



Import Law for Aviation Professionals

2019 Air Carrier Purchasing Conference

August 12, 2019

2:00 pm – 3:00 pm

If you need a course in aircraft parts law, including export law, then please be sure to attend an ASA workshop

2019 ASA Workshops are expected to be held in:

Los Angeles – Sept 20

South Florida – Nov 19

Singapore – Sept 24

Chicago – Dec 3

London – Oct 23

Dallas – Dec 5

For more information:

<https://www.aviationsuppliers.org/Workshops>

Tariffs in the News

- U.S. has imposed 25 percent tariffs on Chinese technology goods including aircraft parts (imposed 2018 as part of “Section 301” probe into China’s intellectual property practices).
- U.S. has threatened to impose sanctions on European planes and other goods following WTO rulings against European government subsidies to Airbus
 - EU has a similar WTO case concerning subsidies to Boeing
 - The rulings could (roughly) offset

Sample Aircraft Parts Subject to China Tariff

- New and Used Aircraft Tires -- 25%
- Toughened or Laminated Safety Glass -- 25%
- Internal combustion aircraft engines and their parts -- 25%
- Aircraft gas turbine engines and their parts -- 25%
- Parts for electric generators for use on aircraft -- 25%
- Flight data recorders -- 25%
- Electric synchros and transducers; defrosters and demisters with electric resistors for aircraft -- 25%
- **Aircraft and their parts -- 25%**

There Are Some VERY Specific Exceptions

- Example
- Aircraft gas turbine compressor cases of steel and Inconel alloy, each valued over \$3,000 but not over \$4,000 (described in statistical reporting number 8411.99.9090) [*issued in July 2019*]
- Generally, there are very few aircraft-specific exceptions

Source of Law for US Duties

- Constitution gives Congress the right to lay and collect duties. Art. 1, Sec. 8, Cl. 1
- Import tariffs and duties were originally the only way for the federal government to raise revenue
 - Also used to advance policy objectives
- Origins date to 1789 as the U.S. Customs Service
 - Post-9/11 was folded into Homeland Security as U.S. Customs and Border Protection
 - Customs plays a role in enforcing a wide range of laws; largest federal law enforcement agency

Terminology

- Duty or Tariff?
 - Duty is the tax or fee charged by the government of the importer
 - Tariff is a list of products and corresponding duties
 - The terms are often used interchangeably (i.e., referring to the Harmonized Tariff Schedule as “customs duties”)

Agencies Tasked with Oversight

- U.S. Customs and Border Protection
 - Generates revenue by assessing and collecting duties, taxes and fees incident to international trade
 - Controls, regulates, and facilitates movement between U.S. and other nations
 - Detect, interdict, and investigate fraudulent and other illegal trade-related activities
- Bureau of Alcohol Tobacco Firearms and Explosives
 - Permanent import of USMIL defense articles
- U.S. Census Bureau
 - Collects and reports data on imports

Other Agencies to Consider

- U.S. Census Bureau (outbound transactions)
- U.S. Commerce Bureau of Industry and Security
 - Export returns of CCL articles
- U.S. State Department – Directorate of Defense Trade Controls
 - Export returns of USML articles
- U.S. Treasury – Office of Foreign Assets Control
 - Sanctions programs
- Securities and Exchange Commission
 - FCPA and Conflict Mineral Issues

Considerations when Importing

- Ensuring articles are entered legally
- Entering imported articles under the correct (and best) classification
- Minimizing tariffs and duties
- Minimizing export burdens (if returning to customer)

Enforcement

Penalties for Non-Compliance

- Each Agency with jurisdiction over the import can levy fines and other penalties in the case of a violation
- Customs may seize and/or seek forfeiture of improperly entered goods
 - Recovering your goods can be expensive and time-consuming
- U.S. Department of Justice enforces criminal provisions

