

Tariff Classification for U.S. and Canadian Importers: A Critical and Unavoidable Step in Cross-Border Shipping



Contents

Introduction	3
How Does Tariff Classification Work?	
The International Harmonized System	
The U.S. Harmonized Tariff Schedule for Imports— and Schedule B for Exports	6
Purposes of Classification Codes	
Ensuring proper classification	
Exporting from the U.S.—Schedule B Codes	
Importing to Canada—Customs Tariff System	12
Understanding Canada's Customs Tariff System	
Identifying the Correct Customs Tariff Classification Code	
Avoiding Classification Errors	17
Who is Responsible for Information Supplied to Customs?	20
Correcting an Improper Tariff Classification Filing	22
Errors in U.S. Customs Filings	
Errors in Canadian Customs Filings	
Conclusion_.....	26
References_.....	29

A large container ship is docked at a port, with a gantry crane positioned over its deck. The ship's deck is filled with numerous colorful shipping containers in shades of yellow, red, blue, and green. The ship is moving through the water, leaving a white wake. In the background, other ships and port infrastructure are visible under a clear blue sky.

Introduction

Tariff classification is the process of determining the correct tariff code for goods crossing international borders. It is an unavoidable, yet highly important step in the worldwide customs clearance process since a shipment's assigned tariff code will determine duties and eligibility for duty-free status, among other factors. Identifying the correct code though, can be difficult. It's easy to make a mistake, with an error potentially resulting in under-or-over-payment of duties, missed free trade agreement benefits, punitive penalties, and delays in the customs clearance process.

Consider the [Snuggie](#), the "blanket with sleeves" that was introduced to American consumers back in 2008.

According to [The New York Times](#), the Snuggie relied on an infomercial-based advertising strategy that quickly caught the attention of major television hosts including Jay Leno and Ellen DeGeneres. It wasn't long, the [Times](#) reported, before the brand "went viral, garnering millions of viewings on YouTube and spawning hundreds of parody commercials."

The product's manufacturer, Allstar Products Group, may have had the last laugh though, as Snuggie sales took off. By the end of 2010, just two years after its introduction, [the company estimated](#) it had sold the equivalent of one Snuggie for about every 12 residents of the United States.

But then customs officials got involved. And a debate ensued over how exactly to classify the Snuggie, which is manufactured in China, for tariff purposes. The company claimed its product was a blanket, which meant each Snuggie entering the country would be subject to an 8.5 percent tariff rate. The U.S. Customs and Border Protection (CBP) agency though, claimed the product qualified as apparel, under the “robes or priestly vestments” classification, and should be assessed a tariff rate of 14.9 percent.

The manufacturer filed a lawsuit in the U.S. Court of International Trade and in 2017, the court ruled that the Snuggie was, in fact, a blanket. Analysis by [National Public Radio](#) estimated the ruling would save the manufacturer as much as \$16 million in duty costs, based on 2013 sales activity.

As this high-profile case made clear, tariff classification can have significant implications for shippers involved in international trade. A few “lessons learned” include:

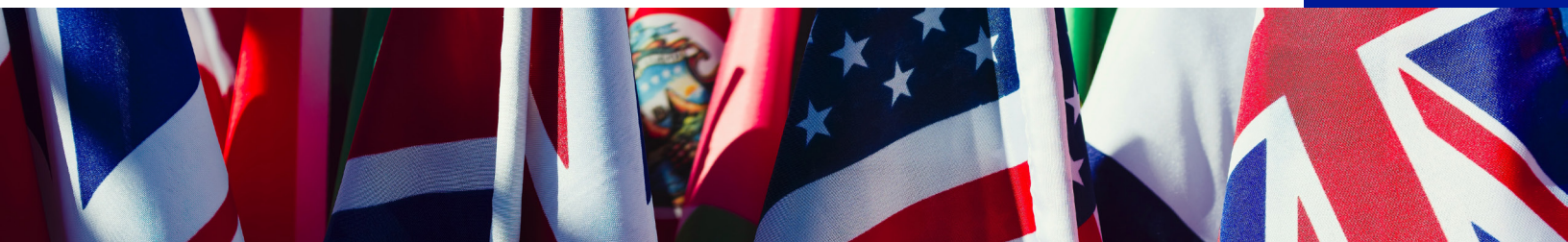
- The importance of assigning the proper tariff code to a cross-border shipment.
- The financial implications associated with tariff classification.
- That slight variations can distinguish one tariff classification code from another, but with broad tariff implications.
- Businesses do have options for challenging disputes over tariff classifications.

According to CBP, there is a single correct tariff classification for each product. And with thousands of classification codes from which to choose, it's up to each importer to identify the right one.

As the following overview will make clear, U.S. and Canadian shippers have a lot at stake in understanding the tariff classification process. Each country takes seriously the need for accurate tariff classification and may assess penalties and delay shipments when an incorrect classification occurs.

But with an understanding of the process, and guidance for selecting the correct classification, a shipper can minimize the risk of making a mistake. The following discussion will provide an overview of the process, including information about the U.S. and Canadian classification systems, and about resources that offer assistance.





How Does Tariff Classification Work?

Imagine a world in which there were no traffic laws. Where everyone pretty much did what he or she wanted, and of course, your vehicle would always have the right of way. It'd be chaotic. Now imagine the same sort of scenario in the world of global trade: Where each country had its own standards and rules and there was no compatibility among nations. Chaos, right?

