



HTS and FTZ Update

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HTS Update

Harmonized Standard

- ▶ The GRIs, 4- and 6-digit nomenclature categories, and associated notes (not including additional U.S. notes) in chapters 1 through 97 reflect the international nomenclature of the Harmonized Commodity Description and Coding System, pursuant to the Harmonized System Convention
 - ▶ Administered by the World Customs Organization (WCO)
 - ▶ Effective for the United States as of January 1, 1989
 - ▶ Harmonized Tariff Schedule of the United States (HTSUS)
 - ▶ Changes to the international nomenclature and certain classification decisions taken by the WCO are reflected in changes to the HTSUS

What is the HTSUS?

- ▶ Harmonized Tariff Schedule of the United States (“HTSUS”)
 - ▶ Goods entering the United States must be classified according the HTSUS
- ▶ Consists of 10-digits
 - ▶ The first 6-digits represent the international HS number
 - ▶ Duty rate is provided at 8-digits
 - ▶ 9th and 10th digits are for U.S. statistical purposes
- ▶ Provides information and additional rules regarding qualification for and application of preferential trade programs and 4 additional US Rules of Interpretation

Overall organization of the HTSUS

- ▶ Table of Contents
- ▶ General Rules of Interpretation (GRIs)
 - ▶ Additional U.S. Rules of Interpretation
- ▶ General Notes (Free Trade Agreements)
- ▶ Notice to Exporters
- ▶ The Main Body of the HTSUS
 - ▶ Sections, Chapters, Headings, and Subheadings
- ▶ Appendixes – Chemical, Pharmaceutical & Intermediate Chemicals for Dyes
- ▶ Statistical Annexes – Country Codes, Customs Districts & Port Codes
- ▶ Alphabetical Index

Main body of the HTSUS

- ▶ The HTSUS is divided into 22 Sections
 - ▶ Sections I to IV cover the agricultural and food sectors
 - ▶ Section V is for basic mineral products
 - ▶ Section VI is for chemical products
 - ▶ Section XI covers textiles and apparel
 - ▶ Section XVI is for machinery and electrical equipment, including computers
 - ▶ Section XVII includes all vehicles, including spacecraft
- ▶ Sections are subdivided into 99 Chapters
- ▶ Chapters are subdivided into Headings
- ▶ Headings are subdivided into Subheadings
- ▶ Most Sections and Chapters have "Notes" which provide dispositive instructions for classifying goods
- ▶ There are also subheading Notes regarding classification within subheadings (also dispositive)

Other information in the HTSUS

▶ General Notes

- ▶ Instructions for interpreting various duty rate columns
- ▶ Abbreviations and definitions
- ▶ Rules for West Bank and Gaza originating goods
- ▶ Lists of preferential programs and their symbols
- ▶ Extensive enumeration of the rules of preferential programs

Trade preference programs

► Possible symbols noted under “Rate of Duty - Special” in the HTSUS

A, A* or A+	Generalized System of Preference	GN4
B	Automotive Products Trade Act	GN5
C	Agreement on Trade in Civil Aircraft	GN6
E or E*	Caribbean Basin Economic Recovery Act	GN7
IL	United States - Israel Free Trade Area	GN8
J, J* or J+	Andean Trade Preference Act	GN11
CA/MX	North American Free Trade Agreement	GN12
K	Agreement on Trade in Pharmaceutical Products	GN13
L	Uruguay Round Concessions on Intermediate Chemical Dyes	GN14
D	African Growth and Opportunity Act	GN16
R	United States-Caribbean Basin Trade Partnership Act	GN17
JO	United States - Jordan Free Trade Area	GN18
SG	United States – Singapore Free Trade Agreement	GN25
CL	United States – Chile Free Trade Agreement	GN26
MA	United States - Morocco Free Trade Agreement	GN27
AU	United States – Australia Free Trade Agreement	GN28
P or P+	Dominican Republic-Central America – United States	GN29

Ethanol: Importation and FTZ Considerations

WHAT IS FUEL ETHANOL?

- ▶ Ethanol is an alcohol fuel produced from the fermentation of simple sugars. Most ethanol in the United States is produced from corn. In other countries, sugar cane or other plants are common feedstocks.
- ▶ The main steps to ethanol production are as follows:
 - ▶ The feedstock is processed to separate fermentable sugars.
 - ▶ Yeast is added to ferment sugars.
 - ▶ The resulting alcohol is distilled.
 - ▶ The distilled alcohol is dehydrated to remove any remaining water.
 - ▶ To render the anhydrous alcohol undrinkable a denaturant (such as natural gasoline) is added.

GASOHOL

- ▶ Pure, 100% ethanol is not generally used as a motor fuel; instead, a percentage of ethanol is blended with unleaded gasoline (a mixture called “gasohol”), the most common blends are:
 - ▶ **E10 - 10% ethanol and 90% unleaded gasoline**
 - ▶ **E85 - 85% ethanol and 15% unleaded gasoline**

Ethanol Production and Demand

- ▶ Production and demand for ethanol in the U.S. has soared to new heights in the last 5 years, according to the latest available data released by the Energy Information Administration (EIA) and the Renewable Fuels Association (RFA).
- ▶ US Production of ethanol in 2011 reached over 13 billion gallons. That is an increase of approximately 170% over 2006 production.

