TOP 10 MISTAKES IMPORTERS MAKE

SEPTEMBER 2019

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Basic Overview

– All goods require a HTS # (classification #)
– Classification based on 6 General Rules of Interpretation (GRI)
  • Most Common – *Ex Nomine* or by name

References

– Customs Rulings Online Search System (CROSS)

– Harmonized Tariff Schedule of the United States (HTSUS)
  • [https://hts.usitc.gov/current](https://hts.usitc.gov/current)
• 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
  – Are your goods subject to Provisional HTS codes? (Sections 232,301)

Consult a U.S. Customs Broker or International Trade Attorney, if necessary
## HTS - Nomenclature

The HTS (Harmonized Tarification System) system is used for the classification of goods for the purpose of customs duties, taxes, and other similar regulations. Each HTS code consists of 10 digits, which are divided into four categories:

- **First 6 digits**: Recognized internationally, providing a global classification system.
- **First 2 digits**: Identify the chapter of the HTS system.
- **Last 4 digits**: Used for statistical reporting.

### Table Example

<table>
<thead>
<tr>
<th>Heading/Subheading</th>
<th>Article Description</th>
<th>Unit of Quantity</th>
<th>Rates of Duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>8701</td>
<td>Tractors (other than tractors of heading 8709):</td>
<td></td>
<td>General</td>
</tr>
<tr>
<td>8701.10.01</td>
<td>Single axle tractors:</td>
<td></td>
<td>Free</td>
</tr>
<tr>
<td>8701.20.00</td>
<td>Road tractors for semi-trailers</td>
<td>No.</td>
<td>4% Free</td>
</tr>
<tr>
<td>8701.10.01</td>
<td>G.V.W. not exceeding 38.287 kg</td>
<td>No.</td>
<td>Free</td>
</tr>
<tr>
<td>8701.10.01</td>
<td>G.V.W. exceeding 38.287 kg</td>
<td>No.</td>
<td>Free, (A+ AU, B, BH, CA, CL, CO, D, E, IL, JO, KR, MA, MX, OM, P, PA, PE, SG)</td>
</tr>
<tr>
<td>8701.10.01</td>
<td>Used</td>
<td>No.</td>
<td>25% Free</td>
</tr>
<tr>
<td>8701.30.00</td>
<td>Track-laying tractors:</td>
<td></td>
<td>Special</td>
</tr>
<tr>
<td>8701.30.00</td>
<td>Suitable for agricultural use</td>
<td>No.</td>
<td>Free</td>
</tr>
<tr>
<td>8701.30.00</td>
<td>With a net engine power of less than 93.3 kW</td>
<td>No.</td>
<td>Free</td>
</tr>
<tr>
<td>8701.30.00</td>
<td>With a net engine power of 93.3 kW or more but less than 119.4 kW</td>
<td>No.</td>
<td>Free</td>
</tr>
<tr>
<td>8701.30.00</td>
<td>With a net engine power of 119.4 kW or more but less than 194 kW</td>
<td>No.</td>
<td>Free</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Culpability</th>
<th>Violations Resulting in Revenue Loss</th>
<th>Non-Revenue Loss Violations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fraud The Entry(ies)</td>
<td>Up to the domestic value of the entry(ies)</td>
<td>Up to the domestic value of the entry(ies)</td>
</tr>
<tr>
<td>Gross Negligence</td>
<td>4 times the loss of duty</td>
<td>40% of the dutiable value of the entry(ies)</td>
</tr>
<tr>
<td>Negligence</td>
<td>2 Times the loss of duty</td>
<td>20% of the dutiable value of the entry(ies)</td>
</tr>
</tbody>
</table>

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2. **Incorrect Valuation & Duties**

**Valuation**
- Normally Transaction Value (i.e. price paid or payable)
- Assists
  - Materials, components, parts and similar items incorporated in the imported merchandise
  - Tools, dies, molds and other production items
  - Merchandise consumed in the manufacture
  - Engineering development, artwork, design work, and plans and sketches other than if done in the US

