

Customs Boot Camp Session IV

Duty Avoidance Programs, Post Entry Corrections, Internal Controls and Audits, Recordkeeping

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About your Speakers



CINDY DELEON

Before forming Deleon Trade, Cindy served for 12 years as a Senior Auditor and Assistant Field Director of U.S. Customs and Border Protection's Regulatory Audit Division in Chicago.

While working at U.S. Customs she conducted and supervised multiple focused assessment audits, quick response audits, fraud investigations, free trade agreement reviews, drawback audits, NAFTA audits, and prior disclosure reviews of Fortune 500 and midsize companies.

In addition, she designed and led the mentoring and recruiting programs for the Chicago field office and conducted advanced training sessions on technical audit issues and special trade program audits.

Additional information about Ms. Deleon and Deleon Trade is located at <http://www.deleon-trade.com/>

GEORGE TUTTLE

George Tuttle is an attorney with the San Francisco Bay Area law firm of George R Tuttle Law Offices.

He has been in practice for over 30 years. His practice emphasis is on Customs, international trade regulation, and export compliance and related matters.

He assists companies with compliance audits and to develop effective compliance programs; determine correct customs duties, values, product classifications, and duty preference eligibility; obtain rulings, file protests; and resolve penalty, seizure and enforcement cases. He also litigate trade cases before the United States Court of International Trade and the CAFC.

Mr. Tuttle has written and contributed to several articles and books published by the American Bar Association's International Law Section, including Chapter 9 of the recently revised "Customs Law Handbook" pertaining to Customs Audits.

Additional information about Mr. Tuttle and the firm can be found at www.tuttlelaw.com.

Customs Boot Camp Agenda



➤ Session IV Agenda

- Free Trade Agreements and Duty Reduction Programs
- Reporting Entry changes: PEAs, PSCs and CBP's Entry Reconciliation Program.
- Creating a Trade Compliance Program – Audits, Focused assessments and ISA
- Customs Recordkeeping Requirements

Customs Boot Camp Agenda



➤ **NEW!!!** -- Session V

- Responding to CF-28s, 29s, liquidated damages, seizures, and CBP penalties
- Hidden Dangers – Antidumping and Countervailing Duties/ IPR violations
- FDA, FFC, FTC and other alphabet soup agencies
- C-TPAT, is it right for your company?

Free Trade Agreements and Duty Reduction/Avoidance Programs



➤ **Duty Saving /Reduction/ Avoidance Programs**

- Free Trade Agreement and Special Trade Programs
- Chapter 98 Special Classification Provisions
 - Articles Exported and Returned
 - Articles returned to the United States after having been exported to be advanced in value or improved in condition
 - Temporary Imports Under Bond (9813)
 - Prototypes (9817.85) and Samples (9811)

Free Trade Agreements and Duty Reduction/Avoidance Programs

- Products Eligible for Special Tariff Treatment
- HTS General Notes 3 through 35

(c) Products Eligible for Special Tariff Treatment.

- (i) Programs under which special tariff treatment may be provided, and the corresponding symbols for such programs are indicated in the "Special" subcolumn, are as follows:

Generalized System of Preferences.....	A, A* or A+
United States-Australia Free Trade Agreement.....	AU
Automotive Products Trade Act.....	B
United States-Bahrain Free Trade Agreement Implementation Act.....	BH
Agreement on Trade in Civil Aircraft.....	C
North American Free Trade Agreement:	
Goods of Canada, under the terms of general note 12 to this schedule.....	CA
Goods of Mexico, under the terms of general note 12 to this schedule.....	MX
United States-Chile Free Trade Agreement.....	CL
African Growth and Opportunity Act.....	D
Caribbean Basin Economic Recovery Act.....	E or E*
United States-Israel Free Trade Area.....	IL
United States-Jordan Free Trade Area Implementation Act.....	JO
Agreement on Trade in Pharmaceutical Products.....	K
Dominican Republic-Central America-United States Free Trade Agreement Implementation Act.....	P or P+
Uruguay Round Concessions on Intermediate Chemicals for Dyes.....	L
United States-Caribbean Basin Trade Partnership Act.....	R
United States-Morocco Free Trade Agreement Implementation Act.....	MA
United States-Singapore Free Trade Agreement.....	SG
United States-Oman Free Trade Agreement Implementation Act.....	OM
United States-Peru Trade Promotion Agreement Implementation Act.....	PE
United States-Korea Free Trade Agreement Implementation Act.....	KR
United States-Colombia Trade Promotion Agreement Implementation Act.....	CO
United States-Panama Trade Promotion Agreement Implementation Act.....	PA

Subpart R—United States-Korea Free Trade Agreement

General Provisions

[§10.1001 Scope.](#)

[§10.1002 General definitions.](#)

Import Requirements

[§10.1003 Filing of claim for preferential tariff treatment upon importation.](#)

[§10.1004 Certification.](#)

[§10.1005 Importer obligations.](#)

[§10.1006 Certification not required.](#)

[§10.1007 Maintenance of records.](#)

[§10.1008 Effect of noncompliance: failure to provide documentation regarding transshipment.](#)

Export Requirements

[§10.1009 Certification for goods exported to Korea.](#)

Post-Importation Duty Refund Claims

[§10.1010 Right to make post-importation claim and refund duties.](#)

[§10.1011 Filing procedures.](#)

[§10.1012 CBP processing procedures.](#)

Rules of Origin

Rules of Origin

[§10.1013 Definitions.](#)

[§10.1014 Originating goods.](#)

[§10.1015 Regional value content.](#)

[§10.1016 Value of materials.](#)

[§10.1017 Accumulation.](#)

[§10.1018 De minimis.](#)

[§10.1019 Fungible goods and materials.](#)

[§10.1020 Accessories, spare parts, or tools.](#)

[§10.1021 Goods classifiable as goods put up in sets.](#)

[§10.1022 Retail packaging materials and containers.](#)

[§10.1023 Packing materials and containers for shipment.](#)

[§10.1024 Indirect materials.](#)

[§10.1025 Transit and transshipment.](#)

Origin Verifications and Determinations

[§10.1026 Verification and justification of claim for preferential tariff treatment.](#)

[§10.1027 Special rule for verifications in Korea of U.S. imports of textile and apparel goods.](#)

[§10.1028 Issuance of negative origin determinations.](#)

[§10.1029 Repeated false or unsupported preference claims.](#)

Penalties

[§10.1030 General.](#)

[§10.1031 Corrected claim or certification by importers.](#)

[§10.1032 Corrected certification by U.S. exporters or producers.](#)

[§10.1033 Framework for correcting claims or certifications.](#)

Goods Returned After Repair or Alteration

[§10.1034 Goods re-entered after repair or alteration in Korea.](#)

Free Trade Agreements and Duty Reduction/Avoidance Programs

<https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements>

The screenshot shows the CBP website's 'Free Trade Agreements' page. The navigation bar at the top includes links for 'Home', 'Travel', 'Trade', 'Border Security', and 'Careers'. Below the navigation bar, a breadcrumb trail reads 'PRIORITY TRADE ISSUE: TRADE AGREEMENTS > FREE TRADE AGREEMENTS'. The main heading is 'Free Trade Agreements'. The introductory text states: 'The United States is party to numerous trade agreements with other countries and is participating in negotiations for new agreements with a number of countries and regions of the world. Currently there are 14 Free Trade Agreements (FTAs). Information on each FTA can be found below.' A bolded line of text reads: 'Information for U.S. Exporters is available through the Department of Commerce at: <http://www.export.gov/FTA/index.asp>'. Below this is a bulleted list of 14 FTAs: Australia Free Trade Agreement (AUFITA), Bahrain Free Trade Agreement (BHFTA), Central America-Dominican Republic Free Trade Agreement (CAFTA-DR), Chile Free Trade Agreement (CLFTA), Colombia Trade Promotion Agreement (COTPA), Israel Free Trade Agreement (ILFTA), Jordan Free Trade Agreement (JOFTA), Korea Free Trade Agreement (KRFTA), Morocco Free Trade Agreement (MAFTA), North American Free Trade Agreement (NAFTA), Oman Free Trade Agreement (OMFTA), Panama Trade Promotion Agreement (PATPA), Peru Trade Promotion Agreement (PETPA), and Singapore Free Trade Agreement (SGFTA). On the right side, there are three sections: 'Resources' with a link 'Side-by-Side Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs, Non-Textiles' (highlighted with a red arrow), 'Trade Agreement Contacts:' listing 'Vacant, Branch Chief', 'Anthony Britt', 'Margaret Gray', and 'Seth Mazze', and 'For Questions Related to Trade Agreements, email the FTA inbox: FTA@dhs.gov'. At the bottom right, there is a 'Questions?' section with a question mark icon and the text 'Find answers at the CBP Info Center.'

