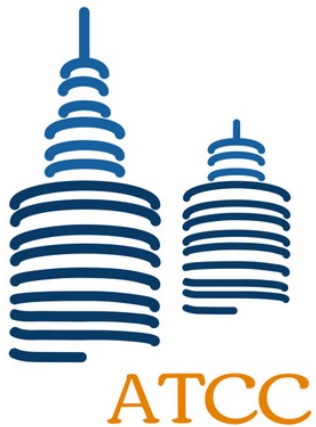




## Chapter 98 Tariff Mitigation Strategies: A focus on 9801 and 9802



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# HTSUS General Note 1

## Tariff Treatment of Imported Goods and of Vessel Equipment, Parts and Repairs

All goods provided for in this Schedule and imported into the customs territory of the United States from outside thereof ... are subject to duty or exempt therefrom ...

- HQ H264475, dated January 11, 2017, Customs HQ confirmed that under HTSUS General Note 1, U.S. origin goods exported and then subsequently returned to the United States, are subject to duties, unless they qualify for a specific tariff exemption.



## Chapter 98, U.S. Note 2



In the absence of a specific provision to the contrary, the tariff status of an article is not affected by the fact that it was previously imported into the customs territory of the United States and cleared through customs whether or not duty was paid upon such previous importation.



# Ch 98 & Trade Remedy Tariffs



- Goods eligible for entry under Chapter 98 HTSUS such as U.S. goods returned, repairs/alterations abroad are generally excluded/ partially excluded From Trade Remedy Tariffs—
  - ❖ IEEPA tariffs for Canada, Mexico and China/HK, and IEEPA Reciprocal Tariffs
  - ❖ Section 232 tariffs on Iron and Steel and derivative iron or steel products.
  - ❖ Section 232 tariffs on Aluminum and Aluminum derivative products.
  - ❖ Section 301 duties for China
  - ❖ Section 232 tariffs on passenger vehicles and light trucks; an automobile parts
  - ❖ Section 232 tariffs on semi-finished copper and intensive copper derivative products
  - ❖ Section 232 duties on softwood timber and lumber products; upholstered wooden furniture; kitchen cabinets and vanities and parts of kitchen cabinets and vanities



# Tariff Subheading 9801.00.10



- Provides for duty free treatment for:
  - ❖ **Products of the United States** when returned after having been exported, or
  - ❖ any **other products\*** when returned within 3 years after having been exported,
  - ❖ **not having been advanced in value or improved in condition** by any process of manufacture or other means while abroad...
- Requires the conditions and requirements of Section 10.1 CR be fulfilled.

\*Added by the Trade Facilitation and Trade Enforcement Act (TFTEA) Implemented 4/25/16

XXII  
98-1-2  
Annotated for Statistical Reporting Purposes

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Ge
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.....		Free
10		Articles previously exported with intent to reimport after temporary use abroad.....	kg	
12		Articles returned temporarily for repair, alteration, processing or the like, the foregoing to be reexported.....	kg	
Other:				
15		Meat and poultry products provided for in chapter 2 or 16.....	kg	
26		Peanuts provided for in heading 1202.....	kg	
27		Articles provided for in chapter 28.....	kg	
28		Articles provided for in chapter 30.....	kg	
29		Articles provided for in chapter 37.....	kg	
30		Articles provided for in chapter 71.....	kg	
31		Articles provided for in chapter 82.....	kg	
Articles provided for in chapter 84:				
35		Articles provided for in headings 8407.10, 8409.10, 8411 or 8412.10.....	No. and kg	
37		Articles provided for in subheadings 8419.33.10, 8419.34.00, 8424.41, 8424.49, 8424.82, 8424.90, 8429.11, 8429.19 or 8431.42 or headings 8432, 8433, 8434 or 8436.....	No.	
43		Articles provided for in headings 8470, 8471, 8472 or 8473.....	No.	
45		Other.....	kg	
Articles provided for in chapter 85:				
49		Articles provided for in headings 8501, 8502 or 8503.....	No.	
51		Articles provided for in heading 8504.....	No.	
53		Articles provided for in headings 8517, 8519, 8525, 8527 or 8529.....	No.	
55		Other.....	kg	



