



# Cracking Codes & Crafting Compliance and Controls: Advanced Tariff Classification Strategies

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# Meet Your Speakers



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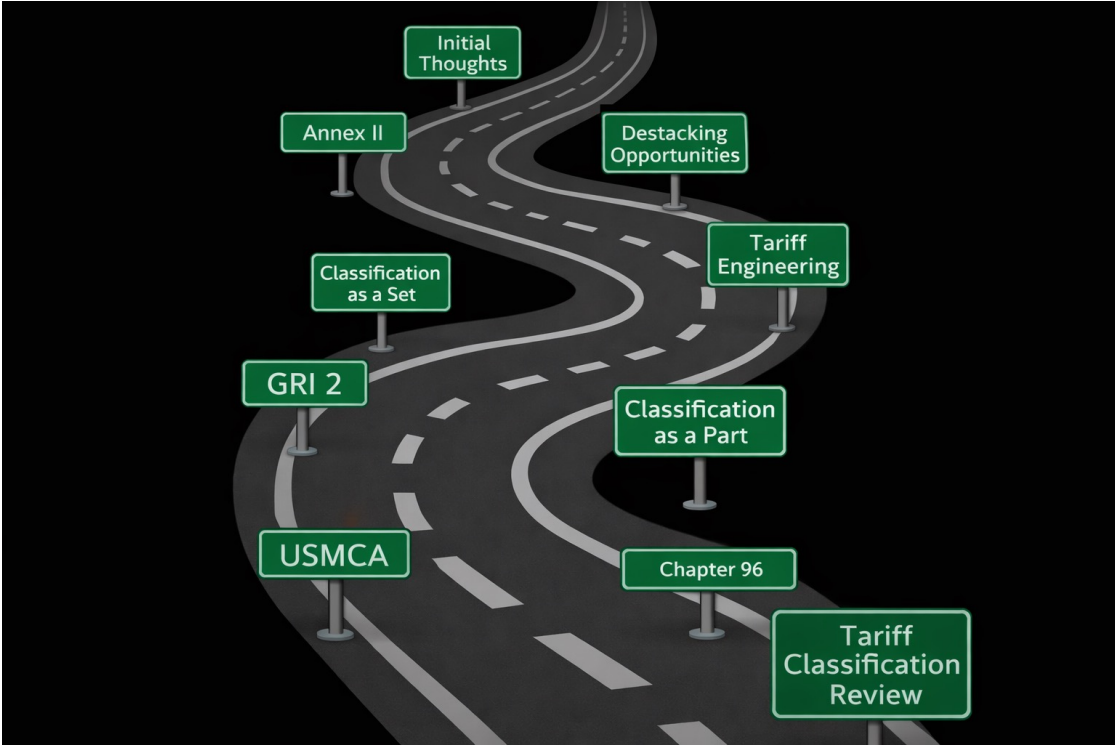
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- **Today's presentation is for informational purposes.**
- **The strategies discussed today can be very complex and fact specific.**
- **Therefore, any duty savings strategies should be implemented only after a thorough review of the applicable facts, laws, and regulations.**



# Agenda



An aerial night view of a city, likely Singapore, with a green overlay. The city lights are visible, including a prominent highway with light trails. The green overlay is semi-transparent and covers the entire image, with the text 'Initial Thoughts' centered in white.