Focal Areas for Import Enforcement

- Undervaluation of goods upon entry
 - Or improper “informal entry”
- Inaccurate country of origin marking
- Misclassification of goods
- Failure to pay antidumping or countervailing duties

Enforcement

- 19 U.S. Code § 1592
 - It does not matter if the US loses money
 - It does not matter if you had a fraudulent intent
 - You can be penalized for negligence!
- Maximum penalties
 - Fraud - value of the merchandise
 - Gross negligence – 4x the lawful duties or 40 percent of the dutiable value
 - Negligence – 2x the lawful duties or 20 percent of the dutiable value
- Penalties can be mitigated through prior disclosure
 - Contact an attorney to guide you through the process

Other Import Violations Subject to Enforcement

- ATF: Permanent import without a license of “Munitions”
 - This includes military aircraft, but not aircraft parts
 - 27 C.F.R. § 447.61-62: Willful import of “Munitions” without a permit or false statements in registration or permit application up to \$1,000,000 and/or 10 years
 - 27 C.F.R. § 447.63: Knowingly imports or transacts in “Munitions” w/o permit subject to \$10,000 and/or 5 years and forfeiture of article
- State: Illegal Import of ITAR-controlled Article
 - 22 C.F.R. 127.10: Civil penalty up to \$1,163,217
- Failure to report data to Census
 - 19 CFR § 141.61(e) of the CBP regulations: penalty procedures relating to erroneous statistical information shall not be invoked against any person who attempts to comply with the statistical requirements; deliberate attempt to avoid penalized per 19 U.S.C. § 1592

Importing in General

- Imports laws and regulations are a complex web
- Work with professionals to help you through the process
 - Common carriers (shippers)
 - Customs brokers
 - Legal counsel
- Don't be afraid to ask questions of your import partners or call Customs directly
 - CBP INFO Center phone number: 877-227-5511

Classification

Harmonized Tariff Schedule

- The Harmonized Tariff Schedule is a system for identifying and categorizing all goods in trade for duty and statistical purposes. The HTS is based on the international Harmonized Commodity Description and Coding System
 - HTS = Import
- Schedule B numbers are export codes administered by Census for export tracking purposes. They are also based on the Harmonized Commodity Description and Coding System
 - Schedule B = Export
- Example of Difference: Undercarriage parts for civil aircraft
 - HTS 8803.20.00.30 vs Schedule B 8803.20.00.10

Import Codes

- United States International Trade Commission: <https://www.usitc.gov/tata/hts/index.htm>

Harmonized Tariff Schedule of the United States (2017) - Revision 1
Annotated for Statistical Reporting Purposes

XVII
88-4

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Rates of Duty		
				General	1 Special	2
8803		Parts of goods of heading 8801 or 8802:				
8803.10.00		Propellers and rotors and parts thereof.....		Free		27.5%
	15	For use in civil aircraft:				
		For use by the Department of Defense or the United States Coast Guard <u>1/</u>	kg			
	30	Other <u>1/</u>	kg			
	60	Other.....	kg			
8803.20.00		Undercarriages and parts thereof.....		Free		27.5%
	15	For use in civil aircraft:				
		For use by the Department of Defense or the United States Coast Guard <u>1/</u>	kg			
	30	Other <u>1/</u>	kg			
	60	Other.....	kg			
8803.30.00		Other parts of airplanes or helicopters.....		Free		27.5%
	15	For use in civil aircraft:				
		For use by the Department of Defense or the United States Coast Guard <u>1/</u>	kg			
	30	Other <u>1/</u>	kg			
	60	Other.....	kg			
8803.90		Other:				
8803.90.30	00	Parts of communications satellites.....	kg	Free		Free
8803.90.90		Other.....		Free		27.5%
	15	For use in civil aircraft:				
		For use by the Department of Defense or the United States Coast Guard <u>1/</u>	kg			
	30	Other <u>1/</u>	kg			
	60	Other.....	kg			
8804.00.00	00	Parachutes (including dirigible parachutes and paragliders) and rotochutes; parts thereof and accessories thereto.....	kg	3%	Free (A, AU, BH, CA, CL, CO, D, E,	50%

