



ICPA Presents . . .

Country of Origin & U.S. Customs Marking Requirements

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Country of Origin Marking: The Statute



19 USC 1304

- Unless an [exemption](#) applies
- every article of [foreign origin](#)
- or its [immediate container](#)
- must be marked in a manner to permit
- the [Ultimate Purchaser](#) in the U.S. to know . . .
- the English name of the [country of origin](#) of the article.

Important Questions

- What is an article of “foreign origin”?
 - Proving U.S. goods returned
 - Goods subject to further processing in the U.S. Is it enough?
- Containers-- If the immediate container is marked, the goods typically do not have to be. But what if the goods are repackaged?
- “Ultimate Purchaser”
 - Who is the ultimate purchaser of the article in its imported condition?
 - Has anything been done to change its condition?
 - Has there been a post importation “substantial transformation”?

Country of Origin & Marking: The Regulations



- 19 CFR 134 PART 134 - Country of Origin Marking
- 19 CFR 102 PART 102 – Rules of Origin (**Not covered**)
 - Sets out rules for determining the country of origin of NAFTA goods
 - Sets out rules for determining the country of origin of textile and apparel products
 - § 102.23 Origin and Manufacturer Identification
 - Rules for Constructing Manufacturer Identification Code (MID)
- Government Procurement; Country-of-Origin Determinations CR sections 177.21- .31

Origin Rules: Basic Concepts



- Two basic concepts determine the origin of goods:
 - “*wholly obtained*” products and
 - products having undergone a “*substantial transformation*.”
- One country of production/manufacture:
 - “Wholly obtained” concept will apply
 - Applies to products obtained in their natural state and products derived from “wholly obtained” materials.
- If two or more countries are involved, the country of “last substantial transformation” determines the origin of the goods.



Origin: Basic Concepts

- A “**substantial transformation**” is expressed in one of the following ways:
 - when an article emerges from a manufacturing process with a **name, character, or use** that differs from the **original material**. NY N248127 (2013)
 - A **value added rule**, where the increase in value due to operations and incorporation of originating materials representing a specified level of the ex-works or FOB price of the product.
 - A rule requiring a change of tariff heading/subheading in the HS nomenclature;

Determining the Origin of Goods for Marking



- Determining the Origin of Goods (other than NAFTA goods or textiles) for marking
 - The country in which the article was wholly manufactured, produced, or grown
 - Last country in which articles or materials of different origins are substantially transformed into:
 - a new or different article, with a:
 - new name,
 - character, or
 - Use
- National Hand Tool Corp. v. United States, 16 C.I.T. 308, 311 (1992)
- M.B.I. Merchandise Industries, Inc. v. United States, 16 C.I.T. 495, 502 (1992)
- Texas Instruments, Inc. v. United States, 69 C.C.P.A. 142, 681 F.2d 778 (1982)
- United States v. Gibson-Thomsen Co., 27 C.C.P.A. 267, 270 (C.A.D. 98) (1940)



Determining the Origin of Goods for Marking



➤ What is "Character"?

- The "essence test," has been used by CIT to determine if there has been a change in character
- SDI Techs., 21 C.I.T. at 899, 977 F. Supp. at 1240
 - The relation between essence and character is apparent in Webster's New World Dictionary which defines 'character' as 'a distinctive trait, quality, or attribute; characteristic' or 'essential quality.'"
- "The term 'character' is defined as 'one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.'" Uniden America Corporation v. United States, 120 F. Supp. 2d. 1091, 1096 (2000), and National Hand Tool Corp. v. United States, 16 Ct. Int'l Trade 308, 311 (1992).

The Substantial Transformation Rule



- Concept of **Substantial Transformation** is common to many areas of customs law:
 - Marking
 - GSP / Preference programs
 - Drawback
 - Dumping/ CV subsidies origin
 - Government contracting

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Trade

Basic Import and Export

> For The Trade Community

Free Trade Agreements

The United States is party to numerous trade agreements with other countries and is participating in negotiations for new agreements with a number of countries and regions of the world. Currently there are 14 Free Trade Agreements (FTAs). Information on each FTA can be found below.