Fortunately, the world's nations recognized the need for uniformity in global trading practices, and commissioned the [World Customs Organization \(WCO\)](#) to establish a set of rules and oversee their enforcement. Located in Brussels, Belgium, the WCO is the self-defined "only international organization with competence in customs matters [that] can rightly call itself the voice of the international customs community."

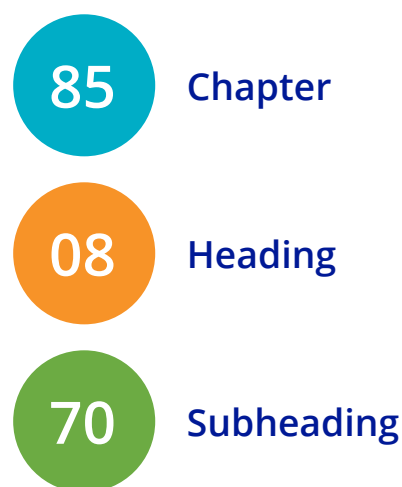
The International Harmonized System

Central to the WCO's work is development, implementation and upkeep of a uniform system of codes to identify international trade shipments. The system, known as the [Harmonized Description Commodity and Coding System](#) (Harmonized System, or HS), includes unique six-digit codes for roughly 200,000 different commodities. The system is used to account for roughly [98 per cent](#) of the world's trade merchandise.

Because of the HS, a product originating in one country will carry the same identifying code as the same product manufactured in a different country. An orange grown in Spain, for example, will be assigned the same HS code as an orange grown in the United States. Without HS, worldwide commerce would be a mishmash of disconnected codes and identifiers.

According to the WCO, the Harmonized System provides a "logical" structure within which more than 1,200 headings are grouped in 96 chapters. The 96 chapters are arranged in 21 sections. Each of the 1,200 headings is identified by a four-digit code, the first two digits of which indicate the chapter wherein the heading appears, while the latter two digits indicate the position of the heading in the chapter.

For example, the HS classification for "vacuum cleaner parts" is 850870. The code breaks down as follows:



Harmonized System codes are updated every five years, most recently in [2022](#), when 351 changes were adopted. Specific provisions were added, for example, to reflect emerging trade in electrical and electronic waste, referred to as e-waste. Accommodations were also made for unmanned aerial vehicles (UAVs), "commonly referred to as drones," the WCO advises.

Today more than 200 countries have adopted the HS, which means uniform codes are in place worldwide to help minimize disputes and set clear "rules of the road." All HS-participants utilize the same six-digit codes, but are permitted to add additional qualifying codes, as a way to capture specific data about the flow of goods crossing their borders.

A woman with curly hair, wearing a blue headband and a high-visibility yellow and red safety vest over a dark blue shirt, is focused on writing on a clipboard. She is standing in a warehouse or industrial setting with a concrete floor. In the foreground, there are several large cardboard boxes. One box has a red 'FRAGILE' label with a hand icon, and another has a shipping label with a barcode and the number '97'. The background is a plain, light-colored wall.

The U.S. Harmonized Tariff Schedule for Imports—and Schedule B for Exports

The U.S. Harmonized Tariff Schedule for Imports—and Schedule B for Exports

The United States adopted the international Harmonized System through the Omnibus Trade and Competitiveness Act of 1988. That legislation authorized the [Harmonized Tariff Schedule of the United States \(HTS\)](#), which builds upon the HS to provide a U.S.-based listing of all product classifications and tariff rates. The HTS is administered by the [International Trade Commission \(ITC\)](#).

An HTS import code is ten digits long. The first six digits, the “root” of the code, are based on the international HS, while the following four digits are unique to the United States.

“The HTS is designed so that each article falls into only one category,” the ITC explains in a web-based tutorial. “It is divided into chapters, each of which has a two digit-number. Each product category within the various chapters is designated by 4, 6, 8 or 10 digits. The 4-digit categories are called “headings,” and the 6-, 8- and 10-digit classifications are called ‘subheadings.’”

Purposes of Classification Codes

The Harmonized Tariff Schedule [classifies](#) more than 10,000 separate groups of goods based on their material composition, product name, and/or intended function. In doing so, it provides uniformity to the international trade community for goods entering the United States. But the coding schedule has other purposes as well:

- **Tariff Rates.** Every tariff code has a corresponding rate of duty. Once a tariff code has been assigned to a particular shipment, a shipper will know the duty cost for importing that particular product into a particular country. However, a business must also be aware that the HTS includes “Notes” and “Rules,” which describe special conditions that must be met to obtain a particular tariff treatment.
- **Trade Data.** Government agencies use HTS data to track the flow of goods into and out of the country. Based on this information, a country will determine import/export volume. HS data is also used to monitor global trade activity.
- **Free Trade Agreements.** Information about Free Trade Agreement benefit eligibility can be found in the “General Notes” section of the HTS. There are currently [36 General Notes](#), many of which deal with specific free trade agreement provisions. General Note 11 for example, contains information about the United States-Mexico-Canada (USMCA) Agreement. USMCA eliminates duties on all domestically produced products traveling between the U.S., Canada, and Mexico, but it contains very specific guidelines for what is considered “domestically produced.” The Chapter 11 General Note includes specific guidance across all product categories.



