Importing Aircraft Parts

What is the Law, What is the Classification, and What is the Tariff Implication

Introduction

- 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

Introduction

- 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 traderelated 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)

Getting it Right

- Each Agency with jurisdiction over the import can levy fines and other penalties in the case of a violation
- Customs seizure and forfeiture of improperly entered goods
- U.S. Department of Justice enforces criminal provisions

Significant Import Violations Subject to 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

- Permanent import without a license
 - 27 C.F.R. § 447.61-62: Willful import without a permit or false statements in registration or permit application up to \$1,000,000 and/or 10 years in prison
 - 27 C.F.R. § 447.63: Knowingly imports or transacts in article w/o permit subject to \$10,000 and/or 5 years and forfeiture of article
- Temporary import without a license
 - 22 C.F.R. 127.10: Civil penalty up to \$1,111,908
- 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

- 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 ABI (or broker)

- 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
- 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).
- Must provide Declaration
 - Person in whose name entry is made, or their agent, must declare that article was purchased, value on invoice is true, all other statements on invoice are true. 19 C.F.R. § 141.19; 19 U.S.C. § 1485(a).

- 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

- 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

- 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
- 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)
 - ACE is where AESDirect migrated last year

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

Harmonized Tariff Schedule vs. Schedule B

- 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
- Undercarriage parts for civil aircraft
 - HTS 8803.20.00.30 vs Schedule B 8803.20.00.10

Import Codes

- 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
- Engines and engine parts are under Chapter 84
 - 8411.12.40.00 Turbojets and parts thereof exceeding 25kN thrust
 - 8411.22.40.00 Turboprops and parts thereof exceeding 1100 kw

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 8803.10.00	15	Parts of goods of heading 8801 or 8802: Propellers and rotors and parts thereof For use in civil aircraft: For use by the Department of Defense or the United States Coast Guard 1/	70007739000	Free		27.5%
8803.20.00	30 60	Other 1/ Other Undercarriages and parts thereof For use in civil aircraft:	kg	Free		27.5%
8803.30.00 8803.90	15	For use by the Department of Defense or the United States Coast Guard 1/	kg			
	30 60	Other <u>1/</u>	kg			
	15	Other parts of airplanes or helicopters For use in civil aircraft: For use by the Department of Defense or the United States Coast Guard 1/	353032655555	Free		27.5%
	30 60	Other 1/Other:	7.000			
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 1/	kg	u==24763		continued.
	30 60	Other 1/	40			
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%

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)
- ▶ 9801.00.1010 Return of temporary exports: articles reimported after <3 years abroad</p>
- ▶ 9801.00.1012 Temporary imports for maintenance: articles reimported for repair and expected to be re-exported
- ▶ 9801.00.1077 US civil aviation goods returned (e.g. when sent for foreign repair)
- 9801.00.3000 US aircraft engines, propellers, or their parts for which duty was previously paid

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.

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
- All the examples above can be imported duty free!
- BUT there are exceptions
 - Tariff rates on some common articles can range from 1% to 9%

The Exceptions

- Joints, washers or the like of any material
- Articles of <u>vulcanized rubber</u> 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

- <u>Electrical machinery</u> 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

Case Study

- > TC holder imported experimental parts as civil aircraft parts
 - Parts intended for use in test engines run in cells on the ground
 - Customs said articles were HTS 8411.91.9080 and dutiable at 3.7%
 - TC holder argued civil aircraft parts duty free under Agreement on Trade in Civil Aircraft
 - The HTC note and the Agreement both required parts to be imported for "use in civil aircraft"
 - TC holder argued that parts didn't have to be installed on civil aircraft, just couldn't be installed on military aircraft

Case Study (cont'd)

- Court agreed with Customs
 - The HTC general note states "the imported article has been imported for use in civil aircraft, [and] that it will be so used."
 - Court explained that using civil-eligible articles on the ground for test and incorporation in test cells didn't satisfy the "use in civil aircraft" requirement. The articles were therefore dutiable
- NOTE: The HTS Code the court referenced does not currently exist. The HTS is revised annually!
- United Tech. Corp. v. United States, 315 F.3d 1320 (Fed. Ct. App. 2003).

Case Study (cont'd)

Lessons:

- Customs has wide latitude to assign classifications
- Make sure you know what is required to enter duty free
 - Stay current
- Entry isn't the end of the story make sure the transaction is completed as stated upon entry

Case Hypothetical: Sending it Back

- Why did Entry documentation matter?
- Facts: Company wants to service avionics unit.
 - The unit is controlled under ITAR.
 - The Company imports the unit for servicing and intends to return the unit directly to the customer.
 - The Company fails to tell the customer or their customs broker to include the statement "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a)(1)."
 - When the Company seeks to export the article, it enters 22 C.F.R. § 123.4 as the authority for export.
 - Customs asks to see the import documentation and upon review realizes the appropriate statement is not included.
 - What result?

Case Hypothetical: Sending it Back

- Why did Entry documentation matter?
 - Customs can refuse to permit export without a license
 - DDTC may require a license
 - DDTC may issue a civil penalty for unlicensed export (or unlicensed temporary import)
 - Delay may cause Company to incur customer penalties and loss of good will
 - Company may need to retain legal counsel incurring legal fees

Solutions:

- If the documentation lacks the appropriate statement work with an attorney, Customs, and DDTC before exporting. Can often find a solution
- Work closely with customer and customs brokers to make sure everyone understands what is expected and required before the article is imported

Case Hypothetical: Sending it Back

- What about exception RPL?
 - No specific designation comparable to 22 C.F.R. § 123.4 required on the Form 7501
 - BUT, remember to include the statement "Imported for Repair and Reexport" and use HTS 9801.00.1012.
 - Include this statement in the ITAR example as well

Record Keeping

- Records must be kept for 5 years from the date of entry. 19 C.F.R. § 163.4(a).
- Records for articles entered duty-free kept only 2 years. 19 C.F.R. § 163.4(b).
- 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.

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 or find me after the workshop... this can be complicated!

Thank You!

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