Home Travel Trade Border Security Careers

PRIORITY TRADE ISSUE: TRADE AGREEMENTS > FREE TRADE AGREEMENTS

Free Trade Agreements

The United States is party to numerous trade agreements with other countries and is participating in negotiations for new agreements with a number of countries and regions of the world. Currently there are 14 Free Trade Agreements (FTAs). Information on each FTA can be found below.

Information for U.S. Exporters is available through the Department of Commerce at: <http://www.export.gov/FTA/index.asp>

- Australia Free Trade Agreement (AUFITA)
- Bahrain Free Trade Agreement (BHFTA)
- Central America-Dominican Republic Free Trade Agreement (CAFTA-DR)
- Chile Free Trade Agreement (CLFTA)
- Colombia Trade Promotion Agreement (COTPA)
- Israel Free Trade Agreement (ILFTA)
- Jordan Free Trade Agreement (JOFTA)
- Korea Free Trade Agreement (KRFTA)
- Morocco Free Trade Agreement (MAFTA)
- North American Free Trade Agreement (NAFTA)
- Oman Free Trade Agreement (OMFTA)
- Panama Trade Promotion Agreement (PATPA)
- Peru Trade Promotion Agreement (PETPA)
- Singapore Free Trade Agreement (SGFTA)

Resources

[Side-by-Side Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs, Non-Textiles](#)

Trade Agreement Contacts:

Vacant, Branch Chief
Anthony Britt
Margaret Gray
Seth Mazze

For Questions Related to Trade Agreements, email the FTA inbox: FTA@dhs.gov

Questions?

Find answers at the CBP Info Center.

Side-by-Side Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs--Non-Textiles

Provision	NAFTA	CHILE (CLFTA)	SINGAPORE (SGFTA)	AUSTRALIA (AUFTA)
GENERAL INFO & DATES				
Agreement Name	North American Free Trade Agreement	US-Chile Free Trade Agreement	US-Singapore Free Trade Agreement	US-Australia Free Trade Agreement
Implementation Date	January 1, 1994	January 1, 2004	January 1, 2004	January 1, 2005
Expiration	None	None	None	None
Duty Phase-Out	January 1, 2008 (15 Years)	January 1, 2015 (12 Years)	January 1, 2013 (10 years)	January 1, 2022 (18 Years)
Merchandise Processing Fee (MPF)	Exempt for originating goods 19 CFR 24.23(c)(3)	Exempt for originating goods 19 CFR 24.23(c)(7)	Exempt for originating goods 19 CFR 24.23(c)(6)	Exempt for originating goods 19 CFR 24.23(c)(8)
Direct Shipment Imported Directly Transit & Transshipment Third Country Transportation	Transshipment: May NOT leave customs' control nor undergo production in a 3rd country; 19 CFR 181 Appendix, Sec. 16; 19 CFR 181.23(b)	Transit and Transshipment: May leave customs' control; may not undergo further production in a 3rd country (requires non-ABI entry summary); GN 26(c)(iii); 19 CFR 10.463	Third Country Transportation: May leave customs' control; may not undergo further production in a 3rd country (requires non-ABI entry summary); GN 25(c)(iii); 19 CFR 10.542	Third Country Transportation: May leave customs' control; may not undergo further production in a 3rd country (requires non-ABI entry summary); GN 28(c)(iii); 19 CFR 10.741
Primary Responsibility for Compliance	Exporter	Importer	Importer	Importer
CITATIONS				
HTS General Note (GN)	GN 12	GN 26	GN 25	GN 28
US Code	19 USC 3301-3473	19 USC 3805 note	19 USC 3805 note	19 USC 3805 note
CFR	19 CFR 181 and Appendix 19 CFR 102	19 CFR 10.401 - 490 (Subpart H)	19 CFR 10.501 - 570 (Subpart I) (Interim)	19 CFR 10.721-10.748 (Subpart L) (Interim), 80 FR 7303 (Feb. 10, 2015)
Marking Rules	19 CFR 102	19 CFR 134	19 CFR 134	19 CFR 134
Special Program Indicator	"CA" or "MX"	"CL"	"SG" or "9999.00.84" (ISI)	"AU"
Verification Authority	Article 506; 19 CFR 181 Subpart G	Article 416; 19 CFR 10.470	Article 3.16; 19 CFR 10.550	Article 5.15; 19 CFR 10.742

Provision	NAFTA	CHILE (CLFTA)	SINGAPORE (SGFTA)	AUSTRALIA (AUFTA)
ORIGINATION, ETC.				
Rules of Origin Citations	General Note 12(b), 19 CFR 181 Append., Part II, Sec. 4	General Note 26(b); 19 CFR 10.451	General Note 25(b); 19 CFR 10.531	General Note 28 (b); 19 CFR 10.730
Rules of Origin	Wholly Obtained or Produced; Exclusively from Originating Materials; Tariff Shift & / or Regional Value Content	Wholly Obtained or Produced; Exclusively from Originating Materials; Tariff Shift & / or Regional Value Content	Wholly Obtained or Produced; Tariff Shift & / or Regional Value Content; Integrated Sourcing Initiative (ISI)	Wholly Obtained or Produced; Exclusively from Originating Materials; Tariff Shift & / or Regional Value Content
Tariff Shift Rules Tariff Change Rules Product Specific Rules	GN 12(t)	GN 26(n)	GN 25(o)	GN 28(n)
Tariff Shift Rules Updated to Comply with 2007 HTSUS	Yes, Presidential Proclamation 8405	Yes, Presidential Proclamation 8214	Yes, Presidential Proclamation 8214	Yes
Tariff Shift Rules Updated to Comply with 2012 HTSUS	No	Yes, Presidential Proclamation 8771, 12/28/11, effective 2/3/12	No	No
Chemical Reaction and Related Rules of Origin	Yes, for certain petroleum goods	Yes, HTS Ch. 27-38; GN 26(m)(vi)	Yes, HTS Ch. 27-40; GN 25(n)(v)	Yes; HTS Ch. 27-40; GN 28(m)(vii)
Special Origination Rules	Annex 308.1 (E Criterion) for certain high-tech goods; Disassembly treated as production, 19 CFR 181.132	No	Integrated Sourcing Initiative (ISI) GN 25(m) for certain 3rd-country, high-tech goods imported from Singapore	No
Drawback Restrictions	Yes, Article 303; 19 CFR 181, Subpart E; 19 USC 1313	Yes, Article 3.8; 19 USC 1313; No General Note or Regulation Citation	No	No
Repair & Alteration Provision	Duty Free per 19 CFR 181.64; HTSUS 9802.00.40/50	Duty Free per 19 CFR 10.490; HTSUS 9802.00.40/50	Duty Free per 19 CFR 10.570; HTSUS 9802.00.40/50	Duty Free per Agreement Article 2.6; HTSUS 9802.00.40/50; 19 CFR 10.748
Documentation required in the importer's possession at the time of claim	Yes, NAFTA Certificate of Origin must be in importer's possession at time of claim; 19 CFR 181.21	No, freeform "Certification" with the elements in 19 CFR 10.411 upon request by CBP	No, freeform "Supporting Statement" with the elements in 19 CFR 10.511 upon request by CBP	No, freeform "Supporting Statement" with the elements in 19 CFR 10.724 upon request by CBP;

Provision	GSP
GENERAL INFO & DATES	
Preferential Trade Legislation Name	Generalized System of Preferences
Implementation Date	January 1, 1976
Expiration	7/31/2013 (expired) Reinstated July 29, 2015 Expires 12/31/2017
Complete Duty Phase-Out	Immediate
Merchandise Processing Fee (MPF)	Per 19 CFR 24.23(c)(1)(iv), exempt from MPF when products of a GSP least-developed country listed in HTSUS GN 4(b)(i)
Direct Shipment Imported Directly Transit & Transshipment Third Country Transportation	Imported Directly: May NOT enter the commerce of a 3rd country except for non-retail sale where the importation is the result of the original transaction, may NOT undergo further production in a 3rd country, may undergo limited operations (sorting, grading, testing, packing, labeling, etc.) in the free trade zone of beneficiary country; 19 CFR 10.175(c). May enter into the commerce of any of four former GSP countries per 19 CFR 10.175(e).
Primary Responsibility for Compliance	Importer; Exporter with regard to 19 CFR 10.173(a)(1)(i) declaration
Eligible Non-Textile Goods	