# Initial Thoughts



# Tariff Classification Remains a Critical Trade Compliance Area

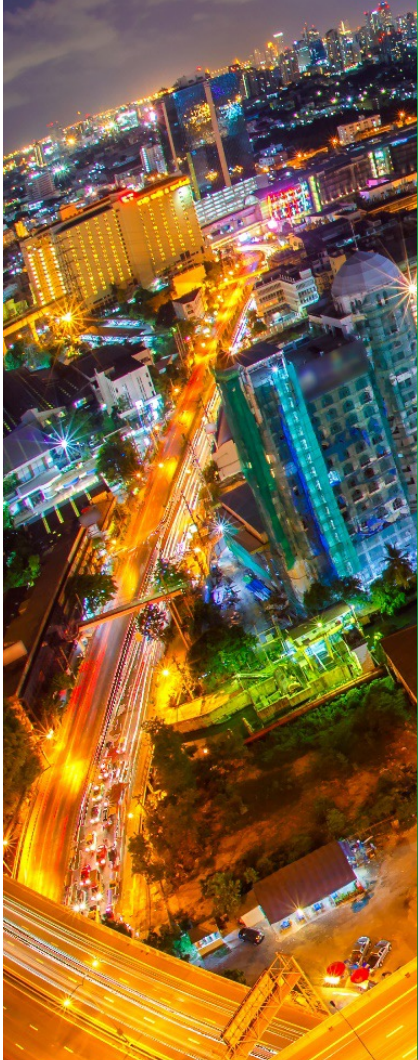
- Companies engaged in international trade face **complex laws and regulations** with respect to imported goods
- Importers must act with **reasonable care** to ensure compliance and avoid costly penalties
- **Increased risk** from non-compliance
- Opportunities exist for those that **think strategically**
  
- Many tariff regimes are based on tariff classification
- Duty preferences may also be tariff based
  
- Tariff classification change could impact duties owed



# Carefully Assess Opportunities

- All opportunities should be carefully reviewed and executed so as not to create additional compliance risk
- Considerations –
  - What is the issue?
  - How do we find the potential savings?
  - What is the benefit?
  - What are the risks?
  - Do we have strong internal controls/processes to support the process?
  - Do we need help to manage the project?
  - What are the additional compliance costs related to the opportunity?
- **New tariff regimes add complexity to duty savings analysis**





ANNEX II

Products that are classified in the 8-digit subheading in the Harmonized Tariff Schedule of the United States (HTSUS) that are listed in the descriptions that are contained in this Annex II, and are not intended to delimit in any way the scope in Annex III governs the tariff treatment regarding the scope of particular HTSUS subheadings under Border Protection. In the product description, the words "specified or included" shall apply.

# Annex II to EO 14257

- Inclusion on Annex II provides duty relief from IEEPA Reciprocal Tariffs and IEEPA India/Oil Tariffs
- Annex II intended to cover goods subject to potential 232 tariffs
- Items have been moved to Annex II as a result of lobbying
- Items moved off Annex II with 232 Executive Orders
  - Copper order moved only some items off Annex II that were intended to be subject to 232 tariffs
  - Semiconductor order kept all tariff classifications on Annex II
- Inclusion on Annex II may be temporary

Description
Coral, shells, cuttlebone and similar material cut to shape; powder and waste thereof
Natural graphite, in powder or flakes (other than in powder or flakes)
Natural graphite, other than in powder or flakes
Natural calcium phosphates, natural aluminates
Natural calcium phosphates, natural aluminates
Natural barium sulfate (barytes), ground
Natural barium sulfate (barytes), not ground
Natural magnesium carbonate (magnesite)
Fused magnesia; dead-burned (sintered) or quant. of other oxides added before sintering
Caustic calcined magnesite
Asbestos other than Crocidolite
Fluorspar, containing by weight 97 percent



An aerial night view of a city, likely Singapore, with a green overlay. The city lights are visible, including a prominent blue-lit building and a highway with light trails. The green overlay is semi-transparent and covers the entire central area of the image.

