

ANALYSIS OF 9801.00.25

DUTY FREE TREATMENT OF ARTICLES

PREVIOUSLY IMPORTED.

All merchandise imported, is liable for duty on, unless exempt by law*.

One such exemption is 9801.00.25, which provides for the duty-free entry of articles previously imported, with respect to which the duty was paid upon previous importation if:

- (1) exported within three years after the date of a previous importation
- (2) re-imported without having been advanced in value or condition while abroad
- (3) re-imported for the reason that such articles do not conform to sample or specifications
- (4) re-imported by or for the account of the person who imported AND exported them from, the USA.

DOCUMENTARY REQUIREMENTS: Articles satisfying each of the above requirements are entitled to duty-free treatment, assuming compliance with the **documentary requirements** of Customs Regulations (19 CFR 10.8a). This regulation contains the same criteria found in HS# 9801.00.25. A Declaration by the person abroad who received the merchandise and who is returning the merchandise, and a declaration by the owner or importer (or consignee or agent). Each declaration must include a description of the articles, and the latter declaration must set forth information relative to the original importation of the merchandise (such as port and date of importation), entry number, and name and address of the importer at the time the duty was paid. (19 CFR 10.8a(b)). However, the district director may waive the documentary requirements if he/she is satisfied that the requirements of that subheading are met. 19 CFR 10.8a(c).

Further, if the article requires VISA and/or is under quota, the article must comply with the VISA/Quota requirements before it may enter the Customs territory of the United States. (CFR 141.2)

TANGIBLE EVIDENCE REQUIRED: In addition, in order to qualify for duty-free treatment under subheading 9801.00.25(EN), HTSUS, there must be some tangible evidence that the returned merchandise does not conform to "specification." The scope of that term, however, is not limited to physical specifications or sample comparison, but may also include failure to meet the terms of a contract. (HQ 556751)
Evidence of failure to meet specification can be evidenced by the written contract, or if oral, by the declarations required under 19 CFR 10.8a(b).

Examples of previous Customer rulings on the idea of 'failure to meet specification'.

- A foreign purchaser may receive a shipment too small to be used for its intended purposes, e.g., insufficient to establish a business or market.
- Alternatively, there may be an over-shipment of merchandise due to miscounting or duplicate shipments. In such instances, a foreign purchaser might seek to return the entire shipment for failure to conform to its quantity specification, or, return only the excess portion of the shipment.
- Customs held that alarm and security equipment which was defective due to mishandling during *delivery* (subsequent to export) (HQ 558746)
- If the written contract expressly provides for the condition of appropriate quota/visa requirements for the subject textiles and it was returned for failure to meet this condition.

Examples of events that DO NOT fulfill this idea:

- The return of goods to the United States due to the cancellation of an order after the goods were en route to the buyer is not a failure to conform to a sample or specification (HQ 558894)
- Failure of a specific product to merely meet a buyer's *expectation* is not a justifiable basis for 'failure to meet *specification*' (HQ 553027, HQ 558746).
- The failure to cancel an order in time to prevent its shipment also does not meet the requirement.
- A country's refusal to enter the merchandise for failure to produce textile visas or to satisfy other government requirements is not a failure to meet sample or specification where such a condition is not specified in the contract. (HQ 556751)