- [Australia Free Trade Agreement \(AUFITA\)](#)
- [Bahrain Free Trade Agreement \(BFTA\)](#)
- [Central America-Dominican Republic Free Trade Agreement \(CAFTA-DR\)](#)
- [Chile Free Trade Agreement \(CFTA\)](#)
- [Colombia Trade Promotion Agreement \(CTPA\)](#)
- [Israel Free Trade Agreement \(ILFTA\)](#)
- [Jordan Free Trade Agreement \(JFTA\)](#)
- [Korea Free Trade Agreement \(UKFTA\)](#)
- [Morocco Free Trade Agreement \(MFTA\)](#)
- [North American Free Trade Agreement \(NAFTA\)](#)
- [Oman Free Trade Agreement \(OFTA\)](#)
- [Panama Trade Promotion Agreement \(PATPA\)](#)
- [Peru Trade Promotion Agreement \(PETPA\)](#)
- [Singapore Free Trade Agreement \(SFTA\)](#)

Tags: [Trade](#)

Report Suspected Trade Violations

E-ALLEGATIONS
Online Trade Violation Reporting System

Return to [Priority Trade Issue: Trade Agreements](#)

Resources

[Side-by-Side Comparison of Free Trade Agreements and Selected Preferential Trade Legislation Programs, Non-Textiles](#)

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For Questions Related to Trade Agreements, email the FTA inbox:
FTA@dhs.gov

Questions?

Find answers at the CBP Info Center.

ICPA
International Compliance Professionals Association

<http://www.cbp.gov/trade/free-trade-agreements>

Origins of The Substantial Transformation Rule



"Manufacture implies a change, but every change is not manufacture * * *. There must be transformation; a new and different article must emerge, 'having a distinctive name, character, or use.'"

Anheuser-Busch Brewing Ass'n v. United States, 207 U.S. 556, 562 (1908).



The Substantial Transformation Rule



- A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:
 - (i) Commercial (name) designation or identity,
 - (ii) Fundamental character, or
 - (iii) Commercial use.
- whether a substantial transformation occurs for marking purposes is a question of fact;
- Generally determined on a fact specific, case-by-case basis

The Substantial Transformation Rule



- Factors to consider to substantiate that substantial manufacturing or processing operations have occurred:
 - A physical change in the material or article;
 - The time involved in the manufacturing or processing;
 - The complexity of the manufacturing or processing;
 - The level or degree of skill and/or technology required in the manufacturing or processing operations;
 - The value added to the article or material.

Common Examples of Substantial Transformation



- Integrated Circuit (die, lead frame, molding) (Texas Instruments, 69 C.C.P.A. 142, 681 F.2d 778 (1982))
- Printed Circuit Board Assembly (PCBA)
- Programming an I.C. (HQ 732087, February 7, 1990)
 - Customs ruled that writing a program onto a computer disk is a substantial transformation of the disk.
 - Character of the disk changed from one of a blank storage medium to one with a predetermined electronic pattern encoded onto it.
 - “The use of the disk has changed from that of an unreadable, therefore meaningless, article of software, to that of an encoded instruction guide to enable to computer to perform various commands.”



Simple Assembly or Combining Operations



- The determinative factor whether the combining of parts or materials constitutes a substantial transformation is
 - The extent of operations performed and whether the parts lose their identity and become an integral part of the new article. Belcrest Linens v. United States, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984).
 - Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97.
- If the manufacturing or combining process is merely a minor one which leaves the [identity of the material intact](#), a [substantial transformation](#) has not occurred. Uniroyal, Inc. v. United States, 3 CIT 220
- HQ 734518 (1993) (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in Data General use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imports it).



Chemical Mixtures

- Substantial transformation of [chemical mixtures](#)
 - Customs has consistently examined whether a [chemical reaction](#) occurs when two chemicals are mixed in the production of the final article. Headquarter Rulings 555248 (1990); 556064 (1990); 555403 (1990).
 - When chemical compounds are mixed together to form a [different substance](#) and the [individual properties of each ingredient are no longer discernable](#), they have undergone a substantial transformation. See HRL 555989 (1991)
 - chemicals must be transformed into a new product with unique chemical properties and a commercial identity distinct from its constituent chemical compounds
- HQ 563014 (2004)
- HQ 561282 (1999)

