



SCARBROUGH

QUESTION/ANSWER FORUM:
U.S. CUSTOMS BROKERAGE 101





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SCARBROUGH
DE MÉXICO S. DE R.L. DE C.V.



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CUSTOMS MODERNIZATION ACT

- ***Shared Responsibility:***

Importers and Customs share responsibility for compliance

- ***Informed Compliance:***

Customs' must clearly and completely inform the trade community of its legal obligations when importing into the U.S..

- ***Reasonable Care:***

Importers must exercise reasonable care when providing entry information to Customs, including classification, value, and applicable duty rate

- ***Enforced Compliance:***

Customs' focus shifting from informed compliance to enforced compliance



CIVIL PENALTIES

- 19 U.S.C. § 1592 – Penalties for Fraud, Gross Negligence, and Negligence Penalties for non-Compliance are as Follows:

Culpability	Violations Resulting in Revenue Loss	Non-Revenue Loss Violations
Fraud The Entry(ies)	Up to the domestic value of the entry(ies)	Up to the domestic value of the entry(ies)
Gross Negligence	4 times the loss of duty	40% of the dutiable value of the entry(ies)
Negligence	2 Times the loss of duty	20% of the dutiable value of the entry(ies)



THE MOD ACT & SECTION 1592

- The following 3 elements must be present in order for customs to find a violation of 19 USC §1592 to impose civil penalties:
 1. False Statement, Act, or Omission
 2. Materiality, and
 3. Culpability – I.e., Fraud, Gross negligence or Negligence



REASONABLE CARE

- No black and white definition
- depends on facts and circumstances of each case.
- Reasonable care commensurate with size and sophistication of importer.

Top 5 Compliance Issues

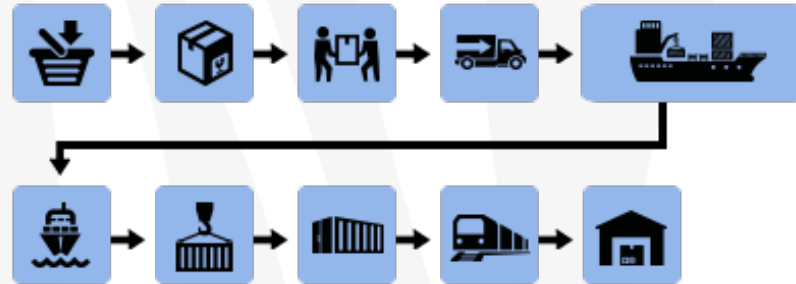
Valuation • Classification • Quantity • Country of Origin • Recordkeeping

Things to look out for

- Prior Disclosure
- Ball Bearings
- Customs Brokers
- Customs Value
- Drawback
- Entry
- Internal Combustion
Piston Engines
- Reasonable Care
- Recordkeeping
- Rules of Origin
- Tariff Classification
- Vehicles, Parts and
Accessories



IMPORT PROCESS



1. Purchase Order
2. Goods are manufactured
3. Goods are loaded
4. Goods leave factory
5. Goods arrive at origin port
6. **Importer Security Filing Required**
7. Goods depart from origin port
8. **Send Required Commercial Documents to U.S. Customs Broker**
9. **Customs Entry Filed by U.S. Customs Broker**
10. **Importer of Record can view Entry data in their ACE portal (old 7501)**
11. Goods arrive at first US Port
12. Goods move inland
13. Goods arrive at inland port
14. Goods arrive at final destination



WHAT IS REQUIRED?

U.S. CUSTOMS SURETY BOND

DOCUMENTS REQUIRED

Required to Make Entry

- Commercial Invoice
- Packing List
- Bill of Lading (B/L)
- Certificate of Origin (if applicable)

Consider Partner Government Agencies requirements

- USDA
- FDA
- Fish and Wildlife
- APHIS

Must have ISF on file 36 hours prior to leaving last foreign port of call

Required for both Customs Entry and ISF

Single Transaction Bond

- A one-time bond
- An importer should purchase this bond only if
 - it plans to import 1-2 times,
 - value isn't extremely high, or
 - there is no PGA involved

Continuous Bond

- valid for 12 months from date of purchase
- automatically renewed each year until it is terminated
- An importer should purchase this bond if
 - it plans to import more than 2-4 times in the next 12 months
 - the value is high, or
 - if a PGA is involved.
- Required if there is a late ISF



