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International Trade, Customs & Export Law

Making Tariffs less Tarriff-ying

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Trade with China

- US Goods Imported from China in 2017 were \$505 billion, while US Goods Exported to China in 2017 were \$130 billion
- US exports to China in 2017 increased +86% since 2007, which rebounded in 2017 by \$14 billion
- China is the 3rd largest market for US goods and services exported. In 2017 NAFTA partners Canada and Mexico buy more “goods” and the UK and Canada buy more “services”
- US Exports to China support 1 million American jobs
- China’s top five exports are computers, broadcasting equipment, telephones, office machine parts and integrated circuits
- China's top five imports are crude petroleum, integrated circuits, iron ore, gold and cars

Note: the sources of this data came from US Census, US Trade Representative and US China Business Council websites.



Tariffs



Trade Issues

- Section 232 steel/aluminum
- Section 232 autos/auto parts
- Section 301 China
- Retaliation: 232 , 301
- FTA Renegotiations
- Congress
- ...



Section 232

- Section 232 of the Trade Expansion Act of 1962

Authorizes the President to take any action necessary to adjust the imports of goods or materials from other countries if it deems the quantity or circumstances surrounding those imports to threaten national security



Steel Tariffs

- 25% Tariffs on imported steel
- Effective March 23, May 1 and June 1
- Korea, Argentina, Brazil have quotas
- Australia exempt
- Company specific exclusion requests available

Aluminum Tariffs

- 10% Tariffs on imported aluminum
- Effective March 23, May 1 and June 1
- Argentina has quotas
- Australia exempt
- Company specific exclusion requests available

Steel and Aluminum Tariffs

STAR TRIBUNE
S&R

- New procedures for exclusion requests September 6
- Allows companies to seek specific exemptions from quota countries
- Allows “rebuttal” and “surrebuttals”
- Outlines criteria for consideration



232 on Autos

- Report from Commerce pending
- Auto industry completed questionnaires in August
- Reportedly including 232 on Autos in discussions with Mexico and Canada
- Action before the mid-term elections?

China 301 Action

- July 6, 2018 (List 1)
 - 25% Tariffs on 800+ items valued at \$34 billion
 - Product specific exclusions possible through October 9
 - Exclusion good for 12 months
 - Retroactive to July 6
 - Possible to get out of 25% tariff if using US components



China 301 Action

- August 23, 2018 (List 2)
 - 25% Tariffs on 200+ items valued at \$16 billion
 - Product specific exclusions deadline December 18
 - Exclusion good for 12 months
 - Retroactive to August 23
 - Possible to reduce 25% tariff if using US components

China 301 Action

- Current List (List 3)
 - 10 and 25% tariffs to be levied on \$200 billion in goods
 - 10% effective **September 24 – December 31, 2018**
 - 25% effective **January 1, 2019**
 - 5,745 tariff lines, reduced from 6,031
 - Some with partial exclusions
 - No Exclusion process
 - Congressional Pressure to allow Exclusion when tariffs are 25%



China 301 Action

- List 4??
- Possible creation of additional list to cover \$257 billion
- All trade from China would be covered by tariffs from 10 and 25%, unless excluded

Dates and Deadlines

List 1

25% duty effective on List 1 items
Deadline to request exclusions

Date

July 6, 2018
October 9, 2018

List 2

Comments on specific subheadings due
Deadline to request to appear at hearing
Pre-hearing submissions due
Hearing on List 2 products
Post-hearing rebuttal comments due
25% duty effective on List 2 products
Deadline to request exclusions

Date

July 23, 2018
June 29, 2018
June 29, 2018
July 24, 2018
July 31, 2018
August 23, 2018
December 18, 2018



Dates and Deadlines

List 3

Deadline for filing requests to appear at hearing and summary of expected testimony

Hearing on List 3 products

Post-hearing rebuttal comments due

Due date for submission of written comments

10% duty effective on List 3 products

25% duty effective on List 3 products

Deadline to request exclusions

Date

August 13, 2018
(previously July 27, 2018)

August 20 - 27, 2018
(extended from August 20 - 23)

September 6, 2018
(previously August 30, 2018)

September 6, 2018
(previously August 17, 2018)

