Bureau of Customs and Border Protection

CBP Decision

19 CFR PART 101
USCBP–2006–0057
[CBP Dec. 06–23]

ESTABLISHMENT OF NEW PORT OF ENTRY AT SACRAMENTO, CALIFORNIA; REALIGNMENT OF THE PORT LIMITS OF THE PORT OF ENTRY AT SAN FRANCISCO, CALIFORNIA

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

ACTION: Final rule.

SUMMARY: This document amends the Department of Homeland Security (DHS) regulations pertaining to the field organization of the Bureau of Customs and Border Protection (CBP) by establishing a new port of entry at Sacramento, California, and terminating the user fee status of Sacramento International Airport. In order to accommodate this new port of entry, this document realigns the port boundaries of the port of entry at San Francisco, California (San Francisco-Oakland), since these boundaries currently encompass area that is included within the new port of Sacramento. This change is part of CBP's continuing program to more efficiently utilize its personnel, facilities, and resources to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: October 5, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202-344-2776.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** (70 FR 52336) on September 2, 2005, CBP proposed to amend 19 CFR 101.3(b)(1) by establishing a new port of entry at Sacramento, California. In the notice, CBP proposed to include

in the port of Sacramento the Sacramento International Airport, currently a user fee airport. In addition, CBP proposed to realign the San Francisco-Oakland port of entry since it includes area within the proposed port of Sacramento.

CBP proposed the establishment of the new port of entry because the Sacramento area satisfies the current criteria for port of entry designations as set forth in Treasury Decision (T.D.) 82–37 (Revision of Customs Criteria for Establishing Ports of Entry and Stations, 47 FR 10137), as revised by T.D. 86–14 (51 FR 4559) and T.D. 87–65 (52 FR 16328). Under these criteria, CBP evaluates whether there is a sufficient volume of import business (actual or potential) to justify the expense of establishing a new office or expanding service at an existing location. The NPRM detailed how the Sacramento area meets the criteria.

Sacramento International Airport currently is a user fee airport. User fee airports, based on the volume of their business, do not qualify for designation as CBP ports of entry. User fee airports are approved by the Commissioner of CBP to receive the services of CBP officers for the processing of aircraft entering the United States and their passengers and cargo on a fully reimbursable basis to be paid for by the airport on behalf of the recipients of the services; the airport pays a fee for the services and then seeks reimbursement from the actual users of those services.

Passenger-processing fees under 19 U.S.C. 58c(a)(5)(B) are collected from passengers at ports of entry. Because a user fee airport pays a fee on a fully reimbursable basis for the services performed by CBP, CBP does not also collect the passenger processing fee. In the notice, CBP proposed to terminate the user fee status of Sacramento International Airport, which would also terminate the system of reimbursable fees for Sacramento International Airport. Thus, if Sacramento International Airport were to become part of a CBP port of entry, the airport would then become subject to the passenger-processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

The current port limits of the San Francisco-Oakland port of entry are described in Treasury Decision (T.D.) 82–9 (47 FR 1286), effective February 11, 1982, and include area within the proposed port of Sacramento. Accordingly, it was proposed that, if Sacramento is established as a port of entry as described in the NPRM, the geographical limits of the port of entry at San Francisco-Oakland would be modified. The port of entry at San Francisco-Oakland, with its modified port description, would continue to meet the criteria for port of entry status.

ANALYSIS OF COMMENTS

Fourteen (14) comments were received in response to the September 2, 2005, NPRM. Twelve (12) of these comments were in support of the proposal.

Three (3) commenters who supported the proposal and the two (2) commenters who objected to the proposal raised issues regarding Mather Airport which is located on Mather Boulevard and Highway 50, east of Sacramento. The three commenters who supported the proposal sought "clarification" as to whether Mather Airport was to be included within the boundaries of the new Sacramento port of entry. The two (2) commenters who objected to the proposal were concerned that there would be additional aircraft noise that might occur at Mather Airport if air cargo carrier workload was relocated there from Sacramento International Airport.

Mather Airport, located in Sacramento County just 12 miles from downtown Sacramento, is, in fact, located within the boundaries of the proposed CBP Port of Sacramento, California. Mather Airport has previously been located within the port of entry at San Francisco, California (San Francisco-Oakland). The reassignment of Mather airport from the port of San Francisco to the port of Sacramento will not result in any change in the functioning or processing of aircraft at that facility. CBP has no plans to relocate air cargo carrier workload from Sacramento International Airport to Mather Airport. Therefore, CBP anticipates no additional aircraft noise at Mather Airport as a result of this rule.