Harmonized Tariff Schedule vs. Schedule B

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- Example of Difference: Undercarriage parts for civil aircraft
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Finding the Schedules

- Harmonized Tariff Schedule
 - <https://www.usitc.gov/tata/hts/index.htm>
 - Typically you only have an option for this year's schedule
 - For imports

- Schedule B Numbers
 - <https://www.census.gov/foreign-trade/schedules/b/index.html>
 - Select this year's codes
 - For exports

Import Codes – Most Aircraft and Parts

- *Most aircraft parts are categorized under Chapter 88 of the Harmonized Tariff Code*
- **Some commonly used tariff codes:**
 - 8802.40.00.90 – Used civil aircraft exceeding 15,000 kg
 - 8803.10.00.30 - Civil aircraft propeller parts
 - 8803.20.00.30 - Civil aircraft undercarriage parts
 - 8803.30.00.30 - Civil aircraft parts that do not fit into any other clause

Import Codes – Most Engines and Parts

- *Civil aircraft engines and engine parts are under Chapter 84*
 - 8407.10.00.20/40/60 – Civil aircraft reciprocating engines
 - 8409.10.00. 40 – Civil aircraft reciprocating engine parts
 - 8411.12.40.00 – Turbojets exceeding 25kN thrust
 - 8411.22.40.00 – Turboprops exceeding 1100 kw
 - 8411.91.10.60 – Turbojet/turboprop cast iron parts
 - 8411.91.90.81 – Turbojet/turboprop steel forged parts
 - 8411.91.90.85 – Turbojet/turboprop other parts

Other Import Codes

- *Some aircraft parts are categorized outside of Chapters 84 and 88 of the Harmonized Tariff Code*
- Sample aviation tariff codes outside chapters 84 and 88:
 - 4011.30.00.10 – Civil aircraft pneumatic rubber tires (new)
 - 4012.13.00.10 – Civil aircraft pneumatic rubber tires (retreaded)
 - 4012.20.10.10 – Civil aircraft pneumatic rubber tires (used)
 - 8501.32.55.20 – Medium-sized electric motors used in aircraft
 - 8503.00.45.00 – Aircraft stators and rotors
 - 8503.00.90.00 – Aircraft generators
 - 8543.70.42.00 – Flight data recorders
 - 8544.30.00.00 - Aircraft ignition wiring

Import Tariff Special Codes

Repaired Items, Returned to the U.S.

- Must be U.S. Goods
 - Can be repaired/restored to original condition
 - Cannot be advanced in value (significant alteration)
- 9801.00.10.10 – Return of temporary exports: articles reimported after <3 years abroad
- 9801.00.10.12 – Temporary imports for maintenance: articles reimported for repair and expected to be re-exported
- 9801.00.10.77 – US civil aviation goods returned (e.g. when sent for foreign repair and then returned to the US)
- 9801.00.30.00 – US aircraft engines, propellers, or their parts for which duty was previously paid

Look at the Rates of Duty

- United States International Trade Commission: <https://www.usitc.gov/tata/hts/index.htm>

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	60	Other.....	kg			
8803.20.00		Undercarriages and parts thereof.....		Free		27.5%
	15	For use in civil aircraft:				
		For use by the Department of Defense or the United States Coast Guard <u>1/</u>	kg			
	30	Other <u>1/</u>	kg			
	60	Other.....	kg			
8803.30.00		Other parts of airplanes or helicopters.....		Free		27.5%
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8803.90		Other:				
8803.90.30	00	Parts of communications satellites.....	kg	Free		Free
8803.90.90		Other.....		Free		27.5%
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	30	Other <u>1/</u>	kg			
	60	Other.....	kg			
8804.00.00	00	Parachutes (including dirigible parachutes and paragliders) and rotochutes; parts thereof and accessories thereto.....	kg	3%	Free (A, AU, BH, CA, CL, CO, D, E,	50%

Calculating the Rate of Duty

- Normal Trade Relations (NTR)
- Column One, General
- Some countries may qualify for Column One, Special, based upon a specific agreement
- Additional Duties may apply to certain goods and certain origins (e.g. current additional duties on aircraft parts coming from China)
- Column Two
 - Cuba and North Korea
- Look for other restrictions on imports from these nations!