Pharmaceutical Products



➤ Pharmaceuticals

- whether a substantial transformation occurs in the manufacture, CBP will examine
 - Complexity of the processing operation, and
 - whether the final article retains the essential identity and character of the raw material.
 - HQ H197582 (2012)
- Processing of pharmaceutical products from bulk form into measured doses does not result in a substantial transformation of the product. See e.g., HQ 561975 (2002); HQ 561544 (2000); and HQ 735146 , (1993).
- substantial transformation occurs where processing significantly increased the effectiveness of the final product. See e.g., HQ 731731 , dated February 23, 1989; HQ 563301 , dated August 26, 2005; and HQ 563207 , dated June 1, 2005

Marking Rule for Sets, Mixtures, and Composite Goods



➤ Treasury Decision (T.D.) 91-7, dated January 16, 1991

- mere inclusion of an item in a collection will not substantially transform it into an article with a new name, character or use and, therefore, each item must be separately marked with its own country of origin.
- mere packaging of the various components of the repair kit in the United States does not substantially transform the individual components and so the origin of each foreign component in the repair kit must be identified. HQ H025404 (2008)
- Articles or their packages must be marked so as to show the origin of every major component of the kit. HQ H009368, dated September 27, 2007.

➤ Small/ insignificant Parts

- in certain circumstances, the marking of every item in a collection of goods may not be consistent with the purpose of the statute, or may be impractical and/or undesirable. This may be because one or more items in the collection are relatively insignificant and would have no influence on the purchasing decision, because the items in the collection are too numerous, making it impractical to specify the country of origin of each item, or for various other reasons. In such cases, Customs will employ a "common sense" approach



Marking of Sets, Mixtures, and Composite Goods



➤ Uniden America Corporation v. United States, 24 C.I.T. 1191, 1195, 120 F. Supp. 2d 1091, 1096 (2000).

- The article consisted of a cordless handset telephone with three detachable components: a handset, a base unit, and an A/C adapter.
- Did the imported article qualify under GSP?
- The cordless telephone and base unit were from Philippines, the a/c adapter was from China.
- Court said the purpose of the a/c adapter (which is to supply power) differed from the purpose of the cordless telephone and that “a new character emerged because [the a/c adapter neither characterized nor defined](#) the phone in question.”
- The adapter was of minor value as compared to the other components
- Applying the "essence" test CIT concluded that the A/C adapter does not impart the essential character of the cordless telephone. “The essence . . . is housed in the base and the handset.”
- The court held the cordless telephone set satisfied the "product of" requirement under the GSP because the imported good [was a GRI 1 set](#) which was classified in accordance with the portion of the set that imparted the essential character of the set, the cordless telephone which was produced in Philippines.
- The court specifically did not rule on whether the same result would occur if it involved [a GRI 3\(b\) set](#).



X-Box Marking Ruling

- the Xbox Pro Video Game System is imported into the United States in a condition ready for sale at retail
 - Retail package includes the Xbox 360 game console and system accessories, including: headset, gamepad/controller, remote control and an external hard disk drive (HDD)
 - The Xbox 360 console, headset, gamepad/controller and remote control are manufactured in China.
 - The HDDs are manufactured in Korea, Thailand or Singapore.
 - Marking "Xbox 360 console, headset, game pad, and remote control made in China; hard disc drive made in South Korea, Thailand or Singapore"
 - NY R02337, August 9, 2005

Commonly Cited Substantial Transformation Cases



- [Torrington Co. v. United States](#), 764 F.2d 1563; 3 Fed. Cir. (T) 158 (1985). Court held that there was a double substantial transformation where wire from a non-beneficiary developing country was processed first into sewing machine needle blanks (intermediate commercial products) and then into finished needles in Portugal.
- [Belcrest Linens v. United States](#), No. 84-734, 741 F.2d 1368; 2 Fed. Cir. (T) 105. (1984). Merchandise was a product of the intermediary country where the processes performed in the intermediary changed the character, appearance, identity, and use of the merchandise from a bolt of woven fabric into a pillowcase.
- [Uniroyal, Inc. v. United States](#), 702 F.2d 1022; 1 Fed. Cir. (T) 21 (1983). Imported shoe upper had to be marked with country of origin because post importation attachment to sole was not a substantial transformation.