To address the issue of noise that might occur at Mather Airport, one of these commenters also requested a comprehensive regional plan and full environmental disclosure pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Since Mather Airport is merely being reassigned to the port of Sacramento from the port of San Francisco and CBP has no reason to expect an increase in air cargo carrier workload at Mather Airport as a result of this change, CBP does not anticipate any environmental impact from this rule relating to Mather Airport.

CONCLUSION

After consideration of the comments received, CBP continues to believe that the establishment of a new port of entry at Sacramento, California, and realignment of the port boundaries of the port of entry at San Francisco, California (San Francisco-Oakland) will assist CBP in its continuing efforts to provide better service to carriers, importers and the general public. Therefore, CBP is establishing the new port of entry of Sacramento to include the territory as proposed in the notice and the port of entry description of San Francisco-Oakland will be revised as proposed in the notice.

PORT DESCRIPTION OF SACRAMENTO, CALIFORNIA

The port limits of the port of entry of Sacramento, California are as follows: (i) the corporate limits of Sacramento, including the adjacent territory comprised of the McClellan and Mather airports in

Sacramento County; (ii) all territory on the San Joaquin River in Contra Costa and San Joaquin Counties, to and including Stockton (which includes Stockton Metropolitan Airport); (iii) from Sacramento, southwest along U.S. Interstate 80, east along Airbase Parkway, to and including the territory comprising Travis Air Force Base; (iv) all points on the Sacramento River in Solano, Yolo and Sacramento Counties, from the junction of the Sacramento River with the San Joaquin River in Sacramento County, to and including Sacramento, California; and (v) all points on the Sacramento River Deep Water Ship Channel in Solano, Yolo and Sacramento Counties, (a) from and including, the junction of Cache Slough with the Sacramento River, to and including Sacramento; and (b) from Sacramento northwest along Interstate 5 to Airport Boulevard, north along Airport Boulevard, to and including the territory comprising the Sacramento International Airport in Sacramento County. All of the territory included in the port of Sacramento is located within the State of California.

REVISED PORT DESCRIPTION OF SAN FRANCISCO-OAKLAND

The geographical limits of the port of San Francisco-Oakland are realigned to include all the territory within the corporate limits of San Francisco and Oakland and all points on the San Francisco Bay, San Pablo Bay, Carquinez Strait and Suisan Bay.

SACRAMENTO INTERNATIONAL AIRPORT

Sacramento International Airport is now within the boundaries of the Sacramento port of entry and will no longer be a user fee airport. It will now be subject to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B). The list of user fee airports at 19 CFR 122.15(b) need not be amended because "Sacramento International Airport" is not currently included in that list.

AUTHORITY

This change is made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624, and section 6 U.S.C. 203 of the Homeland Security Act of 2002, Pub. L. 107–296 (November 25, 2002).

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. The Office of Management and Budget has determined that this regulatory action is not significant within the meaning of Executive Order 12866. This action also will not have a significant economic

impact on a substantial number of small entities. Accordingly, it is certified that this document is not subject to the additional requirements of the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

SIGNING AUTHORITY

The signing authority for this document falls under 19 CFR 0.2(a) because the establishment of a new port of entry, the modification of the port limits of an existing port of entry, and the termination of the user-fee status of an airport are not within the bounds of those regulations for which the Secretary of the Treasury has retained sole authority. Accordingly, this final rule may be signed by the Secretary of Homeland Security (or his or her delegate).

LIST OF SUBJECTS

19 CFR PART 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

AMENDMENTS TO REGULATIONS

For the reasons set forth above, part 101 of the regulations (19 CFR part 101), is amended as set forth below.

PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for section 101.3 continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

2. The list of ports in section 101.3(b)(1) is amended by adding, in alphabetical order under the State of California "Sacramento" in the "Ports of entry" column and "CBP Dec. 06–23 " in the "Limits of Port" column. Also under the State of California, the "Limits of Port" column for "San Francisco-Oakland" will be amended by deleting "Including Benicia, Martinez, Richard, Sacramento, San Jose, and Stockton, T.D. 82–9" and adding "CBP Dec. 06–23."