CUSTOMS ENTRY – RECORD KEEPING

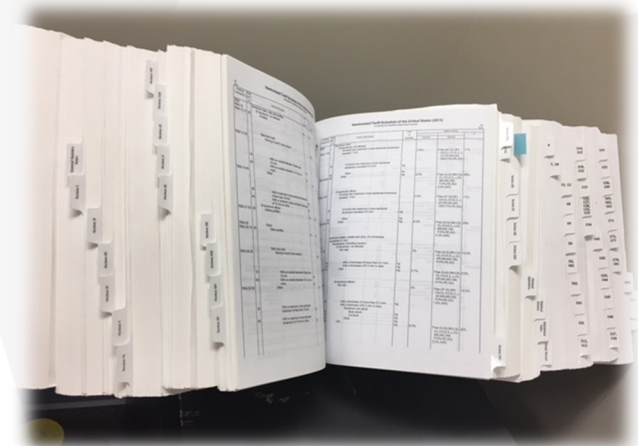
- All documents related to the transaction must be kept for 5 years from the date of entry
 - CF7501 (Entry Summary) *Now available via ACE
 - CF3461 (Entry/Immediate Delivery) *Now available via ACE
 - Commercial Invoice
 - Packing List
 - Bill of Lading
 - Certificate of Origin (if applicable)
- Additional recommend documents
 - PO
 - Proof of Supplier Payment
- Customs always follows the money





CLASSIFICATION TOOLS

- HTSUS General Rules of Interpretation
- Case Law
- Customs Rulings and Decisions
 - Substantially identical products
 - Specific classification guidelines
- Explanatory Notes
 - International interpretation of headings, subheadings (6-digits), and definitions of relevant terms.
- HTSUS Index, HTSUS Table of Contents
- Customs Informed Compliance Publications
 - Tariff Classification





HTS – HOW TO CLASSIFY

Get all the facts on the article to be classified

- All descriptive terms and literature
- Physical qualities
- Material composition
- Chemical characteristics
- Articles use at time of import

Identify all possible classifications

- Use Alphabetical Index
- Use Table of Contents
- Use Binding Rulings

Apply classification rules to determine correct classification

- More than one could apply – if so use GRI's

5 General Provisions

- Eo Nominee
- Principal Use
- Actual Use
- Parts
- Basket

**Consult U.S. Customs House Broker or Trade Compliance Legal Counsel, if necessary



5 GENERAL PROVISIONS

- **Principal Use**

heading 9018 “Instruments and appliances used in medical surgical, dental or veterinary sciences ...”

- **Actual Use**

HTS 9817.00.50 “Machinery, equipment and implements to be used for agricultural or horticultural purposes.”

- **Eo Nominee**

Heading 8483 “ Transmission Shafts (including camshafts and crankshafts) and cranks; bearing housings, housed bearings and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers...”

- **Parts**

heading 8538 “parts suitable for use solely or principally with the apparatus of heading 8535, 8536, or 8537.”

- **Basket**

heading 4016 “ Other articles of vulcanized rubber other than hard rubber”



