

## Trade Alert: Chapter 98: Duty-Free or Reduced Tariff Treatment

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As the current administration rolled out its trade policies of increasing tariffs on imports into the United States, the Dentons Cohen & Grigsby Trade Group has published a number of Alerts ([1](#), [2](#), [3](#), [4](#), [5](#), [6](#)) to keep our clients and readers informed and offer practical advice of what increased tariffs mean to U.S. businesses. With increased tariffs, the duty savings opportunities of Chapter 98 of the Harmonized Tariff Schedule (“**HTS**”) offer companies an effective tool to manage and reduce import costs for those transactions that comply with the Chapter’s specific requirements and limitations. Chapter 98 consists of a list of Headings and Subheadings that each apply to specific transactions that provide reliefs for traditional imports, as well as for the recently enacted wave of tariff increases. In the past, when tariffs on U.S. imports were generally an insignificant cost factor, Chapter 98 was not utilized by many importers because the burden of complying with the specific requirements outweighed the benefit of saving small amounts of duties and fees. This calculus is now changing as tariffs are increasing on U.S. imports. This Alert focuses on a number of transactions where specific provisions of Chapter 98 may offer full or partial duty-free treatment, provided the importer fully complies with all legal requirements applicable to the specific Chapter 98 program<sup>1</sup>.

### Tariff Programs for Duty Reduction on US Input

Generally, U.S. country-of-origin parts and components (**U.S. Parts**) that are supplied as customer furnished material and consumed during the production of an import are considered dutiable “assists”<sup>2</sup> that are included in the calculation for dutiable transaction value when imported into the United States.<sup>3</sup> As an exception to this general rule, certain Chapter 98 programs permit the importer to reduce the dutiable value of the import for U.S. inputs. Here are some examples:

- **Subheading 9801.00.10:** Permits duty-free entry for products exported from and returned to the U.S. provided they were not improved in value. For U.S.-origin products, there is no time limit for claiming this exemption; for foreign-origin products, the return must occur within three years.

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<sup>1</sup> USMCA shipments qualify for certain Chapter 98 provisions, however there are notable exceptions where Chapter 98 provisions are not applicable due to duty deferral programs and USMCA agreement negotiations.

<sup>2</sup> Generally, dutiable “assists” include the following: material and other components of the imports; tools, dies and molds used in the manufacture of the imports; *items that are consumed during the production of the import*; engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

<sup>3</sup> Under 19 U.S.C. §1401a and 19 CFR §152.103(a)(1), transaction value is defined as the price actually paid or payable for the merchandise when sold for exportation to the United States —adjusted by certain statutory additions.

- **Subheadings 9802.00.40, 9802.00.50, 9802.00.60 and 9802.00.80:** Permit duty-free or partially duty-free entry for goods that comply with the respective requirements:
  - **Subheading 9802.00.40:** Permits partial duty exemptions for products exported from the United States for repair or alteration made pursuant to a warranty and then returned to the United States. Duties apply only to the value of the repairs or alterations performed abroad.
  - **Subheading 9802.00.50:** Allows partial duty exemptions for articles exported for repair or alteration and then returned to the United States. Duties apply only to the value of the repair or alteration performed abroad.
  - **Subheading 9802.00.60:** Allows for reduced duties for articles of metal manufactured in the United States or subjected to a process of metal, exported for further “*processing*” and returned to the United States (duties imposed on the value of the processing outside the United States only). “Processing” is a defined term and must meet certain double substantial transformation and other regulatory requirements.
  - **Subheading 9802.00.80:** Allows for a duty exemption for articles assembled abroad in whole or in part of fabricated components, the product of the United States, which meet the following criteria:
    - (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.

All three requirements of HTSUS 9802.00.80 must be satisfied before a component may receive a duty reduction allowance. An article entered under HTSUS 9802.00.80 is subject to duty upon the full value of the imported assembled article less the cost or value of the U.S. components, upon compliance with the documentary requirements of section 10.24, Customs Regulations (19 CFR 10.24). Notably, the exemption applies to U.S.-made fabricated components which are of types designed to be fitted together with other components, and does not apply to chemical products, liquids, gases, powders, etc. H.R. Rep. No. 342, 89th Cong., 1st Sess. 49 (1965).

### **Other Chapter 98 Provisions of Interest:**

Chapter 98 contains many specific Subheadings that target very specific situations that are not generally applicable. The following Subheadings, however, may be useful to a broader group of importers, but also have specific conditions and certain time restrictions that govern their use:

- **Subheading 9804.00.20:** Grants nonresidents duty-free entry for personal effects such as wearing apparel and articles for personal use.
- **Subheading 9813.00.05:** provides for duty-free entry, under bond, for merchandise imported into the United States, for a temporary period, for repair, alteration, or processing. **Subheading 9813.00.20:** provides for duty-free entry of samples solely for use in taking orders for merchandise.
- **Subheading 9813.00.30:** allows for duty-free entry of goods intended solely for use in connection with experiments or for study.

- **Subheading 9813.00.50:** grants temporary duty-free entry of professional equipment, tools of trade, repair components for equipment or tools, and camping equipment for use by non-residents.
- **Subheading 9813.00.75:** permits duty-free entry for automobiles and parts intended solely for show purposes. **Subheading 9813.00.35** similarly allows duty-free entry of automobiles for racing purposes.
- **Subheading 9817.22.05:** grants duty-free entry to rum, tafia, liqueurs and spirits of a type classifiable in subheading 2208.40 or 2208.90 and produced in Canada.
- **Subheadings 9817.00.80 and 9817.00.90:** Defective or damaged pigs, ingots, billets, and certain metal articles (excluding copper, lead, zinc, tungsten, and specified metal-bearing materials) produced from scrap without refining and only fit for remelting or processing to recover their metal content.

By understanding and applying these and other Chapter 98 provisions, companies can effectively manage and reduce import costs, provided that all legal requirements are met. For guidance tailored to your business needs, please contact your Dentons team.

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Because these changes are ongoing, Dentons will continue to monitor these developments and provide additional updates. We provide our clients access to resources in Canada, Mexico, China, and globally to help navigate these rapidly changing trade measures.

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