

Rearranging the Basement – HTS Classification 9801.00.10 Revisions

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March, 2017

It's winter time. Most hearty Minnesotans, and I like to count myself as one, don't let that get in our way. We get out in the cold and enjoy our lives in spite of the negative temperatures and the frozen tundra we call home. Truth be told, there is only so much snowshoeing, curling and broomball one person can enjoy before needing to retreat to the fireside to thaw out. (My fireside is outfitted with a bottle of locally distilled and aged bourbon. But perhaps I share too much?)

That leaves us considerable time to ourselves to enjoy pastimes such as needlepoint and organizing our sock drawers. I for one use the time to root around in the basement, cleaning and rearranging as I go. This year I finally got around to sorting through my collection of spare nuts bolts and screws and organized them by gauge and thread count.

I also find time to explore some of the figurative basements of trade regulations. This winter I've been rooting around in the basement of the Harmonized Tariff Schedule again, that is to say chapter 98. Chapter 98 of the HTS, if you recall, is full of duty exemptions.

I was reminded that in 2016 there was a significant change to classification 9801.00.10. Congress quietly expanded the language so that it now reads:

*Products of the United States when returned after having been exported, **or any other products when returned within 3 years after having been exported**, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad.*

The addition of the language; “... **or any other products when returned within 3 years after having been exported**,” may not seem like much, but is a relief to a wide range of exporters and importers that have found themselves paying duties on returned foreign goods and sometimes, for lack of documentation, on U.S. goods.

The provisions for claiming U.S. goods returned are detailed within the [U.S. Customs regulations, 19 CFR §10.1](#). Within these regulations we find that, in order to claim the duty exemption, the importer should be prepared to present the following documents to CBP and other proof of applicability when requested by CBP:

- Shippers Declaration
- Importer's Declaration
- Manufacturer's Affidavit.

The regulations go so far as to provide a template for these three documents.

These regulations, however, speak specifically to U.S. goods returned. What evidence should the importer present to CBP if the goods were previously imported, then exported and are now being returned? To date, CBP has not updated its regulations to answer this question.

Thankfully, on August 17, 2016, CBP issued [binding ruling HQ H276787](#) outlining its policy regarding the revised language associated with classification 9801.00.10. The ruling specifically addressed the documentation required to support returns within three years. Briefly summarized, CBP said the following.

1. If returned within three years of export the importer need not prove the goods are of U.S. origin. Therefore a manufacturer's affidavit is not required.
2. The shipper's declaration detailed within 19 CFR §10.1 is a requirement of all goods returned within three years.
3. The importer's declaration detailed within 19 CFR §10.1 is a requirement of all goods returned within three years.
4. Additionally, the port director may require other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment including a U.S. export invoice, bill of lading or airway bill evidencing the exportation of the articles from the U.S. and/or the reason for the exportation of the articles demonstrating that the same items were returned within 3 years. This could also include a copy of the Electronic Export Information (EEI) filed through AES or a customs entry form filed with the importing jurisdiction.

If the good is returned beyond the three-year limitation, the use of classification 9801.00.10 will only apply to U.S. goods for which the importer can provide a manufacturer's affidavit when requested by CBP.

CBP also released [CSMS 17-000046 on 1/31/2017](#) that provided additional detail regarding the documentary proof required to support 9801.00.10. The information expands on the binding ruling and, if read closely, may even conflict with it just a little. Nevertheless, it provides guidance to the trade until such time as the CBP regulations can be modified.

The take away from both documents is that the stronger your documentary audit trail, the better off you will be. For my purposes, I would strive to obtain a manufacturer's affidavit for all U.S. goods returned, just in case.

Like sorting nuts and bolts, this type of rule change may seem tedious and trivial. I encourage you, however, to investigate your returns program and to take advantage of this duty exemption. You'll be surprised how much money you will save your company.

Now excuse me. I see a pile of tangled extension cords and Christmas lights piled in the corner that need my attention.