- **Eligibility for Importation.** Not every product is eligible for importation into the United States. Most are, but certain products are excluded, for a variety of reasons. According to insight by [Braumiller Law](#), restricted categories may include goods from embargoed countries, contraband, counterfeit goods, or products restricted by a certain government agency. A product's HTS classification can be an initial indication that a product is either banned from importation, or subject to restrictions.
- **Other Government Department (OGD) requirements.** An HTS code can also identify products that fall under the scope of a controlling "other government department" (OGD). CBP enforces import requirements on behalf of several dozen OGDs which range from the Food and Drug Administration to the Environmental Protection Agency. According to the [Braumiller](#) analysis, "the classification of an automobile in Chapter 8 of the HTS will trigger specific safety and environmental requirements. If the importer fails to satisfy these non-tariff requirements, the automobile will be denied entry into the United States."
- **Anti-Dumping and Countervailing Duties (AD/CVD).** An importer may also use a tariff classification code to gain a general—not definitive—understanding of potential liability for anti-dumping or countervailing duties. The [International Trade Administration](#) maintains a listing of all current AD/CVD cases that identifies affected goods by tariff classification code.



Ensuring Proper Classification

By CBP's own admission, determining a product's correct classification can be a highly confusing endeavor. Differences between classification categories can be slight, but can trigger vastly different tariff obligations. Great care must be exercised, and an importer must avail itself of a number of tools designed to facilitate the process:

- **HTS General Notes.** The Harmonized Tariff System includes detailed notes and guidance called "[General Rules of Interpretation](#)," that support each HTS chapter. One industry expert, [John Goodrich](#), refers to the Rules of Interpretation as the "instructions" for determining the correct classification code. "You search the HTS until you find its specific classification," Goodrich wrote. "You can also eliminate all of the other classifications until you are left with nothing but the [correct] classification."
- **Online "tariff lookup tools" are available for both U.S.** importers and exporters. The International Trade Commission offers an [online database](#) for importers, and the U.S. Census Bureau maintains a [Schedule B lookup tool](#) through which Schedule B export codes can be identified. In addition, the U.S. International Trade Administration provides an online resource, the [FTA Tariff Tool](#), that assists U.S. businesses interested in exporting to Canada, Mexico, and all other countries with which the U.S. has a free trade agreement in place.

Keep in mind though, a database match does not guarantee a correct classification. As the ITC notes: "Consider the classification of a kitchen paring knife with a ceramic blade. Either a word search or casual browsing through the Tariff Schedule might lead to heading 8211 ("Knives with cutting blades, serrated or not,") However, Chapter 82 Note 1 excludes articles with a blade of ceramic from Chapter 82. The proper classification is in Chapter 69 as an article in ceramics."

There may also be circumstances in which a product might seem to fall within the confines of multiple categories. Screws for example, could fall under heading 7318, "screws, bolts, nuts," but also under "parts and accessories of motor vehicles," which is heading 8708. A general rule of thumb is to choose the heading that is most specific, that according to the ITC, describes a product's "essential character." In this example, heading 7318 would be most appropriate.





Purolator officially opened its new 443,084-sq-ft National Hub – the largest and most technologically advanced sortation facility in its network. Strategically located near several major highways in Toronto, the National Hub triples the capacity of Purolator’s former Ontario sortation facility and increases its network capabilities through new world-class automation and advanced scanning and sorting technology.

[Learn more here](#)

- **Advance Rulings.** To eliminate uncertainty about a product’s tariff classification, a business may request a binding [“advance ruling”](#) from CBP. CBP’s website states: “The U.S. Customs Service strongly urges all parties engaged in transactions relating to the importation of goods into the United States to obtain binding advice from the U.S. Customs Service prior to undertaking that transaction.”

Written guidance from CBP generally comes in the form of a “ruling letter” that is issued following careful review of a request by an interested party, usually an importer or exporter. Any request for an advance ruling must be in writing, and [must include](#) several pieces of information including:

- A full and complete description of the good in its imported condition.
- Component materials.
- The good’s principal use in the United States.
- The commercial, common, or technical designation.
- Illustrative literature, sketches, digital photographs, flow charts, etc.
- Chemical analysis, flow charts, Chemical Abstract Registry Number, etc.
- Any special invoicing requirements.
- Any other information that may assist in the classification of the article.

Advance rulings are binding, meaning that an importer who requests, and is provided with a ruling, is obligated to its terms. This means then, that if an importer does not agree with a tariff classification issued by CBP, the information must still be included on all customs documentation. In exchange, importers are assured that shipments will not be subject to scrutiny, and possible delays, upon arrival at the border.

- **Advance ruling database.** U.S. importers can avoid a binding advance ruling by taking advantage of CBP’s searchable database of prior advance rulings. The [Customs Ruling Online Search System \(CROSS\)](#) allows importers to review previous decisions about imports of similar products. This allows insight into CBP’s historical treatment of similar goods, and offers guidance for determining the correct code for current shipments.

Exporting from the U.S.— Schedule B Codes

Exports from the United States must also feature a 10-digit code, but that code must come from the U.S. Census Bureau's ["Schedule B"](#) listing of export commodity codes. According to the Census Bureau, export codes are ["used to track](#) the amount of trade goods that are exported from the U.S.," with information captured based on "the amount of exports by country, quantity, and dollar amount."