**Duties**
- Ad Valorem, Specific, or Compound
- ADD/CVD
- Free Trade Agreements

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<table>
<thead>
<tr>
<th>Unit of Quantity</th>
<th>Rates of Duty</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>General</td>
</tr>
<tr>
<td>kg</td>
<td>6.5%</td>
</tr>
</tbody>
</table>
3. **INCORRECT PGA DATA**

- Research to find out what licenses or registrations are required if partner government agencies are involved.
- Examples: USDA, FDA, Fish and Wildlife, ATF
- Importer’s responsibility to meet requirements of PGAs.
4. MISSING DOCUMENTATION

**Required to Make Entry**
- Commercial Invoice
- Packing List (if available)
- Bill of Lading (B/L or BOL)
- Certificate of Origin (if applicable)

**Bill of Lading Types**
- Telex/Express
  - Keeps cargo moving, copy is acceptable to all
  - Non-negotiable document
- Original
  - Copies not acceptable
  - Original must be “surrendered” to the steamship line prior to delivery of cargo to final destination
  - Negotiable Document
  - Can cause delays

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5. NOT UNDERSTANDING INCOTERMS

• Incoterms® are agreed upon between the seller and buyer in regards to when the risk and responsibility of the goods and transport are transferred.
• Incoterms® are not binding and they are solely used as a guide.
• When buying goods, we recommend F Terms
  – Importer has control
<table>
<thead>
<tr>
<th>INCO TERMS CARBROUGH INTERNATIONAL</th>
<th>INCO TERMS 2010 RULES</th>
<th>Chart of Responsibility</th>
</tr>
</thead>
</table>

**Any Transport Mode**

<table>
<thead>
<tr>
<th>Charges/Fees</th>
<th>EXW</th>
<th>FCA</th>
<th>FAS</th>
<th>FOB</th>
<th>CFR</th>
<th>CIF</th>
<th>CPT</th>
<th>CIP</th>
<th>DAT</th>
<th>DAP</th>
<th>DDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ex Works</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
</tbody>
</table>

**Packaging**

<table>
<thead>
<tr>
<th>Buyer or Seller</th>
</tr>
</thead>
</table>

**Loading Charges**

| Buyer | Seller* | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller |

**Delivery to Port/Place**

| Buyer | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller |

**Export Duty & Taxes**

| Buyer | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller |

**Origin Terminal Charges**

| Buyer | Buyer | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller |

**Loading on Carriage**

| Buyer | Buyer | Buyer | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller | Seller |

**Carriage Charges**

| Buyer | Buyer | Buyer | Buyer | Buyer | Seller | Seller | Seller | Seller | Seller | Seller | Seller |

**Insurance**

* Seller is responsible for loading charges, if the terms state FCA at seller’s facility.  
** Negotiable between buyer and seller
**Best to Buy on**

<table>
<thead>
<tr>
<th>Packaging</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
<th>Seller</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loading Charges</td>
<td>Seller</td>
<td>Buyer*</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Delivery to Port/Place</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Export Duty &amp; Taxes</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Origin Terminal Charges</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Loading on Carriage</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
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<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Carriage Charges</td>
<td>Buyer</td>
<td>Buyer</td>
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<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Insurance</td>
<td>**</td>
<td>**</td>
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<td>**</td>
<td>Seller</td>
<td>**</td>
<td>Seller</td>
<td>**</td>
<td>**</td>
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</tr>
<tr>
<td>Destination Terminal Charges</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Delivery to Destination</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
<td>Seller</td>
<td>Seller</td>
</tr>
<tr>
<td>Import Duty &amp; Taxes</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Buyer</td>
<td>Seller</td>
</tr>
</tbody>
</table>

* Seller is responsible for loading charges, if the terms state FCA at seller’s facility.  
** Negotiable between buyer and seller
6. INCORRECT MODE OF TRANSPORTATION

