definitions.

For the purposes of these regulations and the forms used to implement them:

(a) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(b) *Customs* means the U.S. Customs Service and the "The Commissioner" means Commissioner of the U.S. Customs Service, or the official(s) designated to act on the Commissioner's behalf.

(c) *Customs Port or the Port* means the port where a particular claim has been or will be made for duty-free entry of a scientific instrument or apparatus under subheading 9810.00.60, HTSUS.

(d) *Entry* means entry of an instrument into the Customs territory of the United States for consumption or withdrawal of an instrument from a cus-

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toms bonded warehouse for consumption.

(e) *United States* includes only the several States, the District of Columbia and the Commonwealth of Puerto Rico.

(f) *Instrument* means instruments and apparatus specified in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. A combination of basic instrument or apparatus and accompanying accessories shall be treated as a single instrument provided that, under normal commercial practice, such combination is considered to be a single instrument and provided further that the applicant has ordered or, upon favorable action on its application, firmly intends to order the combination as a unit. The term "instrument" also covers separable components of an instrument that are imported for assembly in the United States in such instrument where that instrument, due to its size, cannot feasibly be imported in its assembled state. The components, as well as the assembled instrument itself, must be classifiable under the tariff provisions listed in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. See paragraph (k) of this section and § 301.3(f). Unless the context indicates otherwise, instrument or apparatus shall mean a foreign "instrument or apparatus" for which duty-free entry is sought under subheading 9810.00.60, HTSUS. Spare parts typically ordered and delivered with an instrument are also considered part of an instrument for purposes of these regulations. The term "instruments" shall not include:

(1) Materials or supplies used in the operation of instruments and apparatus such as paper, cards, tapes, ink, recording materials, expendable laboratory materials, apparatus that loses identity or is consumed by usage or other materials or supplies.

(2) Ordinary equipment for use in building construction or maintenance; or equipment for use in supporting activities of the institution, such as its administrative offices, machine shops, libraries, centralized computer facilities, eating facilities, or religious facilities; or support equipment such as copying machines, glass working apparatus and film processors.