# Regulatory Requirements



## ➤ 19 CFR 10.1 – Documentary Requirements

- ❖ If a shipment valued over \$2,500, the following documents must be filed in connection with the entry of the articles:
  - Foreign Shipper Declaration
  - Declaration by the Owner, Importer, Consignee, having **knowledge of the facts** regarding the claim for free entry.
  - In addition to the declarations a **Center director** may require other documentation or evidence as necessary to substantiate the claim for duty-free treatment, such as
    - A statement from the U.S. manufacturer verifying that the articles were made in the United States, or
    - A U.S. export invoice, bill of lading or airway bill evidencing the U.S. origin of the articles and/or the reason for the exportation of the articles.

**Foreign Shipper's Declaration of U.S. Goods Returned**

I, \_\_\_\_\_, declare that to the best of my knowledge and belief that the articles herein specified were exported from the United States, from the port of \_\_\_\_\_ on or about \_\_\_\_\_, 20\_\_\_\_, and that they are returned without having been advanced in value or improved in condition by any process of manufacturing or other means.

Marks	Number	Quantity	Description	Value, in U.S. coin

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Capacity)

**Importer's Declaration of U.S. Goods Returned**

I, \_\_\_\_\_, declare that the attached declaration by the foreign shipper is true and correct to the best of my knowledge and belief, that the articles were manufactured by \_\_\_\_\_ (name of manufacturer) located in \_\_\_\_\_ (city and state), that the articles were not manufactured in the United States under subheading 9813.00.05, HTSUS, and that the articles were exported from the United States without the benefit of drawback.

\_\_\_\_\_

(Date)

\_\_\_\_\_

(Address)

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Capacity)

\_\_\_\_\_

(Company)

19 CFR 10.1(a)(2)  
 The Importer's declaration may be signed by the president, vice president, secretary, or treasurer of the corporation, or by **any employee or agent of the corporation who holds a power of attorney** executed under the conditions outlined in subpart C, part 141 of this chapter and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts.



# Affidavits of MFG and Origin



(Please print on company letterhead.)

### Affidavit of Manufacture

I, \_\_\_\_\_ declare that the merchandise described below was manufactured in the United States by our company at the following location:

Description	Model number, serial number, part number, etc.

Manufacturer Name	
Street Address	
City, State, Zip Code	

U.S. manufacturer's drawback was (select one below) in connection with the export of this merchandise.

Not Claimed

Claimed in the amount of \$ \_\_\_\_\_ USD on \_\_\_\_\_ in the port of \_\_\_\_\_.

I further declare that the merchandise was not manufactured or produced in the United States in a Customs bonded warehouse, Foreign Trade Zone or under HTS 9813.00.05 (Temporary Import Bond).

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date

- The forms included herein were obtain off the internet and are provided as examples only.
- CSMS #49163963 (08/24/2021) - Updated Requirements for Subheading 9801.00.10- U.S and Foreign Goods Returned
  - ❖ The importer has the burden to prove their claim for duty-free treatment under Subheading 9801.00.10.
  - ❖ One of the following documents will be deemed sufficient proof of export from the United States for U.S. manufactured goods or foreign origin goods, provided the information contained therein proves an export from the United States:
    - ❖ a) Copy of the entry into the foreign country;
    - ❖ b) U.S. export invoice or bill of lading/airway bill; or,
    - ❖ c) Electronic Export Information (EEI) or the Automated Export System (AES) filing exemption.



# “not having been advanced in value or improved in condition”



## ➤ Packaging:

We have consistently held that packaging a finished product from large containers into smaller containers for retail sale is permissible under subheading 9801.00.10, HTSUS.