Schedule B codes are rooted in the HTS but are intended to capture different information and therefore are not always identical. Most times though, an HTS code can be used as an export code. As the [Census Bureau explains](#):

- The first six digits of an HTS and Schedule B number will always be the same for a particular product. A key difference is the number of codes associated with each classification system. For HTS import codes there are more than 19,000 codes, compared to about 9,000 Schedule B codes. This means that multiple HTS numbers can correlate to a single Schedule B number.
- The Census Bureau cites brass-wind instruments as an example of a product for which an HTS code can be used as an export code.
- The first eight digits—9205.10.00—are the same for both HTS and Schedule B numbers.
- But two options—.40 and .80 are used to further distinguish brass instruments HTS numbers, with .40 used for products valued at "not more than \$10 each," and .80 used for products "valued over \$10 each."
- In Schedule B though, only one code is available for brass-wind instruments.
- Therefore, it is possible to convert the HTS codes for use as a Schedule B number.
- The process works for most—but not all—products. Aircraft turbines, for example, are representative of products in which more detailed information is required for exports than for imports. For all products in this category, it is not possible to use a HTS good in lieu of a Schedule B code.

To facilitate the process, the Census Bureau maintains a listing of HTS codes that are [not valid for export purposes](#) on its website. The agency also maintains a ["Schedule B Search Engine"](#) to help exporters identify the proper Schedule B code.





Importing to Canada— Customs Tariff System



Importing to Canada— Customs Tariff System

All products arriving at the Canadian border must have an assigned 10-digit tariff classification code. Canada's tariff classification system is called the [Customs Tariff](#) and, like the U.S., the system is rooted in the international Harmonized System.

Also similar to the U.S, tariff classification serves multiple purposes in Canada's internal processes:

1. The correct classification identifies the appropriate amount of duties and taxes.
2. The system serves as a valuable source of import statistics.
3. The system determines eligibility for duty-free status based on the USMCA and other Canadian free trade agreements.
4. The system determines a product's eligibility for import, and identifies products listed on Canada's [import control list](#).

In addition, the Canadian government lists several [benefits of tariff classification](#), which include:

- Offers measures that relieve duties and foster economic development in Canada.
- Helps businesses adjust to competitive pressures.
- Reduces duties for Canada's trading partners and gives Canadian businesses better access to international markets.
- Protects the health and safety of Canadians.
- Gives Canada the right to impose emergency surtaxes on imports that harm domestic producers.
- Allows Canada to assert its rights under trade agreements with other countries.

Understanding Canada's Customs Tariff System

Customs Tariff codes consist of 10 digits, with the first six digits rooted in the international HS, and the final four unique to Canada. As detailed by the Canada Border Services Agency (CBSA), classification codes [break down as follows](#):

Each classification number consists of core parts that include:

Heading

Sub-heading

Tariff Item

Statistical Suffix

Headings (first four digits)

Headings include categories that have been grouped together. Headings are based on the international HS classification system.

- The first two digits indicate the chapter in which the heading is located.
- The last two digits indicate the position of the heading within that chapter.

Example:

- Customs Tariff Code beginning 01.03 refers to:
 - 01—Chapter 1—Live Animals.
 - 03—Third Heading of Chapter 1—Live Swine.

Subheadings (digits 5 and 6)

- Subheadings further divide products to provide more details about specific qualities.
- Subheadings are based on the international HS classification system.

An example includes: Tariff classification number: 9507.90.10.00	
Breakdown	
9507	Heading (based on international HS)
9507.90	Sub-heading (based on international HS)
9507.90.10	Tariff Item (Canadian)
9507.90.10.00	Statistical Suffix (Canadian)

Tariff item	Description of goods
08.04	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried.
0804.10.00	Dates
0804.20.00	Figs
0804.30.00	Pineapples
0804.40.00	Avocados
0804.50.00	Guavas, mangoes and mangosteens

Tariff Items (digits 7 and 8)

Finance Canada added the tariff item coding as a way to capture additional details about goods entering Canada. These subdivisions serve to protect Canadian industries and economic interests.

Tariff item	Description of goods	Tariff item
96.07	Slide fasteners and parts thereof. Slide fasteners	
9607.11	Fitted with chain scoops of base metal	
9607.11.10.00	Air-tight and Watertight	Free
9607.11.90.00	Other	10%

Tariff Items (digits 7 and 8)

Finance Canada added the tariff item coding as a way to capture additional details about goods entering Canada. These subdivisions serve to protect Canadian industries and economic interests.

Tariff item	Description of goods
8903.91.00	Sailboats, with or without auxiliary motor
With auxiliary motor:	
8903.91.00.11	of a length not exceeding 9.2 meters
8903.91.00.12	of a length exceeding 9.2 meters
Without auxiliary motor:	
8903.91.00.21	of a length not exceeding 4 meters
8903.91.00.22	of a length exceeding 4 meters but not exceeding 6.5 meters

As CBSA explains: "The Canadian Customs Tariff distinguishes between sailboats with or without an auxiliary motor. But this did not provide enough details for statistical purposes. As a result, tariff item 8903.91.00 was further divided to include the length of a sailboat."