# Destacking Opportunities



# Stacking

- If auto/MHDV, then they don't stack with any tariffs except CN fentanyl or 301 tariffs
  - Auto tariffs are by “use” and tariff classification
  - May elect to be subject to auto/MHDV 232 tariffs if parts are: 1) used in production or repair in the United States; and 2) not in certain classifications (st/al articles; other “part” tariff classifications)
  - If electing a part as “subject to” auto/MHDV parts, then it is exempt from the MHDV/auto 232s if it is USMCA-originating (currently), as well as: copper, aluminum, steel, CA/MX fentanyl, reciprocal, wood, Brazil, and India tariffs



An aerial night view of a city, likely Los Angeles, with a prominent green overlay. The overlay is semi-transparent and features a faint, repeating pattern of architectural structures. The city lights are visible through the overlay, particularly along the coast and in the downtown area. The text "Tariff Engineering" is centered in white on the green background.

# Tariff Engineering



# Initial Note on Tariff Engineering

- The practice of modifying an imported product to achieve a lower applicable rate of duty
  - Long-standing principle that merchandise is classifiable in its condition as imported
  - An importer has the right to fashion merchandise to obtain the lowest rate of duty and the most favorable treatment
  - The Court of International Trade (CIT) has long held this is a permissible practice
- When applied properly, tariff engineering creates opportunities for savvy importers to achieve substantial savings
- However, **the practice is prohibited when the change is considered an artifice or disguise**
- **Tariff rate may be different based on change in tariff classification or origin**



# How To Achieve Duty Savings with Tariff Engineering?

- Change materials . . .
- Change design (dimensions/specifications) . . .
- Add something or take something away . . .
- Beware of:
  - Use provisions (What if use does not change?)
  - AD/CVD (Tariff classification does not control)
  - Impact of additional duties (What is impact on other tariff regimes - 232, 301, IEEPA?)
  - Impact on FTA eligibility (Does this change my rule of origin?)



# Component-Based Engineering – Festive Articles

- Generic inflatable snowman is classified in Heading 6307 as “other made-up articles” of textiles – 7% duty
- **Adding a festive symbol could impact the duty rate**
- Holly leaves and red holly berries is a recognized festive symbol closely associated with Christmas
- Product is now eligible for classification in Heading 9505 as “festive articles” – duty free



# Design-Based Engineering – ADA Toilets

- Ceramic toilets are subject to 6.9% duty rate (heading 6910).
- **Changing the dimensions of the toilet could impact the duty rate.**
- CBP has ruled –
  - **Toilets measuring 17 inches from the floor** to the top of the bowl rim are properly classified duty-free (9817.00.96).
  - *“Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons”*
  - **Toilets measuring 16.5 inches from the floor** to the top of the bowl rim do not qualify.
  - HQ H055815, May 26, 2010.



# PCBA Production Example – Origin

- CBP frequently finds the country of origin of an electronic good is based on the main PCBA (Essence Test).
- Well-established that SMT process confers origin of PCBA (substantial transformation of board and components).
- Move main board production = change origin of finished good.
  - Final assembly in a third-country is not a substantial transformation.
- How much PCBA production?
  - Subsidiary PCBAs?
    - Likely do not impact origin.
  - Can further work be done on main PCBA?
    - Yes, so long as main PCBA is functional from source country.



# Tariff Engineering Summary

- Goods are assessed in their condition at the time of importation.
- Importers may manufacture their goods in a specific way to avoid higher duties.
  - Allowed so long as there is no “disguise or artifice” (fraud).
  - Could change classification or origin to benefit.
- Note - CBP frequently contests when there is post-import operations.
  - Limited by product design (should also be viable product).
- **Create a Team:** Involve an engineer, plus procurement, plus legal, plus trade compliance.
- Need to establish that proposed “engineering” is possible and feasible.
  - What can be altered?
  - How much will it cost?
  - What is the benefit?



An aerial night view of a city, likely Los Angeles, with a green semi-transparent overlay. The city lights are visible, including a prominent highway with light trails. The text "Classification as a 'Set'" is centered in white on the green overlay.