TARIFF CLASSIFICATION

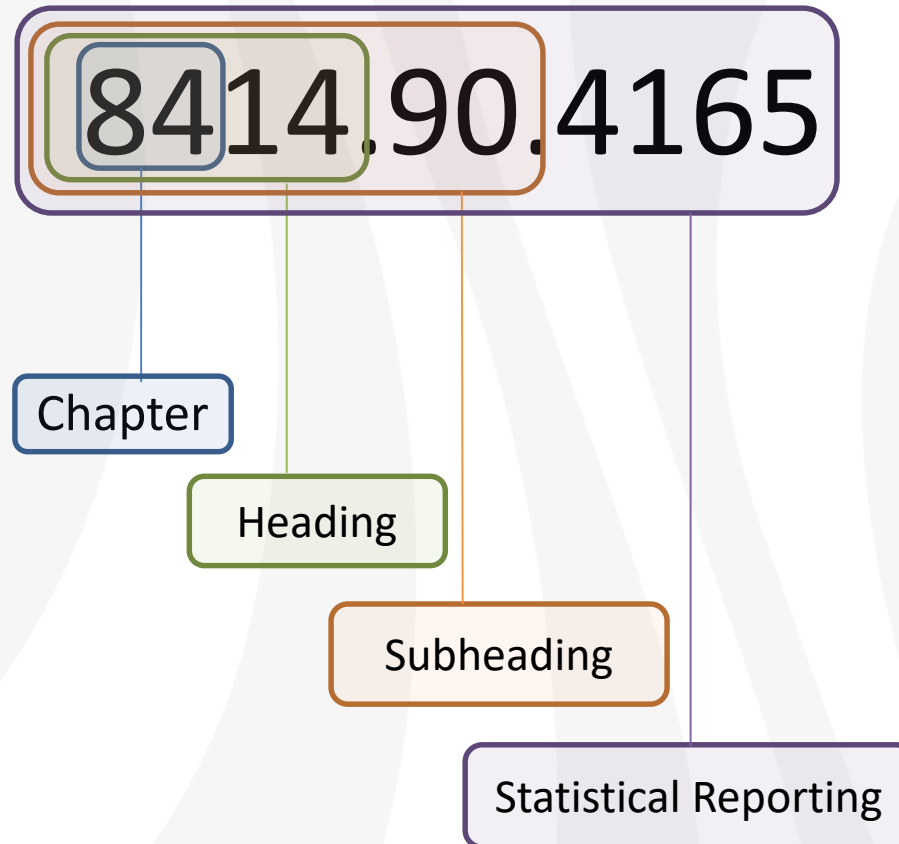
8414.90.4165

84-25

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty	
				1 General	2 Special
8414 (con.)		Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof: (con.)			
8414.90		Parts:			
8414.90.10		Of fans (including blowers) and ventilating or recycling hoods.....	4.7%	Free (A, AU, B, BH, C, CA, CL, CO, D, E, IL, JO, MA, MX, OM, P, PA, PE, SG) 1.8% (KR)	35%
	40	Of fans of subheading 8414.51.....	X		
	80	Other.....	X		
		Of compressors:			
8414.90.30	00	Stators and rotors of goods of subheading 8414.30.....	No.	Free	35%
8414.90.41		Other.....		Free	35%
		Of refrigerating and air conditioning compressors:			
	20	Compressor housings.....	No.		
	40	Other.....	X		
		Other:			
		Of compressors of subheading 8414.40:			
	45	Compressor housings.....	No.		
	55	Other.....	X		
		Other:			
	65	Compressor housings.....	No.		
	75	Other.....	X		
8414.90.90		Other.....		Free	35%



TARIFF CLASSIFICATION STRUCTURE





HTS – NOMENCLATURE

First 6 digits recognized internationally

First 2 digits identify the chapter

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
8701		Tractors (other than tractors of heading 8709):				
8701.10.00	00	Pedestrian controlled tractors	No.	Free	Free (A+,AU,B,BH, CA,CL,D,E,IL,J, JO,MA,MX,P,SG)	Free 25%
8701.20.00		Road tractors for semi-trailers		4%		
	15	New:				
	45	G.V.W. not exceeding 36,287 kg	No.			
	80	G.V.W. exceeding 36,287 kg	No.			
		Used	No.			
8701.30		Track-laying tractors:				
8701.30.10		Suitable for agricultural use		Free		Free
	15	New:				
		With a net engine power of less than 93.3 kW	No.			
	30	With a net engine power of 93.3 kW or more but less than 119.4 kW	No.			
	45	With a net engine power of 119.4 kW or more but less than 194 kW	No.			
	60	With a net engine power of 194 kW or more but less than 257.4 kW	No.			
	75	With a net engine power of 257.4 kW or more	No.			
	90	Used	No.			
8701.30.50		Other		Free		27.5%

Last 4 digits used for statistical reporting



HTS – NOMENCLATURE

Importer will owe 4% of commercial value to CBP

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				1		2
				General	Special	
8701 8701.10.00 8701.20.00	00	Tractors (other than tractors of heading 8709): Pedestrian controlled tractors Road tractors for semi-trailers	No. No.	Free 4%	Free (A+,AU,B,BH, CA,CL,D,E,IL,J, JO,MA,MX,P,SG)	Free 25%
	15 45 80	New: G.V.W. not exceeding 36,287 kg G.V.W. exceeding 36,287 kg Used	No. No. No.			
8701.30 8701.30.10		Track-laying tractors: Suitable for agricultural use New:		Free		Free

Statistical quantity to be reported to US Customs

This product is duty free

Special Rate of Duty or Duty Free Treatment based on Free Trade Agreement with country listed



HTS – NOMENCLATURE

There may be additional provisions for this tariff. Look at the notes at the bottom of the page:

1/ See heading 9902.10.34.

