

Tariff Code Review

Your Guide to Lower Duties



In times of trade wars and economic uncertainty, importers contend with fluctuating tariff rates. If duties increase, it's important to have strategies and resources in place to respond. One possible solution to the problem is a strategy known as tariff code review.

This guide is meant to educate you on the concept and methodologies of this valuable skill to help your business succeed no matter what state the economy is in.



What is Tariff Code Review?

Essentially, tariff code review is a legitimate restructuring or reclassification of a good to achieve the most favorable duty rate. It can be as simple as reclassifying a "doll" as a "toy" or as creative as adding felt to the bottom of a shoe.

Every physical imported item is assigned a 10-digit code from the Harmonized Tariff Schedule (HTS). The HTS code tied to a product will determine its duty rate. By working closely with an experienced customs broker and freight forwarder, importers can identify opportunities for tariff code review. Ideally, consulting an expert early in the process, such as the

product design stage, helps by considering customs classifications when changes are easier to make. However, there are certainly opportunities for established products as well.

Historical Cases

For as long as there have been tariffs, there have been efforts to minimize them through legitimate, if creative means. Here are three cases that illustrate how a solid understanding of tariffs, and how they apply to your commodity class, can produce significantly different outcomes.

Case 1 : The Sugar Rates

In the late 1800s, a company importing sugar discovered that duties were color-based: lower grade, or less refined sugar i.e., darker "brown" sugar received a lower duty rate than more refined, "white" sugar. In the true American spirit of innovation (and a constitutional aversion to taxes of any sort), this company came up with a novel solution.

They used molasses to tint their sugar, giving the appearance that it is a lower grade and therefore subject to lower duties. Because the tariff code was color-based, rather than specifying "grade" or "quality" this company legally avoided a higher duty rate. Since then, regulations have become more specific, but there are arguable delineations available in many cases, such as this next one.

Case 2: United States vs. Citroen

In 1906, a gentleman named Bernard Citroen purchased a pearl necklace for his wife and imported the pearls, unstrung but pre-drilled and suitable for stringing as a necklace. The paperwork that accompanied the shipment described them as follows: 'as pearls set or strung, or jewelry'.

As such, the pearls were dutiable at 60% ad valorem per paragraph 434 (the similitude clause) of the applicable tariff. In 1911 Mr. Citroen appealed, claiming that since the pearls were unstrung, they should be dutiable at 10% per paragraph 436 of the same tariff. In 1912 a decision was reached and they changed the duty rate from 60% to 10%, ultimately saving Mr. Citroen a fortune.

Case 3: Ford Transit Connect

The U.S. imposes relatively high duties on cargo vans at 25%, compared to the 2.5% charged on passenger vans. This tenfold difference presented a significant financial burden on Ford Motor Company, and once again, the importer got creative. The Transit Van, manufactured in Turkey and equipped with such features as second row of seats, footwells, and windows. These features would classify the Transit (as imported) as a passenger van, and subject to the more desirable 2.5% duty rate. This is where the creative part comes in.

Once the vehicle clears customs, Ford employs a third party facility to remove those features and modify the vehicles in other ways so that Ford can sell them as cargo vans , calculating that the duty savings dwarfed the cost of the additional equipment and processing. This approach worked for Ford-saving them millions in duties -until 2013, when U.S. Customs and Border Protection issued a ruling saying that the vans were actually cargo vans even though Ford imported them configured for passengers.

While the U.S. Court of International trade sided with Ford, agreeing that they had applied legitimate " tariff code review, " the U.S. Court of appeals disagreed, ruling that the tariff as written spoke to the "intended use" of vehicles rather than their form at the time of importation. As of 2019, Ford continues to appeal this ruling.

Final Thoughts

The fact is that the HTS code of database is extensive and complex. While this case shows that not all tariff code reviews can be successfully defended as legitimate, it doesn't erase the savings Ford achieved until 2013, nor the potential savings it may still achieve should the decision be

reversed by a higher court. Though caution is always best, fortune favors the bold! And of course, an expert in the field taking proper care to stay compliant with US Customs and Border Patrol regs. For more information about the Harmonized Tariff Schedule and Tariff Code Review click [here](#).