# Classification as a "Set"



# Classification as a “Set” – GRI 3(b)

- Certain combinations of goods can be classified together as “sets” under one tariff provision
  - two or more items classified in different headings
  - put up together to **meet a particular need** or **carry out a specific activity**, and
  - put up for retail sale without further repacking
- Set will be classified under the provision for component/material which gives the “essential character”
- **Example: *Estee Lauder, Inc. v United States* (Ct. Int’l Trade 2011)**
  - Cosmetic kit classified as a set under cosmetics provision (duty-free) avoids duty on carrying case if imported individually (20%)



# Essential Character Considerations

Essential character analysis *will vary* depending on the product.

Factors for determining “essential character” include:

- nature of the material or component,
- quantity, weight and value,
- role of a constituent material in relation to the use of the goods,
- attribute which strongly marks or serves to distinguish what an article is,
- attribute which is indispensable to the structure, core, or condition of the article.

## No Essential Character?

- Classification defaults to tariff provision last in numerical order.



## **How are the Section 232 duties assessed in respect to “sets” covered by the Section 232 duty?**

\*Same for Section 301.

When importing goods in sets for retail sale, pursuant to General Rule of Interpretation (GRI) 3 of the Harmonized Tariff Schedule of the United States (HTSUS), that contain articles subject to an ad valorem duty pursuant to Sec. 232 (19 U.S.C. § 1862), if the product that imparts the essential character to the set (i.e., the HTSUS subheading under which the entire set is classified) is subject to Sec. 232 duties, then the entire set will be subject to the additional ad valorem duty.





# GRI 2



# General Rule of Interpretation 2

Headings cover articles which are *incomplete or unfinished* provided it has the essential character of the complete or finished article at the time of entry.

- An unassembled bicycle with all necessary parts and components would be classified as a finished bicycle.
- Result would likely be the same if imported without some minor constituent components (e.g., rubber tires) so long as the “essential character” of the bicycle is apparent.
- Standard classification for extra/spare parts.
- Special rule for “*blanks*” – 1) approximate size or shape, and 2) sole use for completion into the finished article.



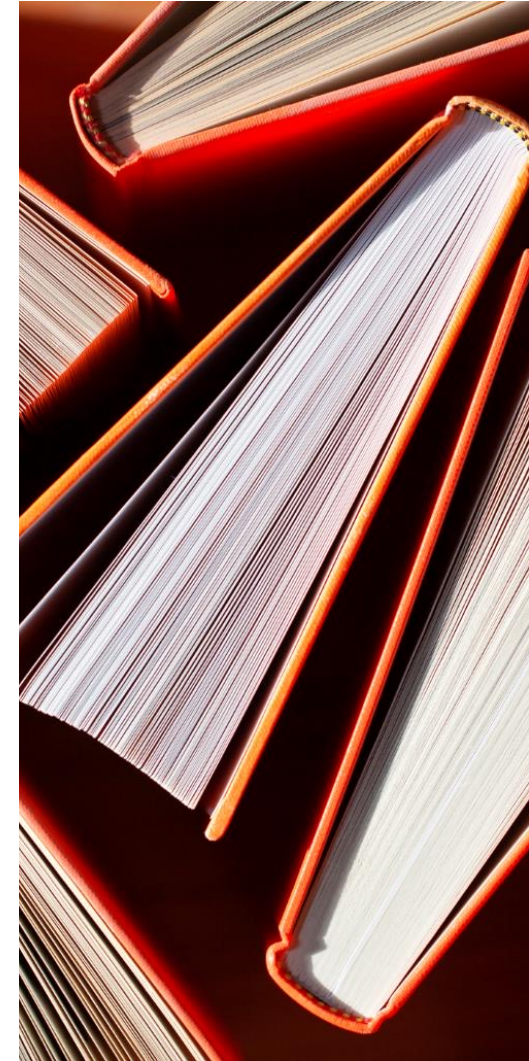
An aerial night view of a city, likely Singapore, with a prominent green overlay. The overlay is semi-transparent and features a faint, repeating pattern of a building's architectural details. The city lights are visible through the overlay, showing a mix of yellow, orange, and blue lights from buildings and streets. The text "Classification as a Part" is centered in white, bold font over the green area.