Provision	GSP
CITATIONS	
HTS General Note (GN)	GN 4
US Code	19 USC 2461-2467
CFR	19 CFR 10.171 - 10.178
Marking Rules	19 CFR 134
Special Program Indicator	"A" "A+" (Least-Developed Beneficiary Developing Countries) "A*" (with exceptions)
ORIGINATION, ETC.	
Rules of Origin Citations	General Note 4(b)(ii) & 4(c); 19 CFR 10.176; 19 USC 2463(a)(2)
Rules of Origin	Value Content + substantial transformation
Tariff Shift Rule Citations	No
Tariff Shift Rules Updated to Comply with 2007 HTSUS	N/A
Tariff Shift Rules Updated to Comply with 2012 HTSUS	N/A
Chemical Reaction and Related Rules of Origin	No
Special Origination Rules	No
Drawback Restrictions	No
Repair & Alteration Provision	No
Documentation required in the Importer's possession at the time of claim	No, GSP Declaration upon request, as provided for in 19 CFR 10.173

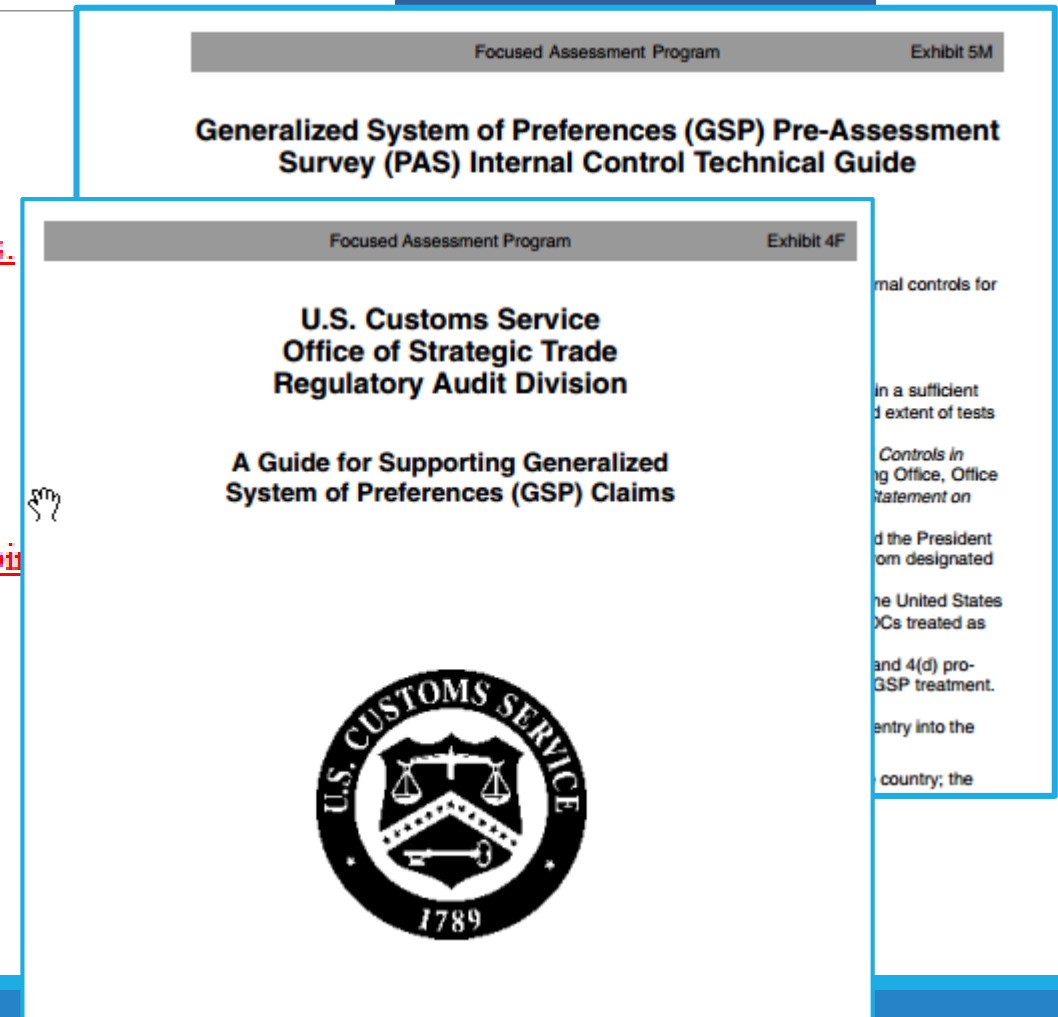
Provision	GSP
VALUE	
Regional Value Content (RVC) Citations	19 CFR 10.176(a)(1), 10.177-178; GN 4(b)(ii) & (c)
Regional Value Content (RVC) Calculation Methods	GSP materials + direct cost of processing
General RVC Percentages	Minimum 35% of appraised value
Special Regimen for Automotive Goods	No
De Minimis Provision	N/A
De Minimis and Sets	N/A
INVENTORY MANAGEMENT METHODS	
Fungible Goods & Materials	No
CLAIMS & DETERMINATIONS	
Post-Importation Claims	Post Entry Amendment (PEA) or Post Summary Correction (PSC)
Reconciliation Claims	No
Determinations Communicated to Exporter	If correspondence with exporter
Pattern of Conduct Clause	No

Free Trade Agreements and Duty Reduction/ Avoidance Programs



Generalized System of Preferences

- § 10.171 General.
- § 10.172 Claim for exemption from duty under the Generalized System of Preferences.
- § 10.173 Evidence of country of origin.
- § 10.174 Evidence of direct shipment.
- § 10.175 Imported directly defined.
- § 10.176 Country of origin criteria.
- § 10.177 Cost or value of materials produced in the beneficiary developing country.
- § 10.178 Direct costs of processing operations performed in the beneficiary developing country.
- § 10.178a Special duty-free treatment for sub-Saharan African countries.



HTS 9801.00.10 Articles Previously Exported and Returned



9801.00.10	Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad	
9801.00.10	10	Articles previously exported with intent to reimport after temporary use abroad
9801.00.10	12	Articles returned temporarily for repair, alteration, processing or the like, to be reexported
9801.00.10	15 - 98	"Other" Articles

- While some change in the condition of the product is permissible, operations that **advance the value or improve the condition** of the exported product are not permissible
- Limited operations abroad are permitted, such as: testing, sorting, packing, mixing, or bottling
- absent some alteration or change in the item itself, mere repackaging of the item, even for purposes of resale to the ultimate consumer, is permissible.

2015 Trade Facilitation and Enforcement Act



[Sec. 819. Application to new and existing preclearance operations.](#)

[TITLE IX—MISCELLANEOUS PROVISIONS](#)

[Sec. 901. De minimis value.](#)

[Sec. 902. Consultation on trade and customs revenue functions.](#)

[Sec. 903. Penalties for customs brokers.](#)

[Sec. 904. Amendments to chapter 98 of the Harmonized Tariff Schedule of the United States.](#)

[Sec. 905. Exemption from duty of residue of bulk cargo contained in instruments of international traffic previously exported from the United States.](#)

[Sec. 906. Drawback and refunds.](#)

[Sec. 907. Report on certain U.S. Customs and Border Protection agreements.](#)

<https://www.congress.gov/bill/114th-congress/house-bill/644/text>

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(b) Modification of provisions relating to returned property.—

(1) IN GENERAL.—The article description for heading 9801.00.10 of the Harmonized Tariff Schedule of the United States is amended by inserting after “exported” the following: “, or any other products when returned within 3 years after having been exported”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies to articles entered, or withdrawn from warehouse for consumption, on or after the date that is 60 days after the date of the enactment of this Act.

Regulations 10.1

Goods Exported and Returned



- Section 19 CFR 10.1(a) –Declarations required for the entry of U.S. articles valued over \$2,000
 - Foreign Shipper Declaration that the goods are not advanced in value or improved abroad
 - Declaration of the owner, importer, or consignee or agent with knowledge of the facts
 - Declarations may be waived by Port Director upon request of Importer
- Port Director may request **other documentation or evidence** to substantiate the claim, including
 - A statement from the U.S. manufacturer verifying that the articles were made in U.S., and
 - A U.S. export invoice, bill of lading or airway bill evidencing the export of the articles.
 - CBP may request **both**.
 - HQ H009110, August 27, 2007; HQ H007668, June 20, 2007

Common 9801 Claim Problems

- Lack of documentation to support the claim
 - ✓ Declarations
 - ✓ Manufacturer Certificates
 - ✓ Export Documents
- Customs examines the merchandise and finds foreign origin marks
- Foreign shipper assumes goods are of U.S. origin because goods shipped from the U.S. or purchased from a U.S. based Company.
- Company frequently files drawback claims.
- Company has large amounts of merchandise produced in a Foreign Trade Zone, exported from a bonded warehouse, or entered under a Temporary Importation Bond.

HTSUS 9801.00.10 U.S. Goods Returned Pre-Assessment Survey (PAS)

Internal Control Technical Guide



Objective

Provide guidance in performing a Pre-Assessment Survey (PAS) of the company's internal controls for merchandise entered under HTSUS 9801.00.10 and in evaluating the results.

Background

Generally Accepted Government Auditing Standards 4.21 require the PAS team to obtain a sufficient understanding of internal controls to plan the audit and determine the nature, timing, and extent of tests to be performed.