▪ *Source: U.S. Energy Information Administration*

Global Expansion of Ethanol

- 2011 World Fuel Ethanol Production (Millions of Gallons)

	Millions of Gallons
North & Central America	14,401.34
South America	5,771.90
Brazil	5,573.24
European Union	1,199.31
Europe	1,167.64
Asia	889.7
China	554.76
Canada	462.3
Australia	87.2
Africa	38.31
Total	30,145.70

- Source: Renewable Fuels Association

Importing Ethyl Alcohol (Ethanol)

- ▶ The applicable Harmonized Tariff Schedule (“HTSUS”) classification are as follows:
 - ▶ 2207.10.6010 - Undenatured ethyl alcohol of an alcoholic strength by volume of 80 percent vol. or higher; for nonbeverage purposes.
 - ▶ The applicable rates of duty set forth in the HTSUS are:
 - ▶ General rate of duty- 2.5% ad valorem
 - ▶ Special (preferential) rates of duty- Free; or
 - ▶ 2207.20.0010 - Ethyl alcohol and other spirits denatured, of any strength.
 - ▶ The applicable rates of duty set forth in the HTSUS are:
 - ▶ General rate of duty- 1.9% ad valorem
 - ▶ Special (preferential) rates of duty- Free

Additional Duties and Taxes

- ▶ The general and the special rates of duty both contain two footnotes, these footnotes state:
 1. Imports under this subheading may be subject to Federal Excise Tax (26 U.S.C. 5001 (applicable), 26 U.S.C. 5041 (not applicable) or 26 U.S.C. 5051 (not applicable)).
 - 26 U.S.C. 5001
 - Rate of tax
 - ▶ (1) In general. There is hereby imposed on distilled spirits produced in or imported into the United States a tax at the rate of \$13.50 on each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.
 - Applies to ethyl alcohol intended for use in beverage and spirits for consumption.

Additional Duties and Taxes

2. For ethyl alcohol, see subheading 9901.0050, *which states in pertinent part*:
 - ▶ Ethyl alcohol (provided for in subheadings 2207.10.60 and 2207.20) or any mixture containing such ethyl alcohol (provided for in heading 2710 or 3824) if such ethyl alcohol or mixture is to be used as a fuel or in producing a mixture of gasoline and alcohol, a mixture of a special fuel and alcohol, or any other mixture to be used as fuel (including motor fuel provided for in subheading 2710.11.15, 2710.19.15 or 2710.19.21), or is suitable for any such uses...
 - ▶ This secondary duty is 14.27 cents per liter or 54 cents per gallon.
 - ▶ NOTE: Was effective until January 1, 2012

Trade Agreements

- ▶ **Bilateral Trade Agreements**
 - ▶ U.S. – Israel Free Trade Agreement and the North American Free Trade Agreement allows ethanol that is fully produced with feedstocks from those countries to enter the U.S. duty-free
- ▶ **Unilateral Trade Agreements**
 - ▶ Caribbean Basin Recovery Act and the Andean Trade Preference Act allow ethanol produced in those countries to enter the U.S. duty free.
 - ▶ Certain conditions apply.

CARIBBEAN BASIN RECOVERY ACT (CBERA) DUTY PLANNING OPPORTUNITIES

▶ CBERA Country Feedstocks

- ▶ Under this agreement, if ethanol is produced from at least 50 percent agricultural feedstock grown in a CBERA country, it is admitted free of duty.
- ▶ If the local feedstock content is lower than 50%, limitations apply on the quantity of duty-free ethanol.

▶ Non-CBERA Country Feedstocks

- ▶ The amount of ethanol that can be imported annually duty-free that is produced from non-CBERA agricultural feedstock is restricted to 60 million gallons or 7 percent of the U.S. domestic ethanol market, whichever is greater; known as the annual “base quantity.”
- ▶ For the 12-month period ending Sept. 30, 2011, the level is 12.955 billion gallons (7% of this amount is 906.9 million gallons)

CARIBBEAN BASIN RECOVERY ACT (CBERA) DUTY PLANNING OPPORTUNITIES (cont)

- ▶ To qualify, ethanol must be dehydrated in a CBI country. Dehydration plants that receive hydrous ethanol produced in non-CBI countries (historically Brazil or Europe) can, after dehydration qualify the ethanol as an indigenous product for duty-free treatment.
- ▶ Local feedstock requirements do exist but do not come into play until the “base quantity” is reached.
 - ▶ 30 percent with respect to the next 35 million gallons of dehydrated alcohol, and
 - ▶ 50 percent with respect to all dehydrated alcohol.

TAX CREDIT

- ▶ American Jobs Creation Act of 2004

- ▶ Volumetric Ethanol Excise Tax Credit (VEETC) - aka “Blender’s Credit”

- ▶ NOTE: This tax credit expired December 31, 2011.