Date: August 25, 2006

MICHAEL CHERTOFF,
Secretary

[Published in the Federal Register, September 5, 2006 (71 FR 52288)]

General Notices

USCBP – 2006 – 0087

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Sugar Beet Thick Juice

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

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: The Bureau of Customs and Border Protection (CBP) has received a petition submitted on behalf of a domestic interested party requesting the reclassification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain sugar beet thick juice. Petitioner contends that sugar beet thick juice competes directly with sugar and has been incorrectly classified in subheading 1702.90.4000, HTSUS, with a general rate of duty of 0.35¢ per liter, not subject to quota. Petitioner contends that the product is properly classifiable under various subheadings of heading 1701, HTSUS, or, in the alternative, in subheading 1702.90.5800, HTSUS, and subject to quota. This document invites comments with regard to the correctness of the current classification.

DATE: Comments must be received on or before November 13, 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 – 0087.
- 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 notice of domestic interested party petition concerning the tariff classification of sugar beet thick juice. All comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

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 9:00 a.m. and 4:30 p.m. at the Bureau of Customs and

Border Protection, Office of Regulations and Rulings, Trade and Commercial Regulations Branch, 799 9th Street, NW, 5th Floor, Washington, DC. 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, Office of Regulations and Rulings, at (202) 572–8828.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of the U.S. Beet Sugar Anticircumvention Coalition (USBSAC) representing over 85 percent of U.S. sugar beet processing capacity, requesting that Customs and Border Protection (CBP) reclassify imported sugar beet thick juice, as classified in New York Ruling letter (NY) J84482, dated October 21, 2003. CBP has classified this product under subheading 1702.90.4000, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for: "Other sugars . . . sugar syrups not containing added flavoring or coloring matter . . . other . . . derived from sugar cane or sugar beets . . . other . . . other", and has a general duty rate of 0.35 cents per liter, and is not subject to tariff-rate quota restrictions. The petition contends that sugar beet thick juice is sugar, competes directly with sugar, and should be subject to tariff-rate quota restrictions. Classification under the HTSUS is determined 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. Classification of sugar beet thick juice is based on the composition of the product.

In NY J84482, CBP classified sugar beet thick juice, labeled "Taber Thick Juice", in subheading 1702.90.4000 HTSUS, as sugar syrup not containing added flavoring or coloring, derived from sugar beets. Petitioner contends that classification of sugar beet thick juice in subheading 1702.90.4000, HTSUS, which is not subject to tariff-rate quota restrictions, is wrong and defeats the legislative purpose of the soluble non-sugar solid threshold in subheading 1702.90, HTSUS, which is to prevent products that compete directly with sugar from entering the United States free of quota. Petitioner states that NY J84482 is apparently based on findings that sugar beet thick juice: (1) is a sugar syrup not containing added flavoring or coloring, (2) is derived from sugar beets, and (3) contains soluble

non-sugar solids greater than 6 percent by weight of the total soluble solids. Petitioner asserts that this analysis is perfunctory and opens the floodgates for quota-free imports of a product that directly competes with sugar.

In support of its position, Petitioner relies on CBP Headquarters Ruling Letter (HQ) 961273, dated August 25, 1999 and the Final Notice of Revocation of Ruling Letter and Treatment Relating to Tariff Classification of Certain Sugar Syrups, 33 Customs Bulletin 35/36 (Sept. 8, 1999) ("Stuffed Molasses Revocation Ruling"), a United States Department of Agriculture (USDA) ruling (Dairy and Sweeteners Analysis Group, Commodity Credit Corporation, Feb. 28, 2003), and legislative history surrounding development of item 155.35 of the Tariff Schedules of the United States (TSUS), the predecessor to the HTSUS.

Petitioner argues that sugar beet thick juice is sugar, and it is for this reason that the USDA has determined that it is squarely covered by the program that regulates the sale of domestically processed sugar in the United States. Petitioner maintains that the only commercial use for sugar beet thick juice is for further processing into sugar for human consumption and, as such, sugar beet thick juice clearly competes with sugar for human consumption. Petitioner states that given the history of tariff engineering with sugar products, CBP should apply strict scrutiny and give careful consideration to the commercial identity of sugar beet thick juice.

CBP administers the tariff and follows the principles of classification as set forth by the GRIs and U.S. Notes. CBP has in the past found that, for tariff classification purposes, the percentage of soluble non-sugar solids present in sugar syrup determines where that syrup is classified. In this instance, NY J84482 indicates that the CBP laboratory determined that the submitted sample of the thick juice contained 7.7 percent soluble non-sugar solids in the total soluble solids. Petitioner does not dispute the chemical composition of the subject sugar beet thick juice. Rather, Petitioner states that products that compete with sugar should be classified in subheadings subject to quota, even if the product meets the terms of a quota-free subheading, such as 1702.90.40, HTSUS.