The guidelines and terms in this technical guide are based on *Assessing Internal Controls in Performance Audits*, GAO/OP 4.1.4, published by the United States General Accounting Office, Office of Policy, September 1990, and the American Institute of Certified Public Accountants *Statement on Auditing Standards No. 78*.

To qualify for 9801, articles of the United States must be exported and returned without having been advanced in value or improved in condition by any manufacturing process or other means while abroad.

To receive the benefit of these provisions, the importer must also comply with 19 CFR 10.1(a), which states, in part, "Except as otherwise provided for in paragraph (g), (h), (i) or (j), the following documents shall be filed in connection with the entry of articles in a shipment valued over \$2,000 and claimed to be free of duty under subheading 9801.00.10 or 9802.00.20, Harmonized Tariff Schedule of the United States (HTSUS) (1) A declaration by the foreign shipper... (2) A declaration by the owner, importer, consignee, or agent having knowledge of the facts regarding the claim for free entry."

The following conditions preclude the use of 9801 (except 9801.00.70 and 9801.00.80):

- Drawback has been claimed on the articles.
- The article was manufactured or produced in a Foreign Trade Zone, exported from a bonded warehouse, or entered under a Temporary Importation Bond.
- The articles were subject to internal revenue tax.

Examples of Red Flags

The following examples are conditions that may indicate a potential problem in 9801.00.10:

- The company has insufficiently documented, poorly defined, or no internal controls for accurately declaring 9801.00.10 for Customs purposes.
 - ✓ The company does not monitor or interact with the broker on 9801.00.10 issues.
 - ✓ The company relies on one employee to handle 9801 issues, and there are poor or no management checks or balances over this employee.

HTS 9802.00.40 -- Articles Exported for Repair or Alteration



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:

	Articles exported for repairs or alterations:
9802.00 .40	Repairs or alterations made pursuant to a warranty
9802.00 .50	Other {non-warranty}

- Repaired article need not be of U.S. origin
- Excludes foreign processing operations which create a new article
- Testing and/or segregation alone does not constitute repair or alteration
- Substitution or commingling not allowed (same product)

Articles Exported for Repair or Alteration – Requirements and Common Pitfalls



- 19 CFR 10.8 requires the following
 - Foreign declaration of person performing the repairs or alterations
 - Declaration of owner, importer or consignee
- Port Director may waive submission of declarations
- Port director may require additional documentation, such as:
 - foreign customs entry & foreign customs invoice
 - foreign landing certificate
 - Original foreign bill of lading, or airway bill
- Failure to maintain required records for 5 years
- Failure to obtain foreign repair declaration
- Supplier controls are not in place to prevent **commingling**
- Substitution/replacement of exported products
- Full disassembly of the product, and placing components in inventory
- Complex cases should be explained in a letter to Customs

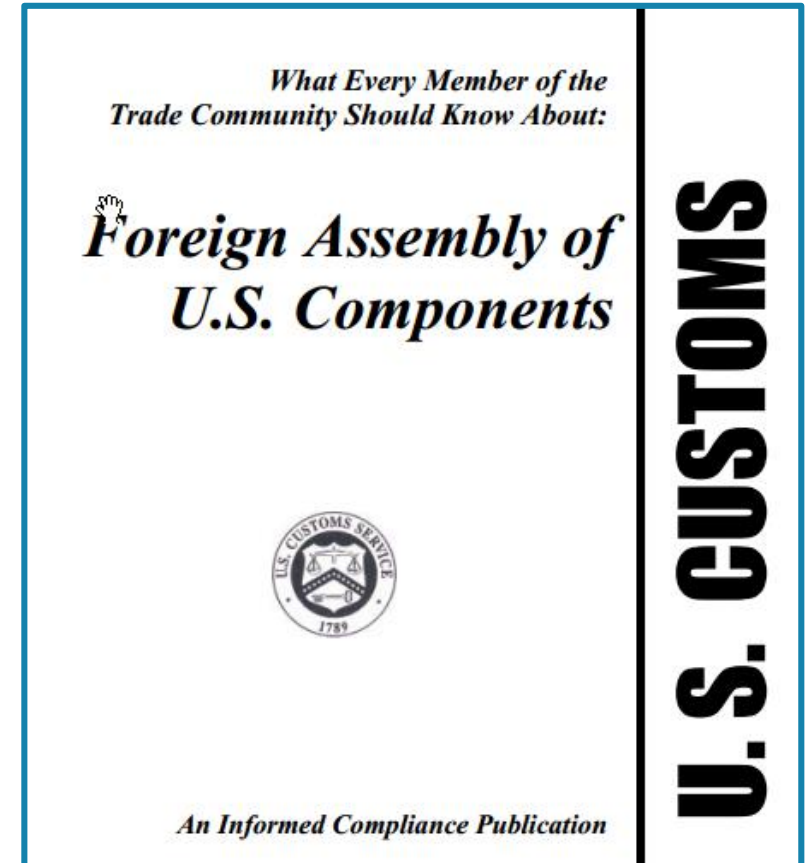
Subheading 9802.00.80 -- Articles Assembled Abroad from U.S. Components



9802.00.80

Articles . . . (except specified textile and apparel goods) assembled abroad in whole or in part of fabricated components, the product of the United States, which

- (a) Were exported in condition ready for assembly without further fabrication
- (b) Have not lost their physical identity in such articles by change in form, shape or otherwise, and
- (c) Have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting



Subheading 9802.00.80 Articles Assembled Abroad from U.S. Components

- Claim requires two line items on entry
 - First line item is for the total foreign value with classification and duty rate for article
 - Second line item is for 9802 value of U.S. Components
 - Total of lines one and two equal total value of article
 - Under the **Trade Facilitation Act of 2015** -- 9802 is amended to allow for duty-free returns of non-U.S. goods exported and returned, or advanced or improved abroad.

HTSUS 9802.00.80 U.S. Articles Assembled Abroad Pre-Assessment Survey (Pas)



Internal Control Technical Guide

Objective

Provide guidance in performing a Pre-Assessment Survey (PAS) of the company's internal controls for merchandise entered under HTSUS 9802.00.80 and evaluating the results.

Background

Generally Accepted Government Auditing Standards 4.21 require the PAS team to obtain a sufficient understanding of internal controls to plan the audit and determine the nature, timing, and extent of tests to be performed.

The guidelines and terms in this technical guide are based on *Assessing Internal Controls in Performance Audits*, GAO/OP-4.1.4, published by the United States General Accounting Office, Office of Policy, September 1990, and the American Institute of Certified Public Accountants *Statement on Auditing Standards No. 78*.

Subheading 9802.00.80 provides a duty allowance for assembly abroad in whole or in part of fabricated components that are the product of the United States and that (a) were exported in condition ready for assembly without further fabrication; (b) have not lost their physical identity in such articles by change in form, shape, or otherwise; and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process, such as cleaning, lubricating and painting. The returned articles are dutiable on the full value of the imported article less the cost or, if no charge is made, the value of such products of the United States, provided the documentary requirements of 19 CFR 10.24 are met.

- 19 CFR 10.24 states, "The following documents shall be filed in connection with the entry of assembled articles claimed to be subject to the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS).... (1) A declaration by the person who performed the assembly operations abroad...; and (2) an endorsement by the importer...."
- The fabricated components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly (e.g., cleaning, trimming, or filling, but not chemical treatment of components or polishing) either before, during, or after their assembly with other components. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad, are not considered fabricated components.
- Some assembly operations (e.g., mixing or combining of liquids or chemicals) are not significant enough to qualify.

9802 Documentation Requirements

19 C.F.R. 10.24



➤ Specific documents

- Declaration of assembler of the assembly process – must be specific
- Endorsement of importer of the correctness of the assembler's declaration

- Other documents and records

- Standard bill of materials
- Updated manufacturer's statements
- Description of assembly operation
- Declaration to update cost information

Articles Assembled Abroad With United States Components

§ 10.11 General.

§ 10.12 Definitions.

§ 10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States.

§ 10.14 Fabricated components subject to the exemption.

§ 10.15 Fabricated components not subject to the exemption.

§ 10.16 Assembly abroad.

§ 10.17 Valuation of exempted components.

§ 10.18 Valuation of assembled articles.

§§ 10.19-10.20 [Reserved]

§ 10.21 Updating cost data and other information.

§ 10.23 Standards, quotas, and visas.

§ 10.24 Documentation.

§ 10.25 Textile components cut to shape in the United States and assembled abroad.

§ 10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components.