Unit of Quantity	Rates of Duty		
	General	1	2
		Special	
kg.....	6.5%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	33.5%
kg.....	Free		20%
kg.....	6.5%	Free(A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	2.2¢/kg + 33.5%
kg.....	6.5%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	2.2¢/kg + 33.5%
.....	6.5% 1/	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, K, KR, MA, MX, OM, P, PA, PE, SG)	2.2¢/kg + 33.5%
kg			
kg			
kg.....	6.5%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	15.4¢/kg + 46%

Importer will owe 2.2cents/kg + 33.5% duty if importing from Cuba or North Korea



GENERAL RULES OF INTERPRETATION

GRI 1

“classification shall be determined according to the terms of the headings and any relative section or chapter notes.” Table of contents, index, titles of sections and chapters are for ease of reference only.

- Must only compare headings to headings (not headings to subheadings, *see* GRI 6).
- For example. Classification of an electric toothbrush:
 - HTSUS heading 8509 provides for electromechanical domestic appliances with self-contained motors; OR
 - HTSUS heading 9603 provides for brooms, brushes, etc.
 - Even though HTSUS subheading 9603.21 provides for “toothbrushes,” classification is more appropriate under the more specific heading, HTSUS heading 8509.
- If classification under GRI 1 cannot be determined, apply remaining GRIs in order.



GRI 1 EXAMPLE

- Chapter 82 provides for classification (among other things) of spoons, forks, and knives.
- Chapter 82, Note 1, provides “this chapter covers only articles with a blade, working edge, working surface . . . of metal.”
 - Baby safety spoons – with PVC/silicone coated bowl are not “spoons”, since excluded by the Chapter Note.
 - Instead, classified under HTSUS heading 7323 which provides for table, kitchen or other household articles of stainless steel.
- Chapter 71, Note 5, provides that any alloy containing more than 2% of a precious metal (*e.g.*, 97.5% lead, 2.5% silver) shall be classified as alloy of that precious metal.



GENERAL RULES OF INTERPRETATION

GRI 2

- (a) Any reference in a heading to an article shall include a reference to that article incomplete or unfinished, provided it has the essential character of the complete or finished article at the time entry.
 - In addition, reference in a heading shall include relevant articles unassembled
- b) Headings include mixtures or combinations as well as goods consisting wholly or partly of substances. Goods consisting of more than one material are classified according to GRI 3.



GRI 2 EXAMPLE

- GRI 2(a) requires that an unassembled bicycle containing all necessary parts and components be classified as a finished bicycle
- The same bicycle may be classified as a finished bicycle if imported without some minor constituent components (*e.g.*, rubber tires), as long as the “essential character” of the bicycle is apparent
- Essential character looks to the nature and intended use of article
- Can take into consideration all relevant factors including user expectations, value and volume of competing components, principal use.



GRI 2 EXAMPLE (CONT'D)

- Essential Character analysis will vary depending on the product, and is a relevant analysis for application of both GRIs 2 and 3.
- Factors for determining “essential character” include:
 - the nature of the material or component
 - Quantity, weight and value
 - Role of a constituent material in relation to the use of the goods
 - The “attribute which strongly marks or serves to distinguish what an article is
 - The attribute which is indispensable to the structure, core, or condition of the article



GENERAL RULES OF INTERPRETATION

GRI 3

When by application of GRI 2(b) or for any other reason goods are *prima facie* classifiable under two or more headings, classification shall be effected as follows:

- a) The heading that provides the most specific description, unless it refers to only part of mixed substances or part of the items put up in sets for retail sale.
- b) Mixture, composites and goods put up in sets for retail sale which cannot be classified according to the heading with the most specific description are classified “ as if they consisted of the material or substance which gives them their essential character.”
- c) If the goods cannot be classified according to (a) or (b) classify them in the heading that occurs last in the HTSUS.