Commonly Cited Substantial Transformation Cases



- [National Juice Prods. Ass'n v. United States](#), 10 C.I.T. 48; 628 F. Supp. 978 (1986).
Imported juice concentrate was not substantially transformed when a change in the product's name and additions of oil, essences, and water were insufficient for a finding of substantial transformation.
- [Texas Instruments, Inc. v. United States](#), 69 C.C.P.A. 151; 681 F.2d 778 (1982).
photodiode was entitled to GSP because constituent materials were substantially transformed into a new and different article of commerce in the BDC.
- [United States v. Gibson-Thomsen Co.](#), 27 C.C.P.A. 267; C.A.D. 98 (1940).
Toothbrush (brush & handle) did not have to be marked with country of origin because articles were used in post importation to manufacture a new article having a new name, character, and use.



Country of Origin Marking: The “Ultimate Purchaser”



- Marking must reach the “Ultimate Purchaser”
- Defined (19 C.F.R. 134.1(d)) as the last person in the U.S. who receives the article in the form in which it was imported
 - “Ultimate Purchaser” is a party that manufactures the imported good into an new or different product, or otherwise substantially transforms the article.
 - If the post import process is merely a minor one which leaves the identity of the article intact, the ultimate purchaser is consumer or user of the article.

Country of Origin Marking: Statutory Exceptions



- 1304(a)(3) Exceptions To Marking requirement:
 - a) The article is incapable of being marked
 - b) The article can not be marked prior to importation without injury
 - c) The article can not be marked prior to importation except at an expense which is economically prohibited
 - d) The marking of the container will reasonably indicate the origin of the article
 - e) The article is a crude substance
 - f) The article will be used by the importer and not intended for sale
 - g) The article will be processed in the U.S. by the importer or for his account and subsequent processing will obliterate, destroy or permanently conceal the mark

Country of Origin Marking (19 USC § 1304) Exceptions



- h) The Ultimate Purchaser by reason of the character or the article or by reason of the circumstances of its importation must necessarily know the origin of the article
- i) The article was produced more than 20 years ago
- j) The article is on the "J" list
- k) The article can not be marked after importation except at an expense which is economically prohibited and the failure to mark the article before importation was not due to any purpose of the importer, seller or manufacturer to avoid compliance

Country of Origin Marking: “J” List exceptions



- “J” List Articles are exempt from individual marking requirements:
 - “J” List Articles (19 C.F.R. 134.33)(examples):
 - Eggs
 - Feathers
 - Flowers
 - Fruits, nuts and berries
 - Rivets
 - Rope
 - Screws
- Containers of “J” list articles must be marked, unless the container is excepted

Marking The Goods or Containers



➤ Markings must be:

- Conspicuous
- Legible
- Permanent

➤ Abbreviations of country names must be approved by Customs

Marking of Containers or Holders



- § 134.22 General rules for marking of containers or holders
 - When an article is excepted from the marking requirements
 - the outermost container or holder in which the article ordinarily reaches the ultimate purchaser must be marked to indicate the country of origin of the article whether or not the article is marked
 - [Substantial / reusable Containers](#) or holders imported with goods must be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents
 - [Disposable containers](#) or holders imported for distribution or sale must be marked to indicate clearly the country of their own origin. Includes
 - cans, bottles, paper or polyethylene bags, paperboard boxes, and similar containers or holders which are ordinarily discarded after the contents have been consumed.
 - Merchandise imported in [disposable containers](#) or holders that are sold without normally being opened by the ultimate purchaser (e.g., individually wrapped soap bars or tennis balls in a vacuum sealed can), must be marked to indicate the [country of origin of the contents](#).

Country of Origin Marking: How to Mark



- Methods of Marking (19 C.F.R. 134.41, 134.44):
 - Must be sufficiently indelible and permanent to survive normal distribution and handling until delivered to Ultimate Purchaser
 - Certain articles require special marking (hand tools, surgical, dental, scientific instruments; knives, forks and scissors; pipe and pipe fittings)
- Location and Size of Marking
 - Must be sufficiently visible and located to allow the ultimate purchaser to easily find and read without strain.

Abbreviations of Country Names



- 19 CFR 134.45(b), provides that abbreviations of country names "which unmistakably indicate the name of a country ... are acceptable.
- Variant spellings which clearly indicate the English name of the country of origin such as 'Brasil' for Brazil and 'Italie' for Italy, are acceptable."
- Customs has been very stringent in approving the use of abbreviations
 - No published list (although see T.D. 92-38, dated April 2, 1992, for list of acceptable names of the former republics of the Soviet Union)
 - abbreviation must unmistakably indicate the country of origin to an ultimate purchaser of a product.



