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**CSMS #49132200 - Updated Requirements for Importers and Brokers Regarding HTS Subheading 9801.00.10- U.S and Foreign Goods Returned**

*U.S. Customs and Border Protection sent this bulletin at 08/20/2021 05:01 PM EDT*

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Specifically, section 904(b) of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), “Modification of Provisions Relating to Returned Property,” amended HTSUS Subheading 9801.00.10 to read as follows:  Products of the United States when returned after having been exported, *or any other products when returned within 3 years after having been exported*, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad  The expansion of Subheading 9801.00.10 includes all products exported from and returned to the United States, regardless of country of origin. **For U.S. origin products, there is no time limit on filing a claim. For foreign origin products, there is a 3-year time limit.** The changes to 9801.00.10 apply to U.S. or foreign articles returned to the United States and entered, or withdrawn from warehouse, for consumption on or after April 25, 2016.  **Guidance**  The importer has the burden to prove their claim for duty-free treatment under Subheading 9801.00.10. If the broker obligates themselves as the importer of record, they will assume the legal responsibility and burden to provide the required documents to substantiate the Subheading 9801.00.10 claim.  Customs Brokers act as agents for the importer and, as such, have a duty of care in the filing of entry documents; however, the burden of proof is not on the broker (unless the broker is acting as importer of record) when requests are made to prove a claim for duty-free treatment under Subheading 9801.00.10. An example of the broker exercising responsible supervision and control for Subheading 9801.00.10 claims is providing proof of the broker’s communication with the importer on what is required for such claims. If it is found that the broker did not provide responsible supervision and control when preparing and filing the entry, then CBP may address that deficiency through the broker informed compliance process as described in Chapter 15 of the Broker Management Interim Guidance II document.  A proposed regulatory change will align 19 CFR 10.1 with TFTEA as referenced above. In the interim, for shipments valued over $2,500, the following documents may be requested from the importer to determine if the duty-free exemption under Subheading 9801.00.10 applies for either U.S. manufactured goods exported from and returned to the United States at any time, or foreign origin goods exported from the United States and returned within the 3-year time limit.  1. For either U.S. manufactured goods or foreign origin goods:  a. Declaration by Foreign Shipper indicating that the products were not advanced in value or improved in condition while outside the United States. A certificate from the master of a vessel stating that the products are returned without having been un-laden from the exporting vessel may be accepted in lieu of the declaration by the foreign shipper.  b. Declaration by the owner, importer, consignee, or agent having knowledge of the facts regarding the duty-free claim. If the owner or ultimate consignee is a corporation, such declaration may be signed by the president, vice president, secretary, or treasurer of the corporation, or may be signed by an employee or agent of the corporation who holds a power of attorney and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts.  2. For U.S. manufactured goods valued over $2,500 entered three years after the date of exportation that are not clearly marked with the name and address of the U.S. manufacturer, CBP may require, in addition to the declarations above, additional documents to substantiate the claim for duty-free treatment including a statement from the U.S. manufacturer verifying that the articles were made in the United States.  3. One of the following documents will be deemed sufficient proof of export from the United States for U.S. manufactured goods or foreign origin goods, provided the information contained therein proves an export from the United States:  a. Copy of the entry into the foreign country;  b. U.S. export invoice or bill of lading/airway bill; orc. Electronic Export Information (EEI) or the Automated Export System (AES) filing exemption.  Documentation may be requested to substantiate that the same articles exported from the United States are being returned. No substitution of the same type of articles under an inventory management system may occur. This merchandise must meet all of the requirements such that it was not advanced in value or changed in condition, and not processed under a drawback claim or Temporary Importation under Bond (TIB) entry.  4. For aircraft and aircraft parts and equipment returned to the United States by or for the account of an aircraft owner or operator and intended for use in his own aircraft operations, within or outside the United States, a CBP Form 3311, or its electronic equivalent, may be used as stated in 19 CFR 10.1. The entrant must show on Customs Form 3311 or its electronic equivalent:  a. The name of the importing vessel or conveyance,  b. The date of its arrival,  c. A description of the articles,  d. The value of the articles, and  e. That the articles are intended for use by the aircraft owner or operator in his own aircraft operations. 5. For U.S. origin goods that were originally exported under a Department of State license that are now being re-imported, formal entry is required regardless of value along with the Directorate of Defense Trade Controls (DDTC) Partnership Government Agency (PGA) message set.  6. For U.S. manufactured aircraft returning to the United States that were sold to a foreign government under the Foreign Military Sales Program, formal entry is required if any maintenance is being performed on the aircraft while in the United States. The repairs must be authorized via a specific case line in the Letter of Offer and Acceptance (LOA). The LOA is the sales agreement between the United States and the foreign government regarding the sale of munitions and other articles to the foreign government.  a. At the time of export of the aircraft, the EEI has to be filed for the maintenance of the aircraft.  7. For U.S. manufactured aircraft returning to the United States that were sold to a foreign government under the Foreign Military Sales program where modifications or enhancements will be made to the aircraft, the following is required for the import and subsequent export of the aircraft:  a. Formal entry is required.  b. At the time of export, the EEI submission is required, citing the Directorate of Defense Trade Controls export license (DSP-5).  Centers of Excellence and Expertise should continue to use risk management in reviewing formal entry claims filed under Subheading 9801.00.10. If you have questions, please contact Ms. Kellee Gross, Policy Branch Chief, Commercial Operation, Revenue and Entry at [otentrysummary@cbp.dhs.gov](mailto:otentrysummary@cbp.dhs.gov).  Questions regarding the import of aircraft under the Foreign Military Sales program or DDTC licensing requirements should be referred to Mr. William J. Romero, Outbound Enforcement and Policy Branch Chief at [william.j.romero@cbp.dhs.gov](mailto:william.j.romero@cbp.dhs.gov). Questions regarding the export of aircraft under the Foreign Military Sales program or DDTC licensing requirements should be referred to Mr. Brian Semeraro, Outbound Enforcement and Policy Branch Chief at [brian.semeraro@cbp.dhs.gov](mailto:brian.semeraro@cbp.dhs.gov). | | | |