Petitioner submits that CBP should classify sugar beet thick juice as raw sugar under subheading 1701.12.1000 or 1701.12.5000, HTSUS, which provides for, *inter alia*, raw beet sugar, in solid form, not containing added flavoring or coloring matter. These subheadings are subject to quota. Petitioner states that there is no such thing as solid raw beet sugar — as a technical and commercial matter, it does not exist. Petitioner argues that, while heading 1701, HTSUS, generally applies to sugar solids, CBP should disregard the water contained in the sugar beet thick juice with the result that the remaining solid would contain a Brix of 68.7 and the non-sugar solids would account for 7.7 percent by weight of all the soluble solids.

CBP notes the well-established classification principle that goods are classified in their imported condition. XTC Products, Inc. v. United States, 771 F. Supp. 401, 405 (1991). See also United States v. Citroen, 223 U.S. 407 (1911). GRI 1 requires us to classify goods according to the terms of the headings of the HTSUS. By its terms, heading 1701 provides for: "Cane or beet sugar and chemically pure sucrose, in solid form." In addition, Subheading Note 1 to Chapter 17, HTSUS, provides that for the purposes of subheading 1701.12 "raw sugar means sugar whose content of sucrose by weight, **in the dry state**, corresponds to a polarimeter reading of less than 99.5 degrees." (Emphasis added.) EN 17.01 further explains that, "sugar syrups of cane or beet sugar, consisting of aqueous solutions of sugars, are classified in heading 17.02 when not containing added flavoring or coloring matter and otherwise in heading 21.06." CBP has previously considered sugar beet thick juice to be precluded from classification in heading 1701, HTSUS, because it is an aqueous solution and not in solid form.

In the alternative, Petitioner submits that CBP should classify sugar beet thick juice as blended syrup under subheading 1702.90.5800, HTSUS. Subheading 1702.90.5800, HTSUS, provides for, *inter alia*: "Other sugars; . . . sugar syrups not containing added flavoring or coloring matter . . .: Other . . .: Other: Other: Blended syrups described in additional U.S. note 4 to chapter 17: Other." Additional U.S. Note 4 to Chapter 17 provides: "For the purposes of this schedule, the terms 'blended syrups described in additional U.S. note 4 to chapter 17' means blended syrups containing sugars derived from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported." Petitioner contends that sugar beet thick juice can be reasonably interpreted to be a blended syrup within the meaning of the HTSUS, because sugar beet thick juice is formed through the blending of different sugar beet juices with various concentrations of sugar and viscosities (e.g., carbonation juice, thin juice, thick juice).

It has been CBP's view that the "blended syrups" of subheading 1702.90.5800, HTSUS, do not include sugar beet thick juice that is formed through the blending of different sugar beet juices with various concentrations of sugar and viscosities (carbonation juice, thin juice, thick juice), as described by the Petitioner. Subheading 1702.90.5800, HTSUS, provides for sugar syrups other than those derived from sugar cane or sugar beets. When this subheading is analyzed in the context of Additional U.S. Note 4 to Chapter 17, HTSUS, CBP's view has been that the blended syrups of subheading 1702.90.5800, HTSUS, must partly consist of sugar syrups not derived from sugar cane or sugar beets. Because the entire Taber Thick Juice product is derived from sugar beets, CBP has considered it to

be precluded from classification in subheading 1702.90.5800, HTSUS.

COMMENTS:

Pursuant to section 175.21(a), CBP Regulations (19 CFR § 175.21(a)), before making a determination on this matter, CBP invites written comments on the petition from interested parties.

The domestic interested party petition concerning the tariff classification of sugar beet thick juice, as well as all comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. § 552, and Section 103.11(b), CBP Regulations (19 CFR §103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on regular business days at the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at 202–572–8768.

AUTHORITY:

This notice is published in accordance with section 175.21(a), CBP Regulations (19 CFR § 175.21(a)) and 19 U.S.C. § 1516.

Dated: August 17, 2006

DEBORAH J. SPERO,
Acting Commissioner,
Bureau of Customs and Border Protection.

[Published in the Federal Register, September 11, 2006 (71 FR 53460)]