# Classification as a Part



# Tariff Classification of Parts

- Two lines of key court cases in classifying parts
  - One line of cases holds that a part of an article **"is something necessary to the completion of that article without which the article to which it is to be joined, could not function"**
  - Another line of cases holds that a device may be a part of an article even if its use is optional and the article will function without it, **if the device is dedicated for use upon the article, and, once installed, the article will not operate without it**
- Customs continues to (try) to read these two lines of reasoning in concert — but is far from consistent
- Generally (for tariff classification purposes), a part must be:
  - ***An integral, constituent or component part without which the primary article could not function properly***
  - ***Dedicated solely for use with another article***



# Tariff Classification of Parts

Other considerations for parts:

- **Additional U.S. Rule of Interpretation Note 1(c)**

*In the absence of special language or context which otherwise requires”*

- (c) a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory
- **Parts of General Use:**
  - In general, identifiable parts of articles are classified as “parts” in their appropriate headings. However, “parts of general use” presented separately are **NOT** considered as parts of articles but classified in the headings appropriate to them
  - Can be made of any material (e.g., iron, steel, other metal, or plastic)
  - Not limited to parts with multiple or nonspecific applications
  - A custom-made part, suitable for a specific good, may be a “part of general use” if the part falls within one of the listed



# Material, Part, or Identifiable Article

- Is there a tariff benefit to one classification over another?
- Can product be imported in a way that it falls into a different category – more or less processing?
  - Bulk material with outlines/marks for cuts? Blank?
  - Break machine into parts
- “Accessory” - not defined in the HTSUS or in the ENs
  - Must relate directly to the thing accessorized
  - Not necessary to enable the goods with which it is used to fulfill its intended function



An aerial night view of a city, likely Los Angeles, with a prominent green overlay. The city lights are visible, including a highway with light trails and various buildings. The green overlay is semi-transparent and covers most of the image, with the text 'USMCA' centered in white.

# USMCA



# USMCA Qualification

- Eligibility may be based on the tariff classification of imported product and its underlying components.
  - Is there a different interpretation from one country to another?
- Provides exemption from the following tariffs:
  - Auto tariffs
  - MHDV tariffs
  - Fentanyl tariffs



An aerial night view of a city, likely Singapore, with a prominent green overlay. The overlay is semi-transparent and features a faint, repeating pattern of a building's architectural details. The city lights are visible through the overlay, showing a dense urban landscape with roads, buildings, and a highway interchange.

# Chapter 98



# Special Duty Programs

Special Classification Provisions (22 subchapters)

## Common Importer Errors

- Lack of proof of U.S. origin (e.g., HTSUS subheading 9801.00.10)
- Lack of records for tracing U.S. origin products
- Incorrect valuation of components
- Failure to provide required declarations at time of entry



# Chapter 98 Provisions

**Subheading 9801.00.10:** 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

**Subheading 9802.00.50:** Articles returned to the U.S. after having been exported for repairs or alterations (9802.00.40 if repairs made pursuant to warranty)

**Subheading 9802.00.80:** U.S. origin fabricated components exported in condition ready for assembly, not advanced in value or improved in condition except by being assembled or by operations incidental to assembly process



# Chapter 98 Provisions

**Subheading 9811.00.60:** Any sample (except samples covered by heading 9811.00.20 or 9811.00.40), valued not over \$1 each, or marked, torn, perforated or otherwise treated so that it is unsuitable for sale or for use otherwise than as a sample, to be used in the United States only for soliciting orders for products of foreign countries

**Subheading 9817.00.50:** Machinery, equipment and implements to be used for agricultural or horticultural purposes

**Subheading 9817.00.96:** Articles specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped (except articles for the blind)

**Subheading 9817.85.01:** Prototypes to be used exclusively for development, testing, product evaluation, or quality control purposes



