

MARK K. NEVILLE, JR.



Trade Court: Importers Are Free to Hire Latter-Day Michelangelos

Some may see the practice of law as a sterile exercise and others may see it, in all of its many guises, including customs laws, as an even more humdrum endeavor. However, I can almost always find a puzzling intellectual challenge or a disarming literary conceit in the precincts of trade and customs law. Sometimes this is of my own making, but there are times when I stumble on a turn of phrase or an argument for which no invention of my own is required. This article

gives me a chance to share one, but first let us set the stage.

U.S. Goods Returned

This column has covered the U.S. goods returned (USGR) provisions in the customs laws.¹ These are the tariff terms in chapter 98 of the Harmonized Tariff Schedule of the United States (HTSUS) that allow duty relief when U.S.-origin goods are imported after having been sent

abroad for processing or qualifying for one type of duty relief or another. Our foreign friends based abroad will recognize these terms as those that provide for “outward processing” relief.²

While there are other permitted operations, such as foreign repairs, the USGR operation that most often comes to mind is the “assembly abroad” allowance for partial duty relief. This story, and the Michelangelo reference, arise in that assembly context.

Assembly Abroad

Congress has allowed partial duty relief for imported

goods that have been assembled abroad since 1956. In fact, item no. 806.20 under the Tariff Schedules of the United States, the forerunner of the present HTSUS provision, was the driving force for the Mexican *maquiladora* program in the pre-NAFTA days (before 1993). Indeed, the tremendous number of rulings and court cases on the assembly-abroad USGR program from the late 1980s and early 1990s predate the rise of NAFTA and the spate of other extant free trade agreements (FTAs). With the FTAs in place, there is a greater opportunity for a “whole loaf” duty exemption if the

MARK K. NEVILLE, JR., LL.M. (*International Legal Studies*), NYU, is Principal of *International Trade Counsellors* and may be reached at mkneville@itctradelaw.com. He has served as an adjunct professor at the University of California, Berkeley's Haas School of Business and NYU's Stern School. Mr. Neville is the *Journal's* Customs & Trade correspondent and a member of the Board of Advisors.