



CHINA SECTION 301 FTZ MANAGEMENT ISSUES **September 7, 2019**

CHINA SECTION 301 LIST 3 DUTY RATE CHANGES. We have identified a potential error in the USTR and CBP management of China Section 301 List 3 duty increases which went into effect May 10, 2019. The legal structure that was implemented to manage initial 10% duty rates and increased 25% duty rates in order that Privileged Foreign (PF) status is preserved and provides management control, was not implemented correctly by USTR and CBP Headquarters for HTS Chapter 9903.8803 and 9903.8804. The duty rate was initially 10% as of September 24, 2018 and changed to 25% effective May 10, 2019. The methodology published by Customs Headquarters in an FAQ, and confirmed by the United States Trade Representative in a Federal Register Notice, is that the date the merchandise is placed in Privileged Foreign (PF) status freezes the effective Chapter 99 duty rate.

Unfortunately, when USTR issued the Notice that raised the Chapter 99 Section 301 Tranche 3 duty to 25%, the exact same HTS Chapter 99 numbers 9903.8803 and 9903.8804 that used as of 9/24/2018 for the 10% duty rate were used for the 25% rate. As a result, it is our belief that merchandise placed in Privileged Foreign (PF) status for Tranche 3 on or before May 9, 2019 at 10% when removed from the zone and subject to Customs entry on May 10, 2019 and later may have paid a 25% duty rate as the ACE control is only by HTS Chapter 99 number. This significant 15% duty variance should not have been paid by FTZ firms. Clients should carefully review their China Section 301 merchandise on Customs entries to confirm accurate duty rate reporting. We have contacted Customs Headquarters to discuss means of correcting the errors that may have occurred. Please contact Marshall Miller or Brian Murphy to discuss alternative means of securing the necessary refunds from CBP Headquarters.

WEEKLY CUSTOMS ENTRIES. The significant increase in merchandise being admitted to FTZ's in Privileged Foreign (PF) status has had an unforeseen consequence with respect to Customs entries. The CBP ACE methodology is that for the same HTS/vendor/country/etc., each Privileged Foreign (PF) admission date for merchandise entered must be separately listed by a line item on the Customs entry. This materially increases the number of line items for weekly Customs entries. As a result, it may be necessary for FTZ firms to file more than one weekly Customs entry. Contact Linda King and Lori Hessler to discuss means of structuring this management process. We have contacted Customs Headquarters and have suggested a simplification methodology.

AUDIT VERIFICATION OF MERCHANDISE STATUS CHANGE FROM NPF TO PF STATUS. We encourage all clients to begin to create a detailed “reasonable care” memorandum that provides a clear audit trail of all merchandise changed from Non-Privileged Foreign (NPF) to Privileged Foreign (PF) status for China Section 301 transactions.

Please contact [Marshall Miller](#), [Brian Murphy](#), [Linda King](#), or [Sean Murray](#), with questions or for assistance with preparing comments.

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