Common Problems: U.S. Goods Assembled Abroad



➤ **Common pitfalls include:**

- Lack of supporting documentation such as purchase orders, component costs, etc.
- No or insufficient description of foreign assembly operation
- No evidence of the declarations or documents being submitted or a waiver granted
- No manufacturer's affidavits or certificates
- Certificates of origin are from distributor or wholesaler
- Dual sourcing of fungible or commercially interchangeable product
- Lack of updates when costs or component pricing changes, new vendors, U.S. goods are purchased directly by foreign assembler

Heading 9817: Classifying Prototypes



“Prototypes” HTSUS 9817.85

- Chapter 98--Special classification provisions
- Must follow requirements of
 - Section 10.91 of Customs regulations
 - Chapter 98 Note 7 “Prototypes”

Heading/ Subheading	Stat Suf- fix	Article Description	OGA	Unit of Quantity	General
9817.85.01 EN9817 CAN		-- Prototypes to be used exclusively for development, testing, product evaluation, or quality control purposes		1/	Free

Heading 9817: Classifying Prototypes



- Term “prototype” means originals or models of articles that—
 - Can be in the preproduction, production, or postproduction but
 - must be used exclusively for development, testing, product evaluation, or quality control purposes; or
 - associated with a design change from current production
 - (including a refinement, advancement, improvement, development, or quality control in either the product itself or the means for producing the product).
 - May be imported only in limited non-commercial quantities
 - may not (generally) be sold after importation or incorporated into other products that are sold

9813 Goods Processed In-Bond



- Allows duty free import of foreign materials under bond for use in manufacturing, alteration or repair
- 19 CFR 10.31 A bond is required equal to double the duties, including fees.
- Time Periods & Extensions (19 CFR 10.37)
 - merchandise entered under bond under chapter 98, may remain in the Customs territory of the United States for up to one year
 - Port Director may grant extensions of not more than two further periods of 1 year each
 - Extensions must be requested before goods are exported or destroyed

Reporting Entry changes: PEAs, PSCs and CBP's Entry Reconciliation Program



- “Post Entry Amendment” (“PEA”) process
 - Applied to clerical, classification, and valuation errors, which result in requests for refunds or the submission of additional monies owed prior to liquidation
 - Statistical errors greater than \$10,000
 - **PEAs used only for Entries filed in ACS – Do not apply to entries filed in ACE.**
- Post Summary Corrections – “PSC”
 - PSCs **replace** PEAs for entries filed in ACE
 - PEA's replace original entry in its entirety
 - Must be filed by broker(s) or importer with electronic entry capabilities in ACE system
 - PSCs must be filed within 270 calendar days of the date of entry.
 - The PSC cannot be filed within 20 calendar days of the scheduled liquidation date.
 - CBP will not review each PSC. CBP will consider the PSC to be the importer's assertion that the entry summary data is correct.

Reporting Entry changes: PEAs and PSCs

<https://www.cbp.gov/document/guides/post-summary-corrections-user-guide>




Topic: Post Summary Corrections

What's Inside:	
• Introduction to Post Summary Corrections	Page 1
• Who Can Correct An ACE Entry Summary?	Page 2
• Post Summary Correction Criteria	Page 2
• Post Summary Correction Restrictions	Page 3
• EDI Changes for Post Summary Corrections	Page 4
• Reports	Page 5
• Additional Resources	Page 7

Introduction to Post Summary Corrections

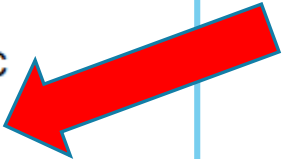
U.S. Customs and Border Protection has deployed enhanced Automated Commercial Environment (ACE) capabilities related to Entry Summary, Accounts and Revenue (ESAR) that will provide new Electronic Data Interchange (EDI) capabilities specific to the Automated Broker Interface (ABI) processing of post summary corrections for entry summaries filed in ACE. The Federal Register Notice announcing this latest release of ACE should be consulted for specific information pertaining to requirements and restrictions for post summary corrections.

Topic: Post Summary Corrections

- Reconciliation fields such as flagging or unflagging an entry summary are not permitted using PSC.
 - A text explanation and at least one reason code are required for each PSC submission.
 - There are NO limitations to the number of PSCs that can be submitted for any one entry summary as long as the PSC is within the permitted time frame and all other requirements are met.
 - An AD/CVD entry type 03 cannot be changed to another entry type using a PSC.
 - Entry summaries cannot be flagged or un-flagged for reconciliation using a PSC.
- 

Post Summary Corrections Criteria

To file a post summary correction for an existing ACE type 01 and 03 entry summary, the original entry summary or previously filed PSC must meet the following criteria:

- The entry summary cannot be liquidated.
 - The entry summary must be fully-paid or revenue free. This means for entry summaries included on a periodic monthly statement, it may be up to 45 days following the entry date before CBP receives payment for the statement.
 - The entry summary must be in "accepted" status and in "CBP control."
 - PSCs must be filed within 270 calendar days of the date of entry. The PSC cannot be filed within 20 calendar days of the scheduled liquidation date.
 - ACE will reject the transmission and the filer must file a protest if the entry summary is less than 21 days from the liquidation date.
 - The entry summary cannot be under CBP review. The filer will receive a message indicating "*PSC not allowed-under CBP Review*" if a PSC is submitted when the entry summary is in CBP review status.
- 

Reporting Entry
changes: PEAs
and PSCs

CBP's Entry Reconciliation Program

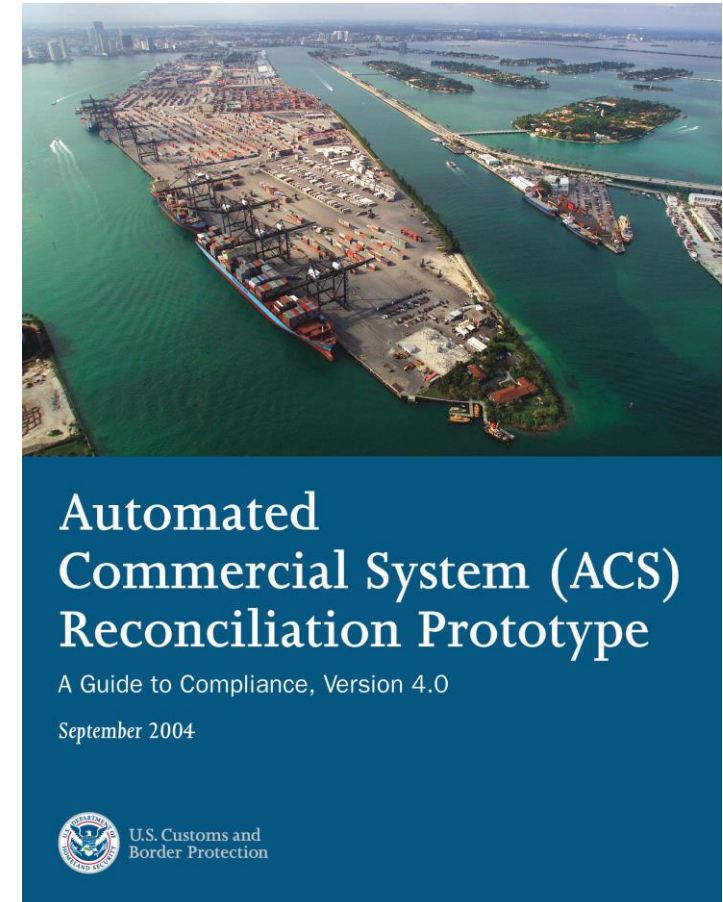


- What is Reconciliation? A process that allows importers to
 - ✓ file entry summaries using the **best available information**
 - ✓ *electronically "flag" entry data elements that are **estimated***
 - ✓ "actual final information" is submitted at a later date
- "*Reconciliation*" Entry
 - ✓ can cover one or thousands of previously filed individual entry summaries
 - ✓ a Reconciliation entry is "liquidated," with a single bill or refund, as appropriate
 - ✓ CBP decisions on reconciliation entries can be protested and contested in court
 - ✓ may file **multiple** recon entries

Customs Reconciliation Guide



- http://www.cbp.gov/sites/default/files/documents/acs_reconciliation_guide.pdf
- Provides rules and desktop instructions
- Reconciliation entry is processed ABI and will liquidate
- Reconciliation entry will be ACE ready in Fall of 2016
- The following entry types are eligible for reconciliation :
 - Entry type 01: Free and dutiable formal consumption entries.
 - Entry type 02: Quota/Visa consumption entries.
 - Entry type 06: Foreign Trade Zone (FTZ) consumption entries



What is Entry Reconciliation?



➤ What Can Be Reconciled?

- ACS Reconciliation is the **exclusive** means for post-summary adjustments:
 - Dutiable value
 - HTSUS Heading 9802 value
 - FTA's such as NAFTA, Chile, CAFTA-DR, Colombia TPA, Korea, Oman, Panama and Peru.
 - Limited classification issues
- Other “options” (“known” vs. “unknown” errors)
 - PEA or PSC?
 - Prior Disclosure?
 - Working with vendor to capture accurate value info on invoices at time of entry
 - Extension of liquidation (§ 159.12 – for proper appraisement or classification of the merchandise)

Entry Reconciliation: When to Participate?