- ▶ Formerly provided a \$0.51 cents per gallon excise tax credit for each gallon of ethanol blended with gasoline.

- ▶ For the ethanol in E10, the tax credit was $(.10 \cdot .51) = .051$ cents per gallon of E10

- ▶ For the ethanol in E85, the tax credit was $(.85 \cdot .51) = .4335$ cents per gallon of E85

- ▶ Blenders of ethanol and gasoline could claim the excise tax credit on Form 720, Quarterly Federal Excise Tax Return.

Ethanol & FTZs

FTZ ACT

- ▶ The Fifth Proviso prohibits circumvention of taxes or controls on merchandise imposed by the IRC.
 - ▶ Alcohol products subject to 26 USC § 5001.
 - ▶ Manufacturing of alcohol products is prohibited.
 - ▶ Ruling history exists for ethanol and gasohol.
- ▶ Storage is permitted
 - ▶ Importer remains liable for IRC tax.
 - ▶ The ethanol can be transferred to a DSP for denaturing without the payment of the IRC tax.
 - ▶ Necessary procedures and controls are required.

FTZ ACT

- ▶ Refinery FTZ
 - ▶ Manufacturing/Blending ethanol and gasoline
 - ▶ Boundary considerations
 - ▶ Taxable status of alcohol

2012 HTSUS Changes for Petroleum

2012 Petroleum Changes to the HTSUS

- ▶ Ch. 27 Intermediate and Finished Products
 - ▶ Subheading 2710.11 was replaced entirely by new subheading 2710.12 with a change in the description to exclude products containing biodiesel
 - ▶ Products previously under subheading 2710.19 will be split between new HTSUS codes under that subheading and new subheading 2710.20 to distinguish between fuels which contain biodiesel and those that do not
- ▶ Biodiesel
 - ▶ Chapter 27 Notes: new definition for biodiesel
 - ▶ 3824.90.4030 was replaced by two codes under new heading 3826, one for biodiesel that contains no petroleum oils (B100) and another for biodiesel that contains more than 0% and less than 70% petroleum oils

FTZ Update

Background on FTZ Board Regulations

- ▶ Most recent regulations adopted in 1991
- ▶ FTZB pursuing path to streamline procedures and reduce burden for program users
 - ▶ Past examples include Alternative Site Framework ("ASF") policy adopted in 2008
- ▶ Proposed regulations published December 30, 2010
 - ▶ Two comment periods provided
 - ▶ Significant public forum activity held
 - ▶ MOST provisions will be effective April 30, 2012

New Regulations: Key Elements

- ▶ "Public utility" and "uniform treatment" provisions
 - ▶ Clarify intent and maximizes use of the program
 - ▶ Effective date deferred until February 28, 2014

- ▶ Improvements to "subzone" process
 - ▶ Simpler and faster procedures
 - ▶ Standard 40-day public comment period on subzone applications
 - ▶ Largely parallel requirements for minor boundary modifications (MBMs)
 - ▶ Ordinary five-month timeframe to process subzone applications

New Regulations: Key Elements (cont)

- ▶ Authority for fines
 - ▶ Covers issues with late annual reports or violations of the uniform treatment requirements
- ▶ "Production" authority
 - ▶ New definitions will allow for quicker processing of most cases
 - ▶ Capacity not part of scope
- ▶ Other procedures
 - ▶ FTZB replaces Port Director oversight in a number of matters
 - ▶ Should streamline certain activities

What is “Production” Authority?

- ▶ Formerly the FTZB reviewed and approved Manufacturing and Processing cases differently
 - ▶ Refineries are manufacturing zones due to "substantial transformation" of components
 - ▶ "Processing" authority granted in cases where there is merely a change in tariff classification under zone operations
- ▶ "Production" authority is now one in the same
 - ▶ Advance FTZB approval is required

What is “Production” Authority? (cont)

- ▶ Notification (not application) is submitted to the FTZB
 - ▶ include only components and products and any trade proceedings for the materials that the FTZB should be made aware of
 - ▶ no longer requires detailed answers such as capacity, employment, forecasted FTZ savings, etc from old application format
- ▶ Timing
 - ▶ 40 day comment period vs. 60 days previously
 - ▶ Approval within 120 days vs. 12 months previously
- ▶ Issues or Controversies may result in the FTZB requiring the full application under the prior standards
- ▶ Temporary / Interim Manufacturing (T/IM) approval may be sought
 - ▶ no longer limited to specific components or products

Ramifications for Petroleum FTZs

- ▶ Capacity increases
 - ▶ no longer required (remember the "old" 10% rule)
- ▶ Boundary modifications or new sites will be processed quicker
 - ▶ beneficial for plant expansions
- ▶ Retail Trade in the Zone
 - ▶ Previous regulations required CBP Port Director to represent the FTZB in determining acceptability of retail trade matters
 - ▶ FTZB Executive Secretary now reviews cases to determine ramifications
 - ▶ Relevance here is gasoline or diesel fuel supply to employees

Questions?