September 24, 2018

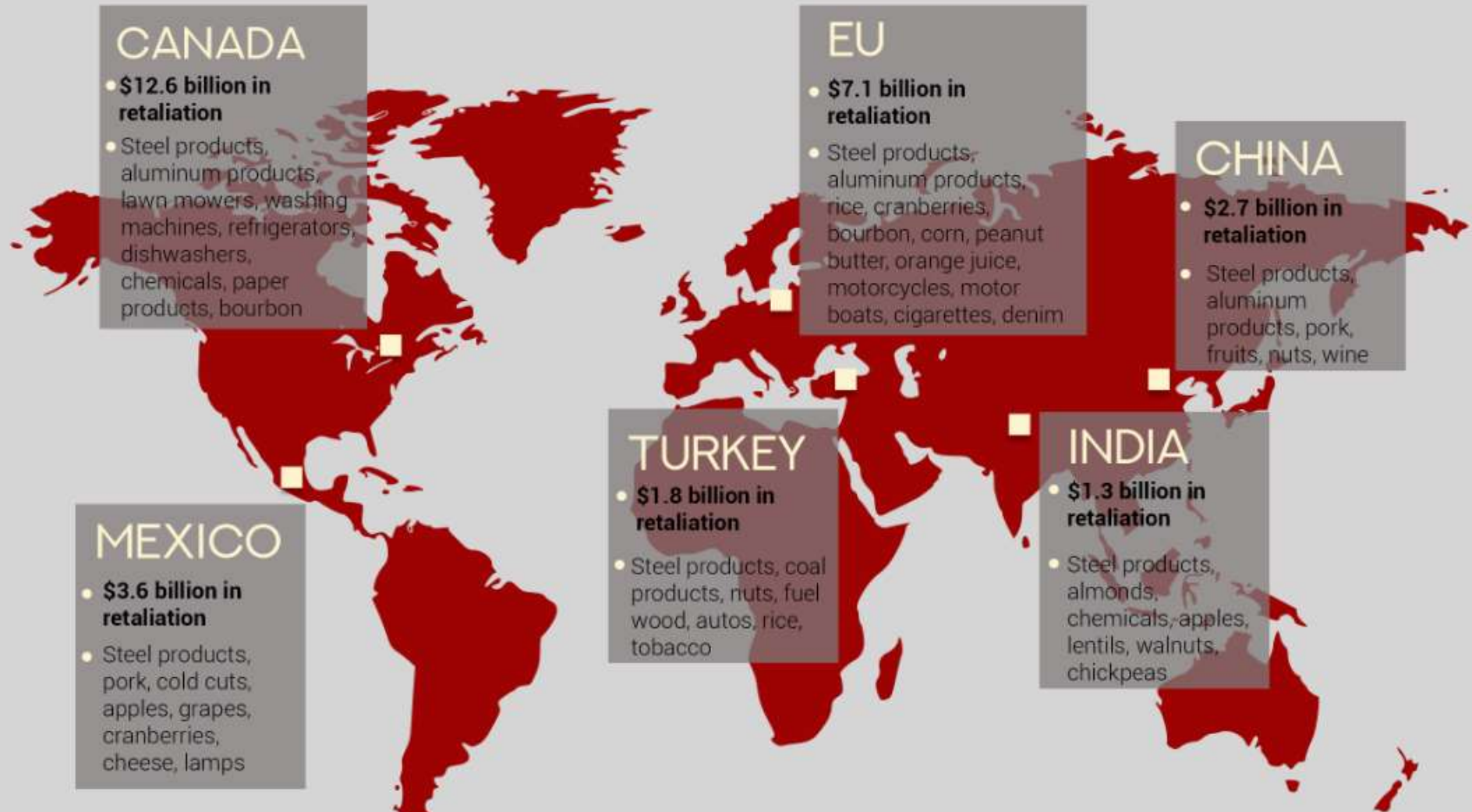
January 1, 2019

TBD



SECTION 232 BACKLASH

GLOBAL RETALIATION FOR STEEL AND ALUMINUM TARIFFS



Retaliatory Actions

The U.S. faces retaliatory actions from China, the EU, India, Turkey, Russia, Canada and Mexico. Find affected products by [viewing our Mega Matrix \(Updated 9/19/18 & contains all products\)](#).