WHICH HEADING SHOULD CONTROL?

GRI 3

- “rule of relative specificity”
- The Heading with requirements more difficult to satisfy will typically prevail over a more general heading.
- More specific heading is preferred because it will generally describe the article with a greater degree of accuracy and certainty
- Headings are generally defined as
 - Use provisions
 - Actual use
 - Principle use
 - Eo nomine (by name)
 - Parts Provisions
 - Basket Provisions
- USE ⇒ EO Nominee ⇒ Parts ⇒ Basket



GRI 3 EXAMPLE

When choosing between competing headings, the more specific heading prevails

- HTSUS heading 9025 “hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof.”
- HTSUS heading 9033 “parts and accessories (not specified or included elsewhere) for machines, appliances, instruments, or apparatus of chapter 90.”



CLASSIFICATION OF “SETS”

GRI 3

- In order for a product to be classified as a kit or set for Customs classification purposes, it must meet the following specific criteria
 - It must consist of at least 2 different materials or components which are classifiable in different HTS headings, and
 - The articles must be put up together to meet a particular need to carry out a specific activity, and
 - The articles must be put up in a manner suitable for sale directly to users without repacking
- *Caution: unique country of origin marking rules apply to sets.*



GRI 3 EXAMPLE OF SETS

A fishing rod and reel put up in a set for retail sale.

The Reel cost \$2.93 + The Rod Cost \$4.57 = \$7.50 Total

- Fishing rods are by name in the HTS 9507.10.0040 6% duty
- Fishing reels are by name and value HTS 9507.30.4000 Duty 24Cents/each

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				General	1 Special	2
9507		Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705) and similar hunting or shooting equipment; parts and accessories thereof:				
9507.10.00		Fishing rods and parts and accessories thereof.....		6%	Free (A+, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	55%
	40	Fishing rods.....	No.			
	80	Parts and accessories.....	X			
9507.20		Fish hooks, whether or not snelled:				
9507.20.40	00	Snelled hooks.....	X	4%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	55%
9507.20.80	00	Other.....	X	4.8%	Free (A, AU, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)	45%
9507.30		Fishing reels and parts and accessories thereof:				
9507.30.20	00	Fishing reels: Valued not over \$2.70 each.....	No.	9.2%	Free (A+, AU, BH, CA, CL, CO, D, E,	55%



GENERAL RULES OF INTERPRETATION

GRI 4

- Goods which cannot be classified according to GRIs 1 – 3 are to be classified in the heading applicable to the goods “to which they are most akin”

GRI 5

- Cases “specially shaped or fitted” for an article, “suitable for long-term use,” and imported with the article shall be classified with the article unless the case or container provides the article’s essential character (e.g., violin cases, camera cases)
- Packing materials and containers are classified with the article “if they are normally of a kind” for packing such merchandise, unless “clearly suitable for repetitive use”

GRI 6

- Classification of merchandise determined according to the terms of the subheadings and section, chapter and subchapter notes



ADDITIONAL RULES OF INTERPRETATION

- In the absence of special language or context which otherwise requires:
 - (a) A tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of the class or kind to which the imported goods belong, and the controlling use is the principal use:
 - (b) A tariff classification controlled by the actual use to which the imported goods are put in the United States is satisfied only if such use is intended at the time of importation, the goods are so used and proof thereof is furnished within 3 years after the date the goods are entered;
 - (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; and
 - (d) The principles of section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named.



GOVERNMENT LINKS

United States Customs Service

<http://www.cbp.gov/>

Customs Rulings Online Search System (CROSS)

<http://rulings.cbp.gov/>

Harmonized Tariff Schedule of the United States (HTSUS)

<http://hts.usitc.gov/>

<http://www.usitc.gov/tata/hts/bychapter/index.htm>

United States International Trade Commission

<http://www.usitc.gov/>

Court of International Trade

<http://www.cit.uscourts.gov>

Court of Appeals for the Federal Circuit

<http://www.fedcir.gov/>

Code of Federal Regulations (Title 19)

<http://www.gpoaccess.gov/cfr/index.html>

United States Code (Title 19)

<http://www.gpoaccess.gov/uscode/index.html>



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