➤ Common Reconciliation situations

- Standard Cost / Computed Value / Maquiladora operations / Tolling contracts (Shelter Operations)
 - Related Party Transfer Pricing Adjustments
 - Imports into a Vendor Managed Inventory (VMI) warehouse (value at time of removal changes);
 - Assists that are not quantifiable at time of entry (including foreign research, development, design, etc.)
 - Supplemental Payments to foreign vendors (tooling, mold, equipment, or other);
 - Proceeds paid to foreign vendors (e.g. 1% of net sales are remitted to vendor after entry);
 - Material acquisition charges or surcharges that are not known at time of entry (spot buy charges, precious metal surcharges based on a market rate [e.g., LME - London Metals Exchange], etc.);
 - Product rework or testing charges;
 - Other post entry price adjustments or any adjustments to the value declared to Customs at time of entry;
- Any time the entered value is “estimated” or the true, correct and final value is not known at the time of entry filing!



Recon flagging & Time Periods

➤ Flagging

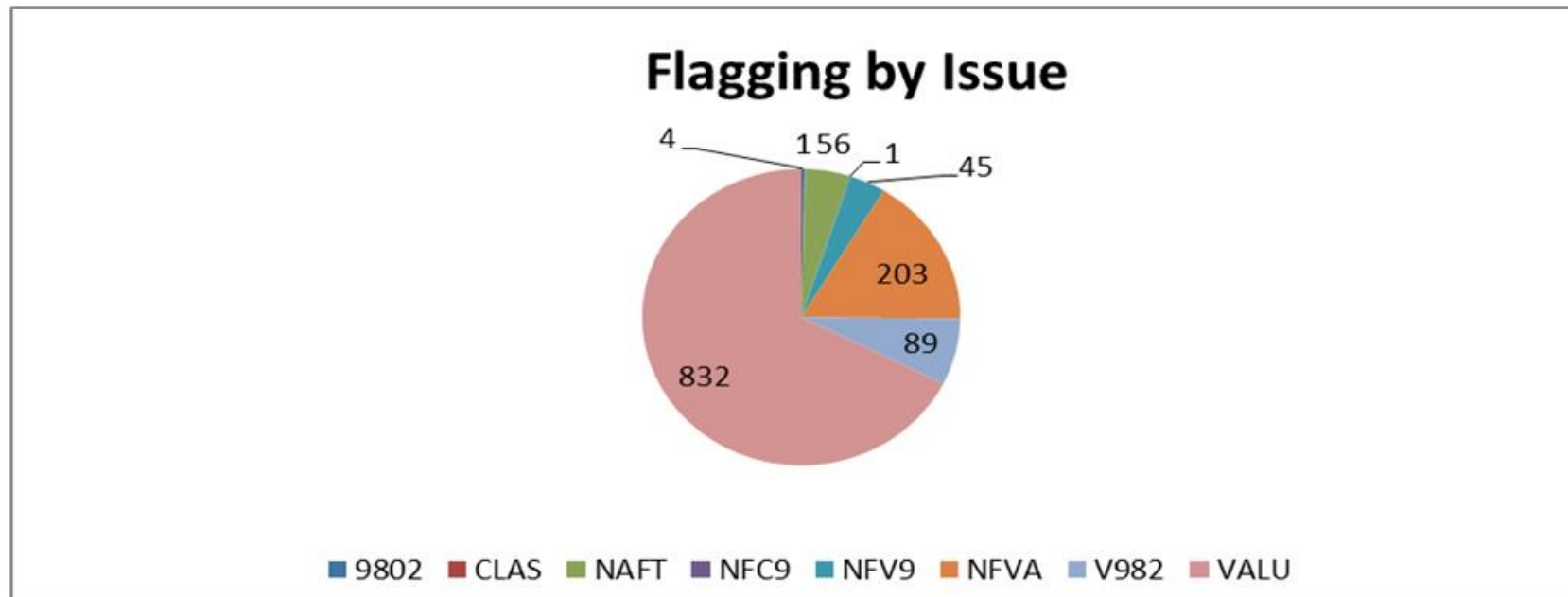
- Identifies unknown information (i.e., valuation, FTA, 9802)
- Transfers liability to a Reconciliation Entry
- “Elements” that are flagged are withheld from liquidation
- Permits normal liquidation of the remainder of the entry summary
- may flag entries via an **individual** entry flag or a **blanket** flag

➤ Time Period For Filing Recon Entries

- Participants in Recon program have up to 21 months from the flagged entry date to file the recon.
- NAFTA/FTA claims— limit is **12 months** from date of **Importation**
- **Failure to file a timely reconciliation will result in the assessment of a liquidated damages.**

What is Entry Reconciliation?

- Approximately 4,282 importers participated in the recon program during calendar year 2012





Creating a Trade Compliance Program – Audits, Focused Assessments and ISA



U.S. Customs and
Border Protection

JUL 11 2016

Director Trade Compliance

Subject: Distribution of Informed Compliance Publications and Other Informative Documents

Dear Ms.

Our analysis of [redacted] importations under the Importer of Record Number (IOR) [redacted] during the period January 1, 2015 through December 31, 2015 show that the top imported commodities fall under Harmonized Tariff Schedule (HTS) [redacted] with an entered values of:

[redacted] respectively representing [redacted] percent of the total entered value of \$ [redacted] for calendar year 2015.

As part of Customs and Border Protection's (CBP) responsibility for informed compliance under the Customs Modernization Act, under Title VI of the North American Free Trade Agreement Implementation Act (Public Law 103-182) the MOD Act, we are providing information to assist [redacted] in taking steps to ensure future compliance.

Additionally, we are enclosing a DVD of selected CBP informed compliance publications to assist [redacted] in understanding CBP's laws and regulations. These and other informed compliance publications may be found on CBP's web site <http://www.cbp.gov/trade/rulings/informed-compliance-publications>.

Informed Compliance Publications

NEW! Reg Audit Notice of Importer Activity and Informed Compliance Publications



Be advised that 19 U.S.C. § 1592(c)(4) does not require a party (e.g., importer) to make a prior disclosure. Rather, importers may elect to submit a disclosure. When a complete disclosure of a violation is presented to CBP before or without knowledge of a formal CBP investigation of the violation, there may be reduced penalties.

For instance, the penalty may be zero if the importations involve unliquidated (i.e., open) CBP entries and no fraud is involved. If the entries are liquidated (i.e., closed or finalized) and no fraud is involved, the penalty may be the interest accrued on the loss of duties. Additional information on prior disclosure is available under 19 C.F.R. § 162.74 and the ABC's of Prior Disclosure which have been provided.

We strongly encourage [redacted] to proactively monitor its transactional data in the ACE Secure Data Portal and evaluate whether there are any significant errors/discrepancies that should be voluntarily reported to CBP. Additionally, we encourage companies to conduct self-reviews of their systems used to make declarations to CBP, and take appropriate action to correct the issues and submit loss of revenue (duties, fees, taxes, etc.) in accordance with the appropriate laws and regulations, based on the liquidation status of the entries/transactions at issue.

ACE portal account users have access to view their account information and transactional data, which can be used to identify and evaluate compliance issues and monitor daily operations. For

Creating a Trade Compliance Program – Audits, Focused Assessments and ISA



- ❖ Focused Assessments
- ❖ Quick Response Audits (*risk or referral based*)
 - ADD / CVD
 - IPR (trademarks and copyright)
 - Value, Classification (single issue)
 - NAFTA, GSP, SFTA, Chapter 98
 - Commercial Fraud
- ❖ Audit Surveys
 - RA completed 1,053 audits in 2008 to 2010.
 - RA recommended collection of approximately \$154.2 million in additional revenue to CBP.
 - OIG-12-117, September 2012



**U. S. Customs and Border Protection
Office of International Trade
Regulatory Audit
Questionnaire**

Introduction

The questionnaire allows us to obtain information about [REDACTED] [REDACTED] organizational structure and processes and procedures related to U.S. Customs and Border Protection (CBP) transactions.

Please respond to all questions completely and comprehensively. The information you provide will help us gain an understanding of [REDACTED] processes and procedures and identify the individuals that are responsible for implementing the processes and procedures and the types of documentation available for review.

Answering the questionnaire affords [REDACTED] the opportunity to evaluate its own operations pertaining to CBP activities. [REDACTED] will also be more prepared for the on-site visit.