Click the list name below to view products by country along with tariff rates.

Dates in red indicate that the tariff is currently active.



Mega Retaliation Matrix

Note: retaliations are listed together when more than one country applies, unless product description differs

HTS codes	Product description	China 232 Effective 4/2/18	China 301 #1 Effective 7/6/18	China 301 #2, V1 Issued 6/16/18 Effective TBD	China 301 #2 V2 Issued 8/8/18 Effective 8/23/18	China 301 List 3 Issued 8/3/18 Effective 9/24/18	India 232 Effective 9/18/18	Turkey 232 Effective 6/21/18	EU 232 #1 Effective 6/22/18	EU 232 #2 Effective 3/23/21	Canada 232 Effective 7/1/18	Mexico NATA treatment suspended 6/5/18. Duties Effective 6/5/18 or 7/5/18 for *	Russia 232 Effective 8/5/18
01012900	Other horse					X							
01061990	Other mammals					X							
01062090	Other reptiles					X							
01064990	Other insects					X							
01069090	Other animals					X							
02011000	Fresh or cold whole head and half cow		X										
02012000	Fresh or cold beef with bones		X										



Solutions

- Tariff Classification Review
- Origin Determination Review
- Duty Drawback
- 9801 Provision
- 9802 Provision
- 9813 Provision / Carnet
- 301 Exclusion Process
- Other:
 - Bonded Warehouse
 - First Sale
 - Section 321



Solutions: Tariff Classification Review

- Classification Review –
 - How old is the tariff classification?
 - Who assigned it and their experience level?
 - Do you have substantiating audit trail for the classification?
 - When was the last time it was reviewed?
- New breakouts under 8517 (specifically created items to exclude certain consumer products like Apple devices) and if they are applicable to your products

HTS Number	Desc	MFN rate	List	List Rate
8517620010	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing appa	0	List 3	10%
8517620020	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing appa	0	List 3	10%
8517620090	Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing appa	0	List 3-Excluded	10%

- Submit rulings (with caution)

Solutions: Origin Transformation Review

- Changing Supply Chain
- Shifting portions of manufacturing operations
- Reviewing the rules of origin
- Production reengineering

Solutions: Origin Transformation Review

- (a) The country of origin of a good is the country in which:
 - (1) The good is wholly obtained or produced;
 - (2) The good is produced exclusively from domestic materials; or
 - (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.
- (b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:
 - (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or
 - (2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the appendix to part 181 of this chapter.
- (c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.
- (d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:
 - (1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;
 - (2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or
 - (3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.



Solutions: Drawback

- Section 301 duties are eligible for drawback
- CBP has not announced any procedures/applicability
- 2 Types of Drawback
 - Direct ID – if you can track imported duty paid to exported items, it is possible – but administratively burdensome
 - Unused substitution –
 - Refurbished - Will not apply if used equipment is exported and imported back as refurbished or vice versa.
 - New Equipment –
 - Customs may require the origin of the exported item to be China (substitution on HS and Origin vs. HS only)
 - Lesser of 2 duties may be applicable
 - Manufacturing Drawback –
 - Duty paid components used in manufacturing process
 - Substitution at HS level may be restricted to HS and Origin for 301 duties

Solutions: 9801.00.10xx Applicability

Importing Articles for Repair/Refurbishment

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 following conditions preclude the use of 9801 (except 9801.00.70 and 9801.00.80):

- Drawback has been claimed on these articles
- The article was manufactured or produced in a Foreign Trade Zone, exported from a bonded warehouse or entered under a Temporary Importation Bond
- The article is subject to internal revenue tax