Special Duty for Articles from China

- Report a second tariff
- Identify the list from which the article was subject to the duty
 - <https://ustr.gov/issue-areas/enforcement/section-301-investigations/search>
- Identify the correlative tariff:
 - 9903.88.01: 25% ad valorem additional duty for articles the product of China (June 20, 2018: List 1) ... most aircraft parts
 - 9903.88.02: 25% ad valorem additional duty for articles the product of China (August 16, 2018: List 2)
 - 9903.88.03: 25% ad valorem additional duty for articles the product of China (September 21, 2018, modified as of May 10, 2019: List 3) ... some additional parts, like used aircraft tires

Civil Aviation Tariffs

- Aircraft and their articles are typically imported duty-free into nations that have signed the *Agreement on Trade in Civil Aircraft*
- The US is a signatory
- Most aircraft parts can be imported duty free!
- BUT there are exceptions
 - Some common articles are not considered aircraft parts
 - Tariff rates on some common articles can range from 1% to 9%
 - China-origin parts subject to section 301 sanctions

Exceptions to Civil Aviation Treatment

- Joints, washers or the like of any material
- Articles of vulcanized rubber other than hard rubber
- Tools
- Pictures and mirrors
- Most items of nuclear reactors, boilers, machinery and mechanical appliances, including machine tools and engines, pumps and tools used in nuclear power generation
- Engines or motor parts consisting of taps, cocks, and valves for pipes or ball or roller bearings
- Transmission shafts and cranks, bearing housings, housed bearings and plain shaft bearings, gears and gearing, ball or roller screws, and gear boxes
- Electrical machinery or equipment (e.g. motors, generators, some avionics)
- Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments
- Clocks and watches
- Bombs, missiles ,or other arms
- Lamps or lighting fittings
- Brushes of a kind used as parts of vehicles
- Parts of general use (wires and cables, chains, tube or pipe fittings, locks, clasps, springs, castors, automatic door-closers, mountings, frames, mirrors, sign plates or other placards, washers, certain fasteners (like nails, tacks, drawing pins, staples, screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, and cotter pins), and closures like buckles or hooks) made from metal or plastic

Tariffs

- The structure of the transaction can affect your tariff rates
 - A used aircraft ferried into the U.S. for part out may be entered duty free (HTS 8802.40.00.90)
 - Same aircraft parted out overseas may result in certain parts being subject to tariff on import
- Know what you are trying to achieve and calculate accordingly

Country of Origin

Country of Origin

- Every article of foreign origin entering the United States must be legibly marked with the English name of the country of origin unless an exception from marking is provided-for, in the law
- This means the country of manufacture
 - The country of origin of an article may be changed in a secondary country if the further work or material added to an article in the second country constitutes a “substantial transformation”
 - A “substantial transformation” occurs if a new article with a different name, character, and use is created (e.g. turning bar stock into a finished part)

Exception

- If the ultimate purchaser, by reason of the character of such article or by reason of the circumstances of its importation, *must necessarily know the country of origin of the article*, then the article does not have to be marked to indicate its origin
- Parts made in only one nation would meet this requirement
- But parts made in more than one nation might not!