Truck
- LTL vs. FTL

Ocean
- AWS vs. MLB
- LCL vs. FCL

Rail

Air
- Cargo vs. Commercial
- Charter

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Mode of Transportation

Air
• Direct
  – Goods have cleared at first port of arrival,
  – any additional movement is authorized
• Non-Direct (i.e., Italy to Chicago via JFK)
  – Goods will probably move via truck in-bond from JFK to Chicago
  – Customs clearance will not take place until Chicago

Truck
• Truck has been cleared at the border of entry and cargo can be delivered at anytime
**Mode of Transportation**

**Rail**
- Rail cars clear as they cross the border and cargo will reach final rail ramp ready to deliver

**Ocean**
- Port Only (i.e., LA Only)
  - Goods will clear at port of entry, cargo will be authorized to deliver
- Inland Port (i.e., Shanghai to Chicago via LA)
  - Goods will move via rail into inland port in-bond
  - Customs clearance will take place at final rail ramp

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7. NO IMPORTER SECURITY FILING (ISF)

Required Importer Data Elements
1. Seller
2. Buyer
3. Importer IRS # (same as EIN#)
4. Consignee IRS # (same as EIN#)
5. Manufacturer (or Supplier)
6. Ship to Party
7. Country of Origin
8. HTSUS
9. Container Stuffing Location
10. Consolidator
11. Master Bill of Lading #
12. House Bill of Lading #
IMPORTER SECURITY FILING (ISF)

Timing
– All data elements should be filed with CBP 24hrs prior to vessel sailing
– Scarbrough asks for this data 72hrs in advance

Potential Risk(s)
– Fines of up to $5,000 per violation
– $10,000 max fine per B/L
– Additional exams which leads to additional expense and delays
– Cargo release held until ISF data is received*

The Good News
– Minimal Fines Issued to Date
– C-TPAT is mitigating factor to reduce fines by up to 50%
– Historical performance is also a mitigating factor

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8. NOT INSURING GOODS

- Cargo insurance provides protection against all risks of physical loss or damage to freight from any external cause during shipping, whether by land, sea or air.

- Insurance is typically between 0.20 to 0.40 per $100 of freight value + commercial value x 110%, with a minimum of $25, depending on the commodity.

- For example, tile & granite is more expensive because it is highly breakable

- All Risk Insurance covers risks of physical loss or damage such as:
  - Improper packing
  - Abandonment of cargo
  - Rejection by Customs
  - Failure to pay or collect
  - Inherent vice
  - Employee dishonesty
  - Barge shipments
  - Losses caused by temperature or pressure
  - Cyber Attack
  - Loss due to strikes or acts of war
  - Loss in excess of policy limits
  - And More

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9. NOT UNDERSTANDING BONDS

Why do I need a bond?

• U.S. Customs and Border Protection requires that an importer purchase a surety bond to ensure it will pay the required duties and taxes when importing an item.

• A bond is like an insurance policy that guarantees payment to U.S. Customs and Border Protection (CBP) if a required act is not performed.

• Surety bonds can be purchased through Scarbrough, regardless if we clear the goods or not.
Two Types of Surety Bonds:

- **Single Transaction Bond** – (aka Single Entry Bond) is a one-time bond.
  - An importer should purchase this bond only if it plans to import 1-2 times and the value isn’t extremely high or there is no PGA involved.
  - Note, if an importer is importing via ocean transport, it is also required to purchase an ISF bond.

- **Continuous Bond** – valid for 12 months from date of purchase and is automatically renewed each year until it is terminated, which can be done so free of charge.
  - 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 (such as FDA, USDA, etc.) is involved.
  - Note, a continuous bond is required if there is a late ISF.

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10. NOT CONSIDERING FULL SUPPLY CHAIN OF GOODS

- Are the goods you are importing remaining in the United States?
- There are several programs to keep in mind if the goods will be re-exported.
  - TIB
  - Carnet
  - Duty Drawback

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