Heading/ Subheading	Stat. Suf- fix	Article Description	Unit of Quantity	Gen
9801.00.10		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.....		Free
	10	Articles previously exported with intent to reimport after temporary use abroad.....	X	
	12	Articles returned temporarily for repair, alteration, processing or the like, the foregoing to be reexported.....	X	
		Other:		
	15	Meat and poultry products provided for in chapter 2 or 16.....	kg	
	26	Peanuts provided for in heading 1202.....	kg	
	27	Articles provided for in chapter 28.....	X	
	28	Articles provided for in chapter 30.....	X	
	29	Articles provided for in chapter 37.....	X	
	30	Articles provided for in chapter 71.....	X	
	31	Articles provided for in chapter 82.....	X	
		Articles provided for in chapter 84:		
	35	Articles provided for in headings 8407.10, 8409.10, 8411 or 8412.10.....	X	
	37	Articles provided for in headings 8419.31, 8424.41, 8424.49, 8424.82, 8424.90, 8429.11, 8429.19, 8431.42, 8432, 8433, 8434 or 8436.....	X	
	43	Articles provided for in headings 8470, 8471, 8472 or 8473.....	X	
	45	Other.....	X	
		Articles provided for in chapter 85:		
	49	Articles provided for in headings 8501, 8502 or 8503.....	X	
	51	Articles provided for in heading 8504.....	X	
	53	Articles provided for in headings 8517, 8519, 8525, 8527 or 8529.....	X	



Solutions: 9801.00.10xx Requirements

Importing Articles for Repair/Refurbishment

Requirements:

- A declaration from the foreign shipper that it has not been advanced in value and were originally exported from the US
- A declaration by the importer that it has not been advanced in value and were originally exported from the US
- Copy of the entry into the foreign country (within the last 3 years),
- U.S. export invoice or bill of lading/airway bill, or
- Electronic Export Information (EEI) or the Automated Export System (AES) filing exemption.
- Ensure applicable 9801.00.10 tariff number is selected

<https://www.govinfo.gov/content/pkg/CFR-2018-title19-vol1/pdf/CFR-2018-title19-vol1-sec10-1.pdf>

https://www.cbp.gov/sites/default/files/documents/exh5e_4.pdf



Solutions: 9802.00.40/50 Applicability

Importing Articles after Repair/Refurbishment

“Repairs or alterations” are defined in 19 CFR 181.64 as the restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.

For purposes of the duty allowance under subheading 9802.00.50, HTSUS, the replacement and/or addition of parts to restore products to their original condition may constitute repair operations, provided that the particular article does not lose its identity and the replacement and/or additions are not so extensive as to create a new or different article.

HTS Number	Desc
98020040	Articles returned to the U.S. after having been exported for repairs or alterations, made pursuant to a warranty
98020050	Articles returned to the U.S. after having been exported for repairs or alterations, nesoi



Solutions: 9802.00.40/50 Requirements

Importing Articles after Repair/Refurbishment

Requirements

- Copy of the entry into the foreign country (within the last 3 years),
- U.S. export invoice or bill of lading/airway bill, or
- Electronic Export Information (EEI) or the Automated Export System (AES) filing exemption.
- Commercial Invoice with the repair/refurbishment value and the original value being claimed under 9802 (dutiable vs. non-dutiable)
- Origin will not change if it is a simple repair (see Page 19 for Origin Determination)
- Other alternatives if you are drop-shipping at a customer within the US and/or if you are using a middle man for refurbishment (First Sale for the repair value)

Solutions: TIB 9813.00.05.40

Importing Articles for Repair/Refurbishment

The articles described in the provisions of this subchapter, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year, shall not exceed a total of 3 years.

There must be an intention at the time of entry that the articles will actually be repaired (HQ 223827).

Requirements:

- The HTSUS subheading number under which entry is claimed.
- A statement of the use to be made of the articles in sufficient detail to enable the port director to determine whether they are entitled to entry as claimed, and
- A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.