**U. S. Customs and Border Protection
Office of International Trade
Regulatory Audit
Questionnaire**

Section 2: Classification/Anti-dumping duties and countervailing duties (ADCVD)

- 2.1 What position and person is assigned responsibility for accurate reporting of merchandise classifications and ADCVD to CBP?
- 2.2 What tools are used to aid in the classification process and the determination of any ADCVD?
- 2.3 Do you rely on Customs Brokers, attorneys, in-house experts, or outside consultants to classify your merchandise under HTSUS and/or make the determination if merchandise is subject to ADCVD?
- 2.4 What types of records are maintained to support the classifications and/or ADCVD of imported merchandise (mill certificates, CAD / engineering drawings, schematics, product catalogs, product samples, etc.)?

**U. S. Customs and Border Protection
Office of International Trade
Regulatory Audit
Questionnaire**

Explanation of Procedures

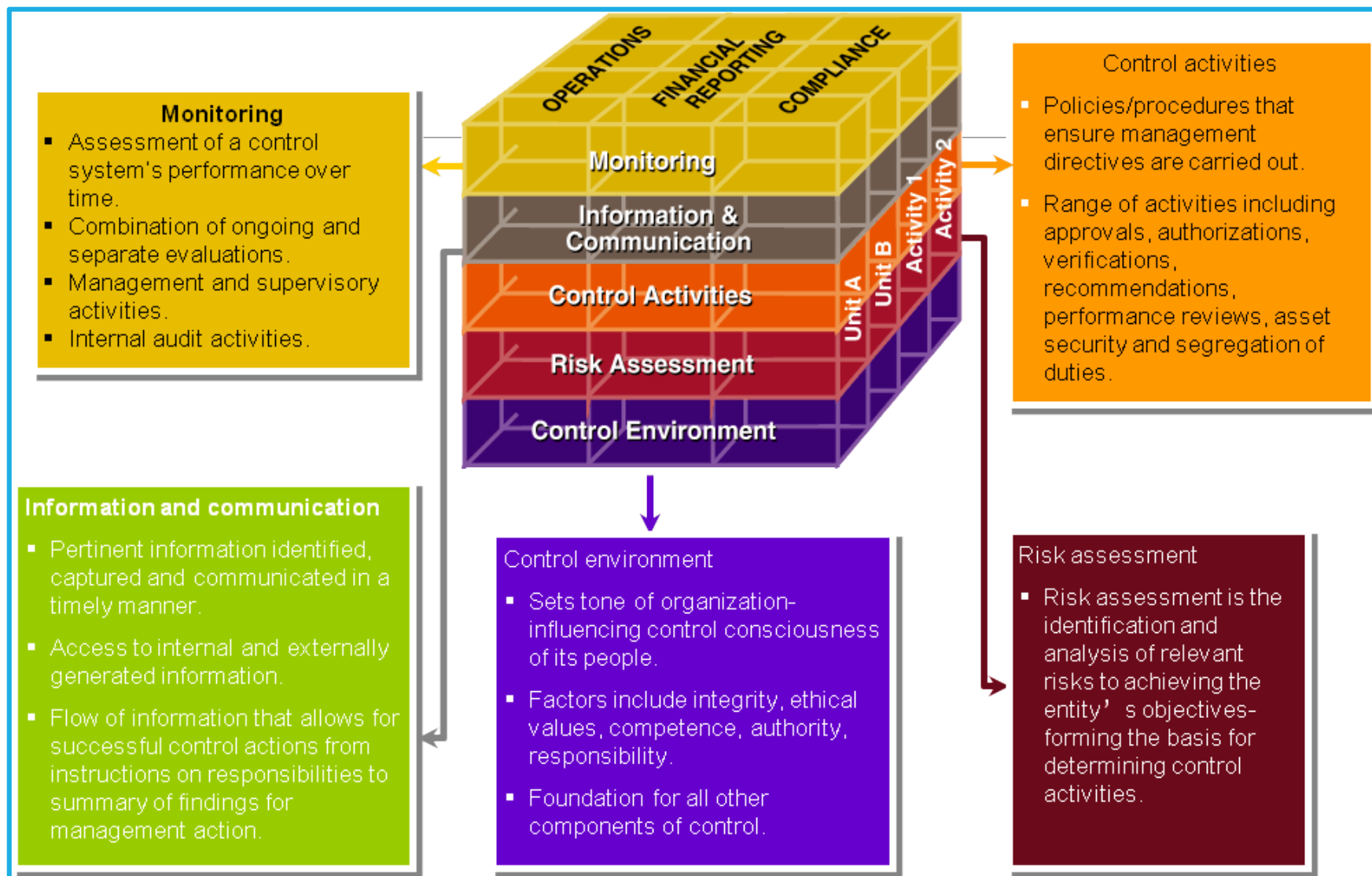
Questionnaire
Page 3

- 2.5 What type(s) of information, if any, does your purchasing department, legal department, engineers and others departments provide to ensure proper classification and determination of possible ADCVD implications of imported merchandise?
- 2.6 Are classifications and ADCVD determinations maintained in a database?
- a. If so, how often is the database reviewed and updated?
 - b. Is the database provided to the Customs Broker(s)?
 - c. Please provide a copy of the database in Microsoft Excel or Access format.
- 2.7 Are Customs Broker(s) required to have advanced company approval to make classification changes? If so, how is advance approval communicated?
- 2.8 How is the classification of new merchandise handled?
- a. Who is responsible for ensuring that new merchandise is properly classified?
 - b. How does the Customs Broker process new merchandise or merchandise that has not yet been added to the company's classification database?
- 2.9 Does the company conduct periodic review of entries to verify that correct classifications are used? If so, what is the frequency of these reviews?

Records Requests

- a. Purchase of Foreign Merchandise, such as:
 - i. Purchase Order(s); and
 - ii. Purchase / Sales Confirmations;
- b. Evidence of Import Activity, such as:
 - i. CBP-3461 (Entry/Immediate Delivery);
 - ii. CBP-7501 (Entry Summary);
 - iii. Commercial Invoice(s);
 - iv. Packing List(s);
 - v. Transportation documents such as bill of lading complete from the declared country of origin;
- c. Evidence to support the declared classification, such as CAD / engineering drawings, prints or pictures of the imported merchandise, physical samples, the end use of the

Why are Internal Controls Needed?



Customs Compliance Manuals



- Importers should IMPLEMENT EFFECTIVE Customs Compliance controls (demonstrate reasonable care), consisting of:
 - company-wide policies and procedures
 - a corporate compliance mandate
 - risk assessment and management procedures
 - specific internal controls procedures (SOP's)
 - detailed monitoring procedures (post-entry audit)
 - reference materials or references
 - periodic updating

Elements of a Good Customs Compliance Manual



➤ Good customs compliance controls are:

- **Not** a regurgitation of the Regulations!
- **Not** an education manual for employees!



➤ Each control should:

- Define accountability and responsibility for reporting in internal control documents and job descriptions.
- Describe how your employees do the task
- Explain process for verification of task
- Include process for reporting & correcting errors

Preparing your Internal Controls



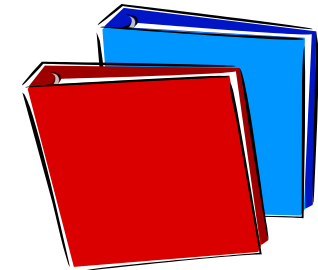
- Each control should explain . . .
 - **Who** does it?
 - **What** do they do?
 - **When** do they do it?
 - **How** do they document that they did it?
 - **Who** checks that “it” was done?
- Post-Entry Review –
 - Consider selective sampling based on identified **RISK**
 - 100% review is not required nor recommended by CBP

How to Prepare for a CBP Audit Survey /FA /QRA

Recommendations from a Former CBP Auditor...



- Review of your Customs ACE entry data.
- Conduct a risk assessment of your import activities.
 - Identify risk areas (value, HTS, FTA, CH98, ADD/CVD, IPR, etc.),
 - Assess internal controls for each risk area
- Conduct an internal review of your import activities:
 - Conduct limited self-testing in risk areas to determine how compliant your entries really are
 - Consider a Prior Disclosure if you discover issues in order to reduce or eliminate potential penalty exposure.
- Complete the FA Internal Control Questionnaire, (<http://www.cbp.gov/trade/audits/focused-assessment>). This will give you a sense of how prepared you really are.



How to Prepare for a CBP Audit Survey/FA/QRA, *Continued...*



- Determine the status of your overall system of internal controls
 - ✓ Do you have a written compliance manual that would pass muster?
 - ✓ Can you document that your controls are implemented, effective, and cover all risk areas?
 - ✓ Can you demonstrate all 5 components of internal control?
- Visit CBP's website and read EVERYTHING regarding FA's and internal control programs (<http://www.cbp.gov/trade/audits/focused-assessment>)
- If you are not completely comfortable conducting any of the recommended tasks above, consider getting external assistance.
- If you're notified of an FA, QRA or audit Survey keep the news of your selection internally to a "need to know basis." Time is of the essence!!!