Mechanics of Entering an Import

Entering an Import

- Two-part entry process, or use Customs Form 7501 (Entry Summary)
 - Customs Form 7501 is the most common way we will make entry
- Declare the tariff codes, entered value and the duty owed
 - Value will typically be transactional costs (what did the buyer pay)
- Report to Census through Automated Broker Interface (ABI), or through customs broker

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

OMB APPROVAL NO. 1651-0022
EXPIRATION DATE 04-30-2021
ESTIMATED BURDEN 16 MIN

ENTRY SUMMARY

1. Filer Code/Entry No.		2. Entry Type		3. Summary Date	
4. Surety No.		5. Bond Type		6. Port Code	
7. Entry Date		8. Importing Carrier		9. Mode of Transport	
10. Country of Origin		11. Import Date		12. B/L or AWB No.	
13. Manufacturer ID		14. Exporting Country		15. Export Date	
16. I.T. No.		17. I.T. Date		18. Missing Docs	
19. Foreign Port of Lading		20. U.S. Port of Unloading		21. Location of Goods/G.O. No.	
22. Consignee No.		23. Importer No.		24. Reference No.	
25. Ultimate Consignee Name and Address				26. Importer of Record Name and Address	
City		State		Zip	
City		State		Zip	
27. Line No.		28. Description of Merchandise		32. A. Entered Value	
29. A. HTSUS No.		30. A. Grossweight		33. A. HTSUS Rate	
B. ADA/CVD No.		B. Manifest Qty		B. ADA/CVD Rate	
		C. HTSUS Units		C. IRC Rate	
				D. Visa No.	
				34. Duty and I.R. Tax	
				Dollars	
				Cents	
Other Fee Summary for Block 39		35. Total Entered Value		CBP USE ONLY	
\$		\$		A. LIQ CODE	
Total Other Fees		\$		B. Ascertain Duty	
				C. Ascertain Tax	
				D. Ascertain Other	
				E. Ascertain Total	
				37. Duty	
				38. Tax	
				39. Other	
				40. Total	
36. DECLARATION OF IMPORTER OF RECORD (OWNER OR PURCHASER) OR AUTHORIZED AGENT					
I declare that I am the <input type="checkbox"/> importer of record and that the actual owner, purchaser, or consignee for CBP purposes is as shown above, OR <input type="checkbox"/> owner or purchaser or agent thereof. I further declare that the merchandise <input type="checkbox"/> was obtained pursuant to a purchase or agreement to purchase and that the prices set forth in the invoices are true, OR <input type="checkbox"/> was not obtained pursuant to a purchase or agreement to purchase and the statements in the invoices as to value or price are true to the best of my knowledge and belief. I also declare that the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed. I will immediately furnish to the appropriate CBP officer any information showing a different statement of facts.					
41. DECLARANT NAME		TITLE		SIGNATURE	
DATE		DATE		DATE	
42. Broker/Filer Information (Name, address, phone number)				43. Broker/Importer File No.	

CBP Form 7501 (2/16)

Paperwork Reduction Act Notice

Page 1 of 5

Entering an Import Two Part Process

- Importer of record must file entry documents with the port director at the port of entry
- Two parts: show evidence that articles can be released by customs, and provide data to accurately assess duty and statistics
 - File Customs Form 3461 in advance (Entry/Immediate Delivery)
 - Must show evidence of right to make entry
 - Typically this is done by a licensed customs broker.
 - When entered by a common carrier (most shipments) delivery to person filing entry summary and estimated duties is deemed evidence of right to make entry. 19 C.F.R. § 141.11(b).