Solutions: TIB 9813.00.05.40

Importing Articles for Repair/Refurbishment

Regulations:

<https://www.govinfo.gov/content/pkg/CFR-2018-title19-vol1/pdf/CFR-2018-title19-vol1-sec10-31.pdf>

Other useful links:

[https://help.cbp.gov/app/answers/detail/a_id/590/~temporarily-imports-for-repair%2C-alteration%2C-or-processing-without-duty](https://help.cbp.gov/app/answers/detail/a_id/590/~/temporary-imports-for-repair%2C-alteration%2C-or-processing-without-duty)

https://help.cbp.gov/app/answers/detail/a_id/377/related/1/session/L2F2LzEvdGltZS8xNTM5Nzk4Mjg1L3NpZC9fVWk0U3Vabg%3D%3D

https://help.cbp.gov/app/answers/detail/a_id/139/kw/goods%20being%20exported%20under%20tib

Solutions: Exclusion Procedures

- The public will have 90 days to file a request for a product exclusion; the request period will end on October 9, 2018 (for list 1).
- Following public posting of the filed request on Regulations.gov, the public will have 14 days to file responses to the request for product exclusion. After the close of the 14 day response period, interested persons will have an additional 7 days to reply to any responses received in support of or opposition to the request.
- Exclusions will be effective for one year upon the publication of the exclusion determination in the Federal Register, and will apply retroactively to July 6, 2018.

Because exclusions will be made on a product basis, a particular exclusion will apply to all imports of the product, regardless of whether the importer filed a request. The U.S. Customs and Border Protection will apply the tariff exclusions based on the product.

To-date not a single exclusion request has been approved.

<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/ustr-releases-product-exclusion>

Solutions: Exclusion Form

<https://www.regulations.gov/docket?D=USTR-2018-0025>

Section 301 Investigation: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation - Form to Request Exclusion of Product

When submitting a product exclusion request using this form, enter the specified information in the following fields and explain the basis and rationale for your statements. By completing this form, you certify that the information provided is complete and correct to the best of your knowledge.

1. Indicate whether the comment contains business confidential information (BCI), is a public document, or is a public version of a BCI document.

2. Please provide a complete and detailed description of the product of concern:
This exclusion request is for Product Number 0210M1F. The product is a car stereo and amplifier wiring set with dimensions of 0.437" x 2.817" x 5.437". The product is made of ABS Plastic, PVC Plastic, Copper, and Tin. The product is sold to retail consumers that shop at BestBuy, Walmart, Target, etc., to allow consumers to easily connect to vehicle wiring systems when replacing stereos and/or speakers in the consumer electronics industry. The product is shipped with an invoice including Product Number 0210M1F and each item has a weight of 0.2 lbs. The product includes color-coded individual wire leads that conform to a 12V industry-based standard known as the EIA (Electronics Industry Association). This distinguishes this product from other imported products and facilitates the administration of this exclusion by CBP.

3. 10-digit HTSUS item number* for product you wish to address in this product exclusion request:
*Use numerical characters only with no special characters (example: 1023456789). For help in finding the HTSUS item number associated with your product, see <https://hts.usitc.gov/>
8544300000

4. Requestor Information
Requestor Name (Last, First): Norris, Christopher
Organization Name: Scoche Industries, Inc.
Note: Representatives submitting on behalf of an organization must enter information below.
Requestor Representative: Craig Giffound, Arent Fox LLP

5. Requestor's relationship to the product: importer

6. Does this submission in regulations.gov include additional attachments?

7. Please indicate whether any additional attachment contains business confidential information (BCI), is a public document, or is a public version of a BCI document.

VERSION 1 CONTINUED BELOW



Other Remedies

- Bonded Warehouse
 - Secured area for storage, manipulation, manufacturing etc.
 - Duty Deferred for 5 years
 - No duty if exported or destroyed
- First Sale
 - Deduced duties and fees
 - Applicable if there is middleman type transaction
 - Using the first sale value vs. 2nd sale value
- Section 321 De Minimis
 - Used by e-commerce companies
 - Shipments under \$800 are excluded from 301 duties (some exceptions)

The Dos and the Don'ts List

- Do Not change your tariff classification to a Non-List item to avoid duties without expert advice
- Do Not Trans-ship items (origin does not change just because you import the good from HK vs. CN)
- Do Not change Origin of the product without substantiating evidence and compliance with rules
- Do Not use firms that will tell you that they can eliminate your duties without evidencing the solution
- Do have a review process for your entries (pre and post filing)
- Provide the required information to the brokers through a pre-entry instruction sheet
- Do keep your records for the prescribed record keeping period (Entry, Commercial invoice, Bill of Lading/Packing List, certificate of origin, any declarations like DFS etc.)

Questions?

Thank you!

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