- ❖ United States v. John V. Carr & Sons, Inc., 69 Cust. Ct. 78, C.D. 4377 (1972), aff'd 61 CCPA 52, C.A.D. 1118 (1974)
- ❖ HQ 555685, August 15, 1990; HQ 559349, December 5, 1995;

## ➤ Cleaning, grading, wrapping, and packing, were deemed to be alterations. Wilbur G. Hallauer v. United States, 40 CCPA 197, C.A.D. 518 (1953). HQ 559611 (1996)

## ➤ Bottle Washing Machine

bottling, washing, and disgorging machine at issue will be used in wineries in Canada and the United States several times a year as need arises. Accordingly, there will be multiple border crossings between the United States and Canada. The machine at issue would be eligible for duty-free treatment under subheading 9801.00.10, HTSUS, if is returned to the United States from Canada within 3 years

- ❖ HQ H350673 October 9, 2025



## CSMS #49163963 - HTS 9801.00.10 - Requirements



- ❖ Documentation may be requested to substantiate that the same articles exported from the United States are being returned.
- ❖ **No substitution** of the same type of articles under an inventory management system may occur. (See Ruling H306350)
- **Broker Advice/Guidance**
  - ❖ If the broker obligates themselves as the importer of record, they assumes the legal responsibility and burden to provide the required documents to substantiate the Subheading 9801.00.10 claim.
  - ❖ Customs Brokers have a duty of care in the filing of entry documents; however, the burden of proof is not on the broker (unless the broker is acting as importer of record) when requests are made to prove a claim for duty-free treatment under Subheading 9801.00.10.
  - ❖ An example of the broker exercising responsible supervision and control for Subheading 9801.00.10 claims is providing proof of the broker's communication with the importer on what is required for such claims.
  - ❖ If it is found that the broker did not provide responsible supervision and control when preparing and filing the entry, then CBP may address that deficiency through the broker informed compliance process.



## Ruling H306350 (2021)–Product Traceability



### Key Ruling Comments:

- “Unless [there is] a product tracking methodology that is exact and uses serial numbers, SKU numbers or some other unique identifier, subheading 9801.00.10, HTSUS, will not be available.”
- **Holding:** “Based on the information presented, the previously imported products from Canada that are subsequently re-imported into the United States will not qualify for duty-free treatment under subheadings 9801.00.25, HTSUS, or 9801.00.10, HTSUS, unless there is an ability ... to match the exportation date from the U.S., in the case of those products with unique identification numbers, to the date that those products are re-imported.”



# HQ H311202, January 5, 2023



➤ Statements:

“The regulations also require that the declaration must include the “marks and numbers” relating to the goods in addition to the description of the articles.

“These documentation requirements ensure that articles that are returned to the U.S. and entered under subheading 9801.00.10, HTSUS, may be traced back to prior exports from the U.S. containing those specific articles.”

“See Headquarters Ruling Letter (“HQ”) 559719 (July 11, 1996) (“Customs also requires additional evidence that supports a port director’s ability to trace the exportation and subsequent importation of the article in question”



## Articles Exported for Repairs or Alterations



### ➤ Heading 9802:

Articles returned to the United States after having been exported to be advanced in value or improved in condition by any process of manufacture or other means

- Subheadings 9802.00.40 and -.50 provide a partial duty exemption for articles exported from and returned to the U.S. after having been advanced in value or improved in condition by **repairs or alterations.**



# Articles Exported for Repairs or Alterations



- For articles admitted under 9802 have two values
  - ❖ The first value following the statistical reporting number (i.e., 9802.00.40, -.50)(reports the value of the Article less the value of the repairs).
  - ❖ The second following the statistical reporting number of the provision in chapters 1-97 from which the rate of duty is derived (the repair value)
- For number 9802.00.50/.40, report the:
  - ❖ (i) total value of the article less the value of the foreign processing; and
  - ❖ (ii) dutiable value, i.e., the value of the foreign processing, respectively



## Articles Exported for Repairs or Alterations: Regulatory Requirements



### ➤ Valuation of Repairs or Alterations:

- ❖ The value of repairs, alterations, processing or other change in condition outside the United States shall be:
  - The cost to the importer of such change; or
  - If no charge is made, the value of such change



# Regulatory Requirements



## ➤ 19 CFR 10.8 – Documentary Requirements

- ❖ Declaration from the party who performed the repairs or alterations. Should include a detailed description of the repairs and/or alternations performed
- ❖ Declaration by the owner, importer, consignee, or agent having knowledge of the facts
- ❖ A Center director may require such additional documentation to prove actual exportation of the articles from the United States for repairs or alterations, such as
  - a foreign customs entry,
  - foreign customs invoice,
  - foreign landing certificate, bill of lading, or an airway bill.