Entering an Import Two Part Process

- Importer of record must file entry documents with the port director at the port of entry
- Two parts: show evidence that articles can be released by customs, and provide data to accurately assess duty and statistics
 - Invoices
 - Include an invoice for each shipment (19 C.F.R. § 141.81). Installment shipments arriving within 10 days require only one invoice. (19 C.F.R. § 141.82).
 - This information allows customs to accurately determine and assess duties

Entering an Import

- Contents of an Invoice
 - Port of Entry
 - To whom and from whom merchandise was sold
 - Detailed description of the merchandise
 - Quantity
 - Purchase price
 - Currency
 - Additional charges upon merchandise (e.g., shipping, insurance) and rebates allowed
 - Country of origin of merchandise

Entering an Import

- Additional contents
 - Packing lists
 - Paginated invoices (e.g., 1 of 3, 2 of 3...)
 - In English
 - Name of responsible individual (exporter)
 - HTS Classification and Rate of Duty
- Deposit estimated duties with Customs (if any)
- Entry summary (Form 7501) filed within 10 days of entry

Entering an Import (the easy way)

- The traditional method of filing in advance and later filing an entry summary is not conducive to modern business
- Form 7501 (Entry Summary) can be filed at the time of entry (19 C.F.R. § 142.3(b)).
 - Serves as both entry and entry summary documents.
 - Consolidates entry into one step
 - Still must ensure invoice includes necessary elements
- This is the form your customs broker probably uses

Census Data Reporting

- Must report data to Census Bureau (15 C.F.R. § 30.50)
 - The CBP Form 7501 (Entry Summary) serves this purpose as well!
 - Form can be submitted in paper format or through ABI
 - CBP provides the data to Census, but Census may require the importer or customs broker provide information to confirm reported data
- ABI (Automated Broker Interface)
 - Allows importers and customs brokers to submit data electronically to CBP and receive communications through Automated Commercial Environment (ACE)

More Entry Language!

- § 30.53 Import of goods returned for repair.
- Import entries covering U.S. goods imported temporarily for repair or alteration and reexport are required to show the following statement: “Imported for Repair and Reexport” on CBP-7501 or in the ABI entry.
 - This works in conjunction with 9801.00.1012
- When the goods are for reexport and meet all of the requirements for filing the EEI file as usual except for the following:
 - Report the value of the repairs, including parts and labor. Do not report the value of the original product. If goods are repaired under warranty, at no charge to the customer, report the cost to repair as if the customer were being charged.
 - Report Schedule B commodity classification code 9801.10.0000 for goods reexported after repair.

ITAR Practice Tip:

- Proper imports can help us export
- License exception 22 C.F.R. § 123.4(a)(1) allows you to temporarily import an ITAR-controlled article for service or repair and return it to the customer without a license
 - When you file your Customs Form 7501 (or 3461) it must be notated “This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a)(1)” and include a description and value of the articles being imported
 - Upon export file the export information with CBP, identify 22 CFR 123.4 as the authority for the export, and provide the entry document number or a copy of the CBP document under which the article was imported.
 - **You must be registered with the DDTC to take advantage of this exception**

Record Keeping

- Records must be kept for 5 years from the date of entry. 19 C.F.R. § 163.4(a).
- Remember to retain export documentation for 5 years as well.
- Don't rely on your partners to retain records; make sure YOU have the records because you are ultimately responsible.

Special Recordkeeping Rules for Aircraft Parts

- Written order or contract, PLUS
- Other evidence that the merchandise entered qualifies as a civil aircraft, aircraft engine, or ground flight simulator, or their parts, components, and subassemblies, such as:
 - FAA certification
 - Airworthiness approval from the country of export (e.g. EASA Form 1) and evidence that the FAA recognizes that approval as an acceptable substitute for an FAA certification (e.g. the BASA)
- Evidence must be maintained, but need not be submitted
- Proof of *end use* of the entered merchandise need not be maintained

Conclusion

- Importing articles can be complex
- Work with professionals. Don't be afraid to ask them questions and review their work
- Stay up to date. Laws change, tariffs change
- Make sure you are filing everything required so Customs can make the right decision
- Importing correctly can help you export quickly
- Remember your record keeping requirements

Questions?

Please feel free to ask questions

You can find this presentation at:

<http://washingtonaviation.com/downloads/Import-ACPC.pdf>



Thank You

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