



FedEx Regulatory Alerts & Updates

Regulatory Alert: Foreign Goods Returned under Chapter 98 of US-HTS

August 23, 2017

BACKGROUND DETAILS

On April 25, 2016, a change to the Harmonized Tariff Schedule of the United States (HTSUS) Chapter 98 – U.S. goods returned – went into effect. Specifically, section 904(b) of the Trade Facilitation and Enforcement Act of 2015, "Modification of Provisions Relating to Returned Property," amended HTSUS subheading 9801.00.10 to read as follows:

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.

While the expansion of subheading 9801.00.10 includes all products exported from and returned to the United States without having been advanced in value or improved in condition, regardless of country of origin, foreign origin products may only be claimed when returned within 3 years of export from the U.S.

WHAT HAS CHANGED?

U.S. Customs and Border Protection (CBP) issued a Cargo Systems Messaging Service (CSMS) message on January 31, 2017, which reiterated the specific clearance requirements for both U.S. and Foreign Goods Returned (FGR) to the USA.

In those instances, where FedEx Trade Networks (FTN) acts as Importer of Record (IOR) for purposes of U.S. import entry at any U.S. FedEx Hub, the following documentation is required in order for a shipment valued above \$800.00 USD to be entered as FGR:

1. A completed Foreign Shipper's Declaration of Foreign Goods Returned

Form is located here: <https://www.fedex.com/gtm/pdf/USF079.pdf>

2. A completed Importer's Declaration of Foreign Goods Returned

Form is located here: <https://www.fedex.com/gtm/pdf/USF080.pdf>

3. A copy of the export commercial invoice and air waybill or a foreign customs document showing that the same goods were exported from the United States and entered into a foreign country within 3 years of the date of re-importation into the United States
4. The commercial invoice should contain a detailed description of the merchandise in order to determine the correct 9801 HTS and any other U.S. federal agency requirements.

The FGR declarations and proof of original export are NOT required for U.S. import clearance only in these two specific scenarios:

- The shipment value is \$800 USD or less (current de minimis; a “Section 321” entry) and does NOT require another U.S. federal government agency clearance (Ex. – Food and Drug Administration (FDA), Toxic Substance Control Act (TSCA), Animal and Plant Health Inspection Service (APHIS), etc.)
- The goods are delivered directly to a division of the U.S. Military and are being cleared as a military non-entry release under a C.F.R. § 10.102(b)(2) Declaration.

U.S. import clearance scenarios when this does not apply:

In those instances, where FTN does NOT act as the IOR for purposes of U.S. import entry, the documentation requirements cited above for FGR do not necessarily apply. CBP at any port of entry could request them for any given shipment, but the party responsible for providing the documents will be the IOR.

Examples of when FedEx Trade Networks is **not** the IOR include:

- Some Customized Processing Account (CPA) customers who have arranged to be the IOR for their import shipments into the U.S.
- Customers that choose to utilize the Broker Select Option (BSO) service for their import shipment.

Please note the entry requirements for FGR for Military, CPA and BSO customers are dependent upon the discretion of the IOR and/or CBP at the particular U.S. port of entry.

Q & A ON FGR SHIPMENTS INTO THE U.S.

1. **Who can legally complete the Foreign Shipper’s Declaration of FGR and the Importer’s Declaration of FGR?**
 - a. Foreign Shipper Declaration – the foreign shipper
 - b. Importer Declaration - the owner, importer, consignee, or agent having knowledge of the facts regarding the claim for free entry
2. **What are the qualifications that must be met to use 9801.00.10 for foreign made articles?**

As per the 2017 HTSUS subheading 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.

3. **What if my shipment contains BOTH U.S. articles and foreign articles commingled in a shipment; are ALL four documents required?**

Yes, since the U.S. and foreign made articles are combined into one shipment. The declarations would need to indicate which articles on the invoice that it covers. The commercial invoice must clearly show the country of manufacture of all items.

4. **Does the \$800 de minimis still apply for FGR shipments?**

Yes, it does. This means that the documents for FGR are NOT required if:

- a. The shipment value is \$800USD or less (current U.S. de minimis; known as a "Section 321" entry).
- b. There are no other U.S. Government Agency requirements (FDA, APHIS, TSCA, etc.).

5. **Is the Declaration of Free Entry of Returned American Products (CF 3311) an option for FGR shipments?**

No, the CF 3311 does not apply to foreign origin articles.

6. **Does Anchorage (ANC) CBP also want the Manufacturer Affidavit for FGR shipments?**

No.

Timeline for Implementation: Immediate

References:

19 CFR 10.1 (Domestic Products; requirements on entry):

http://www.ecfr.gov/cgi-bin/text-idx?SID=c9986ff31d5ef9b7c9b19026e55e782a&mc=true&node=se19.1.10_11&rgn=div8

Cargo Systems Messaging Service (CSMS) # 17-000046:

https://apps.cbp.gov/csms/viewmssg.asp?Recid=22450&page=&srch_argv=&srchtype=&btype=&sortby=&sby

Customs Reauthorization Bill (see section 904):

<https://www.congress.gov/bill/114th-congress/house-bill/644/text>