# Samples

Subheading 9811.00.60: Any sample (except samples covered by heading 9811.00.20 or 9811.00.40), valued not over \$1 each, or marked, torn, perforated or otherwise treated so that it is unsuitable for sale or for use otherwise than as a sample, to be used in the United States only for soliciting orders for products of foreign countries

**SAMPLE**



# Agricultural Use Provisions

- Actual Use Provisions:
  - Requires goods must be intended and used for agricultural use
  - Intent must be declared at time of entry
  - CBP can ask for certificate of actual use anytime within 3 years from date of entry
- 9817.00.50 – actual articles; cannot be parts
- 9817.00.60 – can only be parts of articles in headings 8432, 8433, 8434, 8436
  - Do not have to be “parts of” in .90 of those subheadings
  - Cannot be “parts of” parts



# Nairobi Protocol – 9817.00.96

Articles specially designed or adapted for the use or benefit of the permanently or chronically physically or mentally handicapped (except articles for the blind)

KEY: Permanent or Chronic

Quiz:

1. Insulin injection pen case (Y/N)
2. Pacemakers (Y/N)
3. Adult diapers (Y/N)
4. Mist dispersion device (Y/N)
5. Automatic book page turner (Y/N)
6. Walking Cane (Y/N)
7. Crutches (Y/N)
8. Foods designed for metabolic disorders (Y/N)



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# Prototype Provision – 9817.85.01

For **Prototypes** to be used exclusively for development, testing, product evaluation, or quality control purposes

Duty free treatment

Allows for consumption entry of prototypes (no bond required)

Prototypes may only be imported in limited, noncommercial quantities (in accordance with industry practice)

Cannot be used for articles subject to quota, antidumping or countervailing duties



An aerial night view of a city, likely Singapore, with a green overlay. The city lights are visible, and the green overlay is semi-transparent, showing the city's layout. The text "Tariff Classification Review" is centered in white.

# Tariff Classification Review



# Where Are the Opportunities?

- Work with a classification expert
  - Team with expert that understands your business/industry and tariff classification process
- Discuss with compliance personnel
  - Are they aware of questionable classifications?
  - Review import classification database
  - Review import data
- What are other importers doing?
  - CBP rulings (administrative precedent)
  - Pending litigation



# Question Everything

- Under GRI 1, we must determine the appropriate classification “according to the terms of the headings and any relative section or chapter notes”
  - Some terms are defined in the HTSUS and some are not
- Undefined terms are construed in accordance with its common and commercial meaning
- CBP may take a narrow definition (self-serving for chosen classification)
- Does it make sense or **is there a better interpretation?**
  - Dictionaries/encyclopedias
  - Scientific authorities
  - ENs
  - Industry expert
- **Does CBP understand how the product works** for purposes of a use provision?



# Keep Up with Specific Guidance

- **NOT ONLY WHAT'S NEW, BUT WHAT'S OLD AS WELL**
  - Has CBP changed its position?
- **Rulings and Decisions by U.S. Customs**
  - May cover similar products or provide classification guidelines
  - Proposed revocations or modifications could impact your goods
- **Judicial Precedent**
  - Pending cases may impact your goods – Protest?
- **HTSUS Changes**
- **Other publications from U.S. Customs**
  - Informed compliance publications
- **International Guidance**
  - ENs
  - WCO Opinions
  - Foreign country rulings



# Is Litigation an Option?

- Court of International Trade
  - Litigation stops all pending administrative review
  - Best to secure jurisdiction through denied protest - 1581(a)
    - Could seek expedited review of protest (deemed denied after 30 days)
- Financial considerations for litigation:
  - What is the difference in duty rate?
  - Are we entitled to duty refunds?
  - Do we have exposure from past entries – potential penalty?
  - Do we have a pending Prior Disclosure?
  - Is someone else litigating the issue?
  - How much will it cost to litigate?



Questions?