Trade

Basic Import and Export

> ACE and Automated Systems

Border Interagency Executive
Council

Programs and Administration

Account Management

Audits

Quick Response Audits

Bonds

Focused Assessment Program (FA)

Focused Assessment Program Overview:

- [FA to ISA Transition Program Presentation \(October 2014\)](#)

Focused Assessment Documents:

The following documents are the portions of the FA Kit that have been updated to date and are effective for new PAS assignments started on or after October 1, 2014:

- [Exhibit 2A – Pre-Assessment Survey Questionnaire \(October 2014\)](#)
- [Exhibit 2C – FA PAS Audit Program \(October 2014\)](#)

The following document contains all the exhibits of the original FA Kit:

[FA Kit \(October 2003\)](#)



Focused Assessment Program Table of Contents

Exhibit **Subject**

Technical Information for Pre-Assessment Survey

5A	PAS Internal Control Overview
5B	Transaction Value – Technical Information for Pre-Assessment Survey
5C	Computed Value – Technical Information for Pre-Assessment Survey
5D	Classification – Technical Information for Pre-Assessment Survey
5E	HTSUS 9801.00.10 – U.S. Goods Returned – Technical Information for Pre-Assessment Survey
5F	HTSUS 9802.00.40 and HTSUS 9802.00.50 – Articles Exported for Repairs and Alterations – Technical Information for Pre-Assessment Survey
5G	HTSUS 9802.00.60 – Metal Articles Previously Exported for Processing – Technical Information for Pre-Assessment Survey
5H	HTSUS 9802.00.80 – U.S. Articles Assembled Abroad – Technical Information for Pre-Assessment Survey

Focused Assessment Program Table of Contents

Exhibit	Subject
5I	HTSUS 9802.00.90 – U.S. Formed and Cut Fabric Assembled in Mexico – Technical Information for Pre-Assessment Survey
5J	Antidumping Duties and Countervailing Duties – Technical Information for Pre-Assessment Survey
5K-1	Foreign Trade Zones – Manufacturing – Technical Information for Pre-Assessment Survey
5K-2	Foreign Trade Zones – Petroleum – Technical Information for Pre-Assessment Survey
5L	Transshipment – Technical Information for Pre-Assessment Survey
5M	Generalized System of Preferences – Technical Information for Pre-Assessment Survey
5N	Caribbean Basin Economic Recovery Act and Caribbean Basin Trade Partnership Act – Technical Information for Pre-Assessment Survey
5O	Andean Trade Preference Act – Technical Information for Pre-Assessment Survey
5P	Products of Insular Possessions – Technical Information for Pre-Assessment Survey
5Q	Israel Free Trade Area – Technical Information for Pre-Assessment Survey
5R	African Growth and Opportunity Act – Technical Information for Pre-Assessment Survey
5S	Quantity – Technical Information for Pre-Assessment Survey
5T	Reconciliation – Technical Information for Pre-Assessment Survey
5U	Intellectual Property Rights – Technical Information for Pre-Assessment Survey
5V	NAFTA - Technical Information for Pre-Assessment Survey

➤ CBP Best Practices Guidelines

<https://www.cbp.gov/document/forms/best-practices-compliant-companies>

▪ U.S. Customs and Border Protection ▪ Best Practices ▪ Of Compliant Companies

- ¶
1. → **Have management's commitment.** — *(Control Environment)* ¶
Demonstrate management's commitment to compliance. ¶
¶
 - → Establish a statement of corporate policy that addresses Customs and Border Protection (CBP) matters. ¶
 - → Solicit a statement from the Board of Directors that assigns authority and responsibility to the customs group. ¶¶
2. → **State compliance and cost goals.** — *(Risk Assessment)* ¶
Identify and analyze relevant risk and develop internal goals to manage the risk. ¶
¶
 - → Conduct post-entry reviews and compare these against established goals. ¶
 - → Determine how risk areas should be managed. ¶
 - → Resolve control weaknesses in a timely manner. ¶¶
3. → **Develop formal policies.** — *(Control Activities)* ¶
Develop, implement and/or modify formal policies and procedures to ensure that management's goals and objectives are met. ¶
¶
 - → Verify the accuracy of the Internal Control Manual to ensure processes and procedures achieve prescribed goals and objectives. ¶
 - → Modify controls that are ineffective or inefficient and report to management. ¶
 - → Define accountability and controls in job descriptions. ¶¶
4. → **Establish training programs.** — *(Information & Communication)* ¶
Ensure that employees receive appropriate training and guidance to effectively discharge their responsibilities. ¶
¶

Customs Recordkeeping Requirements



- 19 U.S.C. 1508 and 19 U.S.C. 1509
 - 19 U.S.C. 1508 – Recordkeeping Requirements
 - ❖ **Records for Exports under FTAs**
 - 19 U.S.C. 1509 -- Examination of books and witnesses
 - Summoning records & documents
 - Regulatory Audit Procedures
 - List of records subject to penalties
- 19 CFR Part 163; Appendix to Part 163-Interim(a)(1)(A)List
- Two classes of records that must be kept:
 - 163(a)(1)(A) list records
 - “Other” records kept in the normal course of business.

19-CFR-163 PART 163-RECORDKEEPING

Section Contents

- [§ 163.0 Scope.](#)
 - [§ 163.1 Definitions.](#)
 - [§ 163.2 Persons required to maintain records.](#)
 - [§ 163.3 Entry records.](#)
 - [§ 163.4 Record retention period.](#)
 - [§ 163.5 Methods for storage of records.](#)
 - [§ 163.6 Production and examination of entry and other records and witnesses: penalties.](#)
 - [§ 163.7 Summons.](#)
 - [§ 163.8 Third-party recordkeeper summons.](#)
 - [§ 163.9 Enforcement of summons.](#)
 - [§ 163.10 Failure to comply with court order: penalties.](#)
 - [§ 163.11 Compliance assessment and other audit procedures.](#)
 - [§ 163.12 Recordkeeping Compliance Program.](#)
 - [§ 163.13 Denial and removal of program certification: appeal procedures.](#)
 - [Appendix to Part 163-Interim\(a\)\(1\)\(A\)List](#)
-

What Are (a)(1)(A) List Records?



Documents required by law or regulation for the entry of merchandise, such as:

- Bill of Lading / Air waybill;
- Broker's power of atty;
- CF 3461;
- CF 7501;
- Invoice and invoice information (19 C.F.R. 141.86)
- Packing List (limited time)
- Binding Ruling Identification Number

19 CFR Part 163, Appendix to Part 163 - Interim (a)(1)(A) List

✓ There are 2 Updates appearing in the Federal Register for 19 CFR Part 163. View below or at eCFR (GPOAccess)

CFR

Updates

Rulemaking

prev | next

[View PDF at GPOPt. 163, App.](#)

APPENDIX TO PART 163—INTERIM (A)(1)(A) LIST

List of Records Required for the Entry of Merchandise

General Information

(1) Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general recordkeeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

What Are (a)(1)(A) List Records?

➤ Special Documents

- Declarations of Persons performing alterations or repairs
- Declaration of foreign processing
- Declaration of foreign assembler
- Endorsement by importer
- Declarations for articles exported and returned
- Declarations of actual use
- GSP Declarations and supporting documentation
- NAFTA certificates of origin
- Certificate of marking and notice to repacker

“Other” Required Records



- Chart of Accounts
- General Ledger and trial balance
- Disbursement records such as journals, bank statements, letters of credit, wire transfer records
- Accounts payable records
- Contracts
- purchase orders
- receiving documents (warehouse & inventory receipts)
- Catalogs with descriptions for imported merchandise
- Contracts for services (R & D, tooling, Royalties, Commissions, Assists, transportation)
- Correspondence



Recordkeeping Period

➤ General Requirements

- 5 years from the date of entry or activity
 - Special problems U.S. goods returned
 - special trade programs and U.S. Goods Returned (9801/ 9802)
- Drawback records: Three years from the date of payment
- Common recordkeeping problems in audits
 - Inability to produce basic entry records with commercial invoice
 - Inability to produce records for special trade programs and drawback
 - Tying payment records to actual entries to prove price paid

Recordkeeping Penalties



- Monetary penalties applicable for failure to produce (a)(1)(A) List Records
- Guidelines for mitigation of recordkeeping penalties published November 8, 2000. T.D. 00-63 (Vol. 34 Cust. Bull 45)
- Statutory Penalties for failure to produce (a)(1)(A) list documents
 - Negligent = \$10,000 or 40% value of merchandise + loss of benefits /privileges
 - Intentional= \$100,000 or 75% of value of merchandise + loss of benefits/ privileges
- **Mitigated Penalties for negligent violations.** For each release of merchandise, the lesser of:
 - an amount ranging from \$5,000 to \$10,000 or
 - a minimum of 20% of the total appraised value of the release documents to a maximum of 40% of the appraised value