Identifying the Correct Customs Tariff Classification Code

Similar to U.S. Customs, Canadian officials assert that there is a single correct tariff classification number for each product. And, it is the responsibility of each importer to identify the correct term. Tools are available to assist in the process that include:

Online Tariff Lookup Tools.

Importers to Canada can take advantage of various online tools designed to help identify the correct Customs Tariff code. Examples include:

- Purolator Trade Assistant. This [tool](#), offered by Canada's leading provider of courier and integrated freight solutions, allows shippers to quickly identify a tariff classification code after providing requested product information. The system evaluates the supplied information, and seamlessly provides the likely Customs Tariff Code.
- Canada Tariff Finder. Another option is the online [Canada Tariff Finder](#), which provides classification information and tariff amounts. This tool allows importers and exporters to identify information for all countries with which Canada has a free trade agreement.

- FTA Tariff Tool. The U.S. International Trade Administration provides an online resource, the [FTA Tariff Tool](#), that assists U.S. businesses interested in exporting to Canada, Mexico, and all other countries with which the U.S. has a free trade agreement in place.

Important to note though, results generated by online tools are intended for guidance purposes only, rather than as a firm recommendation of a correct classification code. Each importer is ultimately responsible for ensuring the accuracy of any classification code listed on documentation provided to customs officials.

Advance rulings.

An importer may ask CBSA to determine a product's correct classification code prior to arrival at the border. These determinations are called [advance rulings](#) and can help eliminate any uncertainty or possible disputes. However, advance rulings are binding, meaning a shipper commits to CBSA's determination, and is precluded from appealing or questioning the determination.

Advance ruling database.

CBSA maintains a database of [previously-issued advance rulings](#). A shipper can consult this listing to determine if a ruling has already been issued for a similar product. This allows the shipper to obtain good guidance, but without giving up the right to appeal, should CBSA not agree with its tariff classification decision.



CUSTOMS



Avoiding Common Classification Errors



Avoiding Common Classification Errors

As this discussion has made clear, whether you're shipping to Canada or the United States, tariff classification can be a confusing process. It's not surprising then, that on either side of the border, misclassification is a top reason for custom-related processing delays.

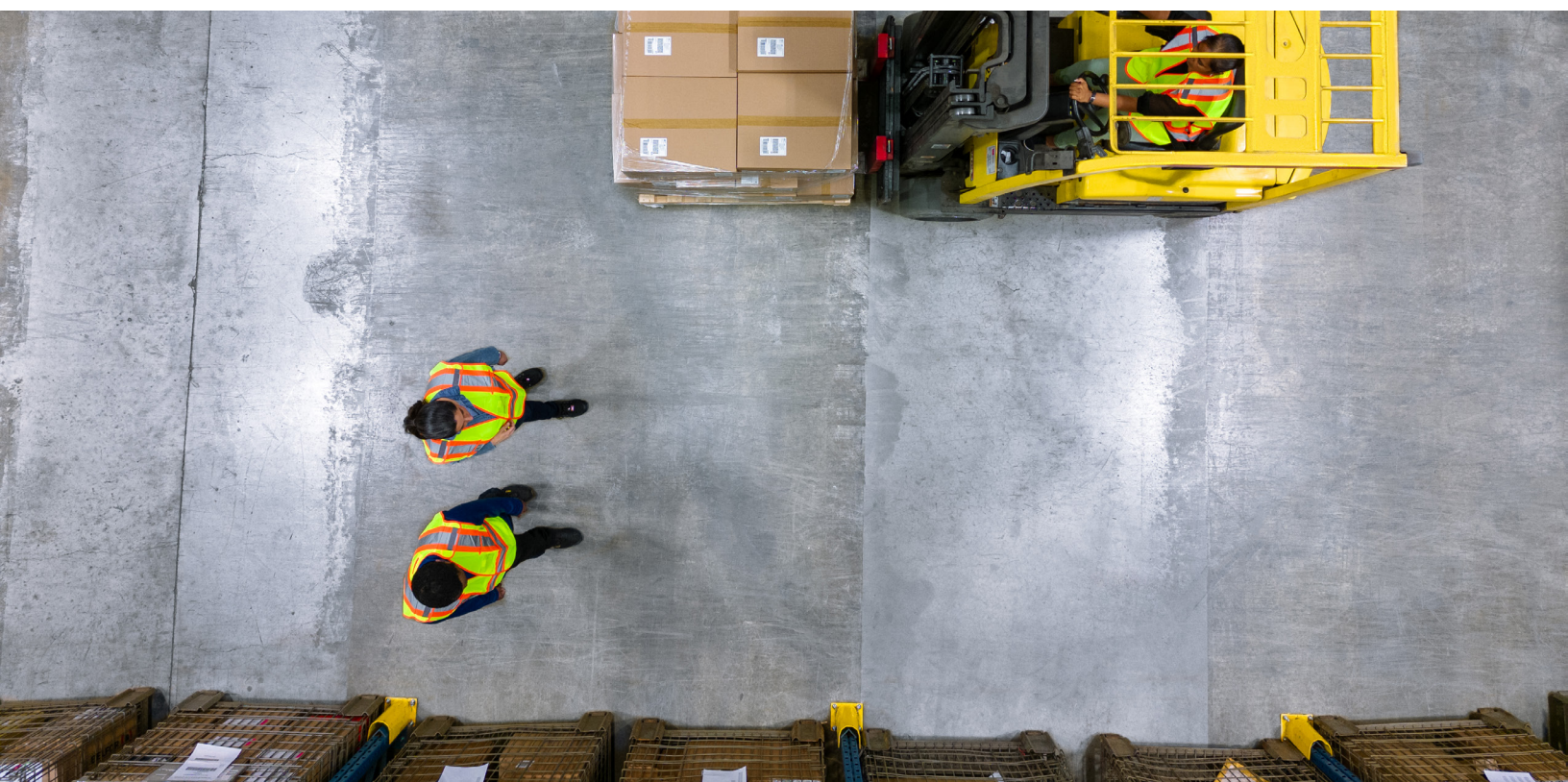
Misclassification is also a top reason for customs-imposed fines and penalties.