AWB: \_\_\_\_\_ Entry: \_\_\_\_\_

### Exporter's Declaration of Repair

I, \_\_\_\_\_, declare that the articles herein specified are the articles which, in the condition which they were exported from the United States, were received by me (us) on \_\_\_\_\_, (mm/dd/yyyy) from \_\_\_\_\_ (name and address of the owner or exporter in the U.S.); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations below were performed by me (us); that the full cost or (when no charge is made) value of such repairs or alterations are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter mentioned above.

Marks and Numbers	Description of articles and description of repairs or alterations performed	Full cost or (when no charge is made) value of repairs or alterations (see subchapter II, Chapter 98, HTSUS)	Total value of articles after repairs or alterations

\_\_\_\_\_  
(Date)  
\_\_\_\_\_  
(Address)  
\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Capacity)

Reference: 19CFR 10.8(a)(1)

Entry: \_\_\_\_\_ AWB: \_\_\_\_\_

### Importer's Declaration of Repair

I, \_\_\_\_\_, declare that the (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that such articles were exported from the United States for repairs or alterations and without benefit of drawback from \_\_\_\_\_ (U.S. port) on \_\_\_\_\_ (date of export from U.S.); and that the articles entered in their repaired or altered condition are the same articles that were exported on the above date and that are identified in the (attached) Exporter's Declaration of Repair.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Capacity)

Reference: 19CFR 10.8(a)(2)

These forms were obtained off the internet and are provided as examples only.



## Articles Exported for Repairs or Alterations: Regulatory Requirements



### ➤ 10.8 Requirements: Invoices

- ❖ The cost or value of the repairs or alterations outside the U.S., must be set forth in the invoice as the basis for the assessment of duty under subheading 9802.00.40 or 9802.00.50, HTSUS
- ❖ limited to the cost or value of the repairs or alterations performed abroad, and include all domestic and foreign articles furnished for the repairs or alterations
- ❖ Does not include any expenses incurred in U.S. for engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.



# Articles Exported for Repairs or Alterations



- *Press Wireless, Inc. v. United States*, 6 Cust. Ct. 102,
  - ❖ Repairs are operations aimed at restoring articles to their original condition
  - ❖ Operation may not be so extensive as to destroy the identity of the exported article or create a new or different article.
- Disassembly
  - ❖ Where the foreign repair operation entails the complete disassembly of the exported article and numerous component parts of the article are replaced, the concept of essential identity may come into play.



# Articles Exported for Repairs or Alterations: Limitations



- Eligibility under subheading 9802.00.40/-.50, HTSUS, is precluded where:
  - ❖ (i) the articles are not complete for their intended use at their time of export from the U.S. and
  - ❖ (ii) the foreign processing operation is a necessary step in the preparation or manufacture of finished articles; or
  - ❖ the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture.
- HQ H335651 (2023) and *Guardian Indus. Corp. v. United States*, 3 Ct. Int'l Trade 9 (1982), and *Dolliff & Co., Inc., v. United States*, 455 F. Supp. 618 (1978), *aff'd*, 599 F.2d 1015 (1979).



# Articles Exported for Repairs or Alterations: limitations



- Mere testing abroad will not qualify articles for the partial duty exemption under subheading 9802.00.50, HTSUS.
- When testing is performed in connection with a cleaning or other repair operation, the articles will be eligible for the partial duty exemption under subheading 9802.00.50, HTSUS.
- the used solar panels which are simply inspected, tested and returned to the United States do not qualify for preferential tariff treatment under subheading 9802.00.50, HTSUS. However, you may wish to reimport these used solar panels under subheading 9801.00.10, HTSUS. **H325232(2022)**