

## 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 (19 U.S.C. 1202).

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, contracted to by approximately 89 countries, 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 institutions shall enjoy duty-free entry if instruments or apparatus of equivalent

scientific value are not being manufactured in the country of importation.

(3) Pub. L. 89-651, the Educational, Scientific, and Cultural Materials Importation Act of 1966 (19 U.S.C. 1202; "the Act"), implements the Agreement in the United States. Section 6(c) of the Act gives effect to Annex D of the Agreement. This section added tariff item 851.60 to the Tariff Schedules of the United States (TSUS) to provide for the duty-free importation of instruments and apparatus "entered for the use of any nonprofit institution, whether public or private, established for educational or scientific purposes \* \* \* if no instrument or apparatus of equivalent scientific value for the purposes for which the instrument or apparatus is intended to be used is being manufactured in the United States." Headnote 1 to Schedule 8, part 4, TSUS, was amended by Pub. L. 89-651 and provides for the use, disposition and transfer of articles and their repair components accorded duty-free entry under tariff items 851.60 and 851.65, respectively, and Headnote 6, added by Pub. L. 89-651, sets forth the duty-free procedures and responsibilities.

(c) *Summary of statutory procedures and requirements.* (1) Headnote 1 provides, among other things, that articles covered by tariff items 851.60 (scientific instruments and apparatus) and 851.65 (repair components therefor) must be exclusively for the use of the institutions involved and not for distribution, sale or other commercial use within five years after being entered. These articles may be transferred by a qualified nonprofit institution to another such institution without duty liability being incurred. However, if such article is transferred other than as provided by the preceding sentence, or is used for commercial purposes within five years after having been entered, duty shall be assessed in accordance with the procedures established in Headnote 1.

(2) Pursuant to Headnote 6 an institution desiring to enter an instrument or apparatus under tariff item 851.60 TSUS must file an application with the

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Secretary of the Treasury (U.S. Customs Service) in accordance with these regulations. 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) whose decision as to whether or not duty-free entry may be accorded the instrument is published in the FEDERAL REGISTER. An appeal of the final decision may be filed with the United States Court of Customs and Patent Appeals, on questions of law only, within 20 days after publication of the decision in the FEDERAL REGISTER.

(3) Repair components for instruments or apparatus admitted duty-free under tariff item 851.60 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 Headnote 6, TSUS. The Secretary of the Treasury has delegated authority to the Assistant Secretary for Enforcement and Operations, 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 Deputy 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]

### § 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

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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 tariff item 851.60.

(d) *Entry* means entry of an instrument into the Customs territory of the United States for consumption or withdrawal of an instrument from a Customs 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 only instruments and apparatus classifiable under the tariff items specified in headnote 6(a) of part 4 of Schedule 8. 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. Unless the context indicates otherwise, instrument or apparatus shall mean a foreign "instrument or apparatus" for which duty-free entry is sought under tariff item 851.60. 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.