A few years ago, a Canadian government [audit](#) found 20 percent of products arriving at its border were misclassified, at a cost to the government of \$21 million in duty underpayments. In some instances, misclassifications are intentional, as shippers deliberately—and illegally—attempt to achieve a preferred tariff rate. Most times though, misclassifications are unintentional—usually the result of a misinterpretation or clerical error. Several reasons contribute to the high incidence of misclassified shipments:

- **Classification codes are complicated, and difficult to understand.** A cursory look at either the U.S. Harmonized Tariff Schedule or Canada's Customs Tariff reveals that the systems are not for the faint of heart! The language is difficult to follow, and at times can seem contradictory. Products are not defined in everyday terminology. As one U.S. customs official wrote in the [World Customs Journal](#), "the instruments were designed for customs officers and other experts."
- **Tariff Classifications can be open to interpretation.** Perhaps not surprisingly, importers looking to minimize tariff obligations sometimes have a difference of opinion with border agents, with regard to a product's tariff code assignment. When that happens, an importer can challenge a CBSA or CBP assessment, and seek a legally binding ruling, as discussed previously.

- **Tariff Classifications can change with little notification.** Governments regularly update their classification systems, and the onus is on an importer to be aware of any changes that may affect product classifications. The International Trade Commission issues an updated HTS each year, but [supplemental](#) revisions are released throughout the year. Canada's CBSA also updates its Customs Tariff on an annual basis, with additional revisions when warranted. While both CBSA and the ITC issue notices to the trade community when system updates are made, a shipper must be sure to use the most current information when classifying a shipment.
- **Improper training.** While many businesses outsource their compliance management processes to a third party, not every third party dedicates the proper resources to the complicated task of product classification. A World Customs Journal [report](#) on tariff classification found "many third party service providers treat HS classification as a clerical or data entry function rather than as one of knowledge management." As a result, many of the people tasked with code assignment do not have the proper training or understanding of the classification process, or the necessary tools at their disposal.
- **Limitations of electronic systems and nuances of the tariff system.** As much as online tools have been helpful in the classification process, they are not foolproof. This is especially true for products that may have complex characteristics that do not translate to computerized classification systems, which assign codes based on more generalized assumptions about product attributes.
 - Further, the World Customs Journal cites the "pervasive use of keyword-based search tools," which can generate long lists of possible codes, but are incapable of applying HS classification rules, or special rules and notes. For [example](#), a keyword search for a tariff classification for "paper shredder" resulted in hundreds of suggested codes—none of which turned out to be correct.

Whatever the reason, a misclassified shipment runs the risk of missing out on trade benefits to which it is legally entitled, of over-or-under-paying duties, and the risk of incurring fines and legal repercuss





Who is Responsible
for Information Supplied
to Customs?



Who is Responsible for Information Supplied to Customs?

Many businesses choose to enlist a customs broker to manage the customs process on their behalf. A customs broker licensed by either [CBP](#) or [CBSA](#) will have extensive knowledge of all customs requirements and protocols, and actual hands-on experience successfully managing the clearance process. Both CBP and CBSA maintain listings of licensed brokers, who are authorized to transact business on an importer's behalf.

As CBP notes, customs brokers "take the burden of filling out paperwork and obtaining a CBP bond off of the importer's hands."

What they don't do, however, is assume responsibility. As both CBP and CBSA make clear, the importer remains liable for the accuracy of all information provided to customs, and for all duties and fees owed.

"The importer is always ultimately responsible for knowing CBP requirements and for ensuring their importation complies with all federal rules and regulations," CBP advises, "but using a customs broker can save you from making costly mistakes."

This means then, that as helpful as a customs broker can be in guiding a business through the process, an importer must understand the information provided to customs on its behalf. An importer should review all documentation, and be sure to question anything that seems amiss before submitting to customs.



Correcting an Improper Tariff Classification Filing

Correcting an Improper Tariff Classification Filing

Should an importer realize a mistake has been made in information reported to CBP or CBSA, the party can voluntarily disclose the information. By voluntarily reporting the error, an importer can significantly reduce the amount of penalties that would have been imposed had customs officials discovered the mistake and initiated an investigation.

Errors in U.S. Customs Filings

With regard to U.S. Customs and Border Protection, importers are expected to exercise “reasonable care” in ensuring that information provided to CBP is accurate and thorough. The “reasonable care” standard, according to analysis by international trade experts at [Braumiller Law](#), obligates the importer “to exercise reasonable care with import transactions.” Examples of reasonable care include consultation with a customs broker, and documented good faith efforts to provide accurate information.

When a mistake occurs, one of CBP’s first considerations will be whether or not the importer meets the “reasonable care” standard. If an importer is determined to have been negligent in filing incorrect information, CBP will likely impose penalties. But a determination that reasonable care was exercised can mitigate the severity of CBP’s response. The [Braumiller](#) analysis cites as an example a court case, [United States v. Horizon Products International, Inc.](#), in which the government sought to impose penalties on the company for ‘negligently’ importing a piece of plywood as duty free “when in fact it was subject to an 8% duty rate.”

The government claimed Horizon had acted negligently and sought to impose a fine amounting to \$324,540. In its defense, Horizon admitted to the mistake, but claimed it had exercised reasonable care by consulting with a customs broker. In its [ruling](#), the court found no evidence “as to any steps taken by Horizon on its own or by a customs broker acting on Horizon’s behalf, to ascertain the correct classification,” even after the classification mistake had become known. This, along with other mitigating factors [resulted in a penalty](#) of \$162,270, plus interest.

As this example makes clear, importers should prioritize the need to exercise “reasonable care,” and to carefully document all steps taken to ensure that “good faith” is exercised in providing documentation and information.



Disclosure

Should an importer realize it has failed to exercise “reasonable care” in reporting information to CBP, and that failure has resulted in errors on entry documentation, the company can voluntarily disclose the information. Such errors are reported to CBP through submission of a “prior disclosure,” as outlined by federal statute.

According to the [George R. Tuttle](#) international law firm, a properly prepared and timely filed prior disclosure protects the importer, and “can significantly reduce the amount of penalties that would have been imposed had customs initiated an administrative penalty action.”

[CBP](#) advises that a properly filed prior disclosure requires an importer provide a written report with the following information:

- An explanation of the circumstances of the violation, including the nature of the error or incorrect information submitted,
- The identity of the entries or period to which the disclosure applies.
- The correct information that should have been included in the original documentation.
- Payment of all duties owed.

Timing is critically important in submitting a prior disclosure. The prior disclosure must be submitted while the entry is still open—before CBP discovers the error and initiates its own investigation. That way, the disclosure is considered “voluntary,” which is taken into consideration in assessing penalties.

As CBP explains, a prior disclosure should be filed as soon as possible, once an error is identified. “If you delay submission of a prior disclosure, you run the risk that CBP may discover the violation, commence a formal investigation, and notify you of the commencement of a formal investigation, thereby cutting off your right to make a prior disclosure.”

Post Summary Corrections (PSCs)

Customs and Border Protection has mandated use of a new “Single Window Initiative” which now serves as the centralized entry point for submitting trade-related documentation to CBP and associated “other government departments” (OGDs). Going forward, all information and documentation must be electronically submitted through CBP’s [Automated Commercial Environment \(ACE\)](#), which is the technology platform that enables the SWI. Thus, the import process has changed from a paper-based system to an electronic system.

And with that change, came the need for a mechanism to allow members of the trade community to correct or amend information submitted via ACE. That mechanism, is the [Post Summary Correction \(PSC\)](#), and it replaced the Post Entry Amendment (PEA) process, which had been in place to handle hardcopy entry filings.

Through the PSC process, an importer can correct or amend information supplied to CBP after documentation has been filed, but before the entry has been liquidated. PSCs can be used for a variety of purposes including correction of errors that resulted in overpayments or underpayments of duties, or to correct inadvertent misclassifications.

A PSC is essentially a new entry summary that replaces an initial entry. PSCs [can be submitted](#) for entries that have been electronically filed and “accepted” by ACE. PSCs can be submitted within 300 days from the date of entry and up to 15 days of the scheduled liquidation date.

Importers are legally required to correct erroneous information submitted to CBP. Filing a PSC provides a fast and relatively simple venue for meeting that obligation.

Protests

CBP will make the final determination with regard to the appropriate tariff classification for a particular shipment.

CBP could reject a tariff classification assigned by an importer, for example, significantly adding to the amount of duties owed. Or, CBP could decide that an importer acted with negligence in making that improper tariff classification and refer the case for possible legal action.

Should CBP make a decision with which an importer disagrees, and the shipment in question has already been liquidated, the importer can seek recourse through an administrative protest.

According to [CBP](#), within 180 days of liquidation, the importer or their broker or attorney can contest a CBP decision by filing a protest under section 514 of the Tariff Act of 1930. Protests are generally filed on [CB Form 19](#), which includes specific instructions. Protests can also be filed electronically in the [ACE Protest Module](#) or by paper submission at any port of entry.

Errors in Canadian. Customs Filings

Mistakes in filings to CBSA fall under the agency's [Reassessment Policy](#), which identifies the process for correcting erroneous information. According to CBSA, in accordance with Canadian law, an importer is required to "correct a declaration of origin, tariff classification, or value for duty within 90 days after having reason to believe that the declaration is incorrect."

But what does "[reason to believe](#)" mean?

According to CBSA, "reason to believe occurs whenever an importer has specific information regarding the origin, tariff classification, value for duty, or diversion of imported goods that gives the CBSA reason to believe that a declaration is incorrect."

CBSA advises importers that, if an error is discovered before a shipment has been processed, a "self-adjustment" can be made using CBSA Form B2 Adjustment Request. The form must be completed and returned to CBSA within the 90-day timeframe. This "self-adjustment" process is for changes that are revenue neutral, or result in an importer owing money to the government.

However, analysis by Farrow customs brokerage notes, if an importer had reason to believe that information was incorrect and did not submit revised information within 90 days, penalties will be assessed in accordance with the [Administrative Monetary Penalty System \(AMPS\)](#).

Important to note, for both U.S. and Canadian importers, voluntary disclosure of erroneous information is always superior to having customs officials discover the error. By self-reporting, and self-correcting, an importer can usually contain the fallout, and in some instances minimize the amount of penalties assessed, and the likelihood of being targeted for a customs audit.





Conclusion

Conclusion

If North American shippers had any doubt about the seriousness with which customs officials treat tariff classification, current activity with regard to certain products arriving from China should eliminate any questions.

As reported by [GateHouse Media](#), customs agents have noticed “an uptick in the potential misclassification of product codes” as a way to avoid paying higher tariffs currently in effect on a range of Chinese products. Companies are taking advantage of the similarities in tariff classification codes to try and “fool” customs agents by listing a code that does not trigger a high tariff rate, instead of the correct code that does come with a higher rate.

Analysis by [GateHouse Media](#) confirmed that imports of lower-tariff products increased, while those of products subject to higher tariffs decreased. “It just shows you how similar these products are and how hard it is to distinguish between one and the other,” a GateHouse analyst noted.

The practice violates international trade practices, of course, and anyone found to have intentionally used an incorrect classification code faces punitive fines and penalties. One freight broker in Shenzhen, China, for example, noted that a client caught trying to avoid higher tariff rates was assessed more in fines and fees than it would have saved had the ploy been successful. The company, he said, ultimately went bankrupt.

Not surprisingly, such attempts to misclassify shipments has caught the attention of customs officials. The [Gatehouse Media](#) report notes that penalties, shipment seizures and investigations have all increased in recent years. Anything that appears suspicious, one customs official said, “CBP is going to stop it and take a look at it.”

While the vast majority of traders are focused on providing accurate and complete information to customs, this example illustrates the complexity of tariff classification, and how easy it is to make a mistake. But given the consequences of an improper classification—overpayment of duties, missed trade benefits, possible fines, shipment delays—it’s worth investing the time to ensure that tariff classifications are accurate.





The Canadian customs
process is a lot more
manageable with
Purolator on your team.

[Contact us](#)



21419405

Resources

Resources

1. [“Amendments effective from 1 January 2022.”](#) World Customs Organization, accessed February 28, 2023.
2. Brock, Jan, [“AMPS Under the Microscope: The Continual Evolution.”](#) Pacific Customs Brokers, November 23, 2022.
3. Cherniak, Cyndee Todgham, [“What Every Importer Should Know About Canada’s Customs Duty Reassessment Policy.”](#) Canada-U.S. Blog, January 12, 2016.
4. [“Customs Tariff 2022.”](#) Canada Border Services Agency, February 20, 2023.
5. Goodrich, John, [“When Classifying Parts Using HTS Codes, Read the Notes!”](#) Shipping Solutions, September 10, 2018.
6. [“Guide to tariff classification for Canadian imports: The origins of tariff classification.”](#) Canada Border Services Agency, January 24, 2022.
7. [“Harmonized Tariff Schedule of the United States HTS.”](#) U.S. International Trade Commission, accessed February 28, 2023.
8. Horvath, Jennifer, [“The Reasonable Care Standard.”](#) Braumiller Law Group, Dallas, TX, accessed March 1, 2023.
9. Kappler, Holm, [“Reversing the trend: low cost and low risk methods for assuring proper duty payments.”](#) World Customs Journal, Volume 5, Number 2, September 2011.
10. Malone, Kenny, [“How the Case of the “Snuggie” Impacts Tariffs and Trade.”](#) National Public Radio, March 30, 2017.
11. Martin, Taylor, [“Exporting with Import Classification Numbers.”](#) U.S. Census Bureau, July 9, 2018.
12. Newman, Andrew Adam, [“Lots of Laughs, and Even More Sales.”](#) *The New York Times*, December 21, 2010.
13. [“Post Summary Corrections.”](#) U.S. Customs and Border Protection, November 21, 2022.
14. [“Prior Disclosure.”](#) Law Offices of George Tuttle, accessed March 3, 2023.
15. Smiszek, Mike, [“The Multi-Purpose Role of the U.S. Harmonized Tariff Schedule.”](#) Braumiller Consulting Group, December 12, 2022.
16. [“The Blanket You Wear’ Importer Challenges Tariff Classification.”](#) Bloomberg Law, January 24, 2022.
17. [“United States v. Horizon Products International,”](#) Inc., 229 F. Supp. 3d 1370, United States Court of International Trade, Court No. 14-00104; June 7, 2017.
18. [“What Importers Must Know About Reason to Believe.”](#) Farrow Customs Agents, July 5, 2018.
19. [“What is the Harmonized System \(HS\)?”](#) World Customs Organization, accessed February 28, 2023.
20. Zhang, Dian, [“Analysis suggests companies might be miscoding to avoid tariffs.”](#) GateHouse Media, as appeared in the Wilmington, NC StarNews Online, September 1, 2019.