Abbreviations of Country Names



- CBP Rejected abbreviations where it determined that the abbreviation was not sufficiently known in the U.S. to recognize the country of origin:
 - “. . . merchandise will be manufactured in Germany or Singapore. We find that the abbreviations "DE or SG" are not acceptable because they do not unmistakably designate the country of origin to the ultimate purchaser.” NY N059796 (2009)
 - Abbreviations "Dom Rep" and "DR" do not unmistakably identify the country of origin. NY N033436 (2008)
 - HRL 560978 (1998) (denial of "G," "D," and "Ger" for Germany);
 - HRL 735526 (1994) (denial of "F.Y.R.O.M." for The Former Yugoslav Republic of Macedonia, though "FYR Macedonia" and "F.Y.R.O.M. (Macedonia)" are acceptable);
 - HRL 735083 (1993) (denial of "NL" for the Netherlands);
 - HRL 734856 (1992) (denial of "YAP" and "YAP, F.S.M." for Yap, Federated States of Micronesia);
 - HRL 7344487 (1992) (denial of "CSFR" as an abbreviation for Czech Slovak Federal Republic);
 - HRL 731799 (1989) (denial of "V", "VZLA," or "VENZLA" for Venezuela).
 - 561083 (1998), abbreviation U.A.E. for the United Arab Emirates as does not unmistakably identify the country to most U.S. consumers. See also HRL 561997, (2001).

Use of “Assembled In”

- CBP has established that the phrase "Assembled in" is synonymous with "Made in" or "Product of" as an indicator of origin for goods produced as a result of an assembly operation and the country of origin of the article is determined to be the country of assembly.

[HQ 968034, March 16, 2006](#)

The Close Proximity Rule

19 CFR 134.46



- When the name of a country or locality other than the country of origin appears on the article or its immediate container (such as name or address of seller or distributor of the product)
 - the country of origin of the product shall appear in close proximity to and in at least a comparable size, preceded by the words “made in,” “product of,” or “assembled in,” or words of similar meaning.
 - If there is insufficient space, the country of origin marking shall take precedence.

The Close Proximity Rule

19 CFR 134.46



- The . . . vacuum cleaners are made in Australia and bear the logo "North American" in large bold lettering with an outline of North America in the background.
- “ . . . the reference "North American" on the vacuum cleaners could mislead or deceive the ultimate purchaser as to the actual country of origin of the imported article.”
- The words "Made in Australia," "Product of Australia" or a similar phrase must appear in close proximity and in at least a comparable size to the "North American" reference.
- HQ 561327, June 8, 1999

Close Proximity Rule: 19 CFR 134.46



- T.D. 97-72, published August 20, 1997
 - References such as "Designed in U.S.A.," "Made for XYZ Corp, California, U.S.A." or "Distributed by ABC Inc., Colorado, U.S.A." are misleading to the ultimate purchaser and trigger the country of origin marking requirements of 19 CFR 134.46

The Close Proximity Rule

19 CFR 134.46



- Under certain conditions, geographic names appearing in connection with imported articles do not necessarily trigger the close proximity rule.
 - The context in which the names are used is such that confusion by the ultimate purchaser regarding country of origin is unlikely.
 - The non-origin geographic references must appear as part of the design/decoration of the article.
 - Special marking requirements of section 134.46 shall only apply if the non-origin reference is likely to mislead or deceive the ultimate purchaser as to the actual country of origin of the article.

The Close Proximity Rule: 19 CFR 134.46



➤ Example

- The country of origin marking of jeans with the word "Kansas" on a fabric label attached to the rear right pocket, "Kansas Jean" on rear pocket snaps, "Kansas" and "Kansas Jeans Navy Wear" printed on a leather label attached to the front right pocket, and a stylized "K" and the word "J. Kansas" decorating the front button were found acceptable.
- HRL 732412 , dated August 29, 1989.

Country of Origin Marking: Articles Repackaged After importation

- Articles Repacked or Manipulated After Importation (19 C.F.R. 134.26)
 - Unless the imported foreign articles are substantially transformed by post-importation processing, articles that are repacked or manipulated after importation must be packaged in containers that display the country of origin of the article
 - Certifications to Customs
 - Importers that repackage articles must provide Customs with a certificate of marking of repacked articles
 - Importers that provide articles to third parties that will repackage articles must provide third party with notice of marking requirements
 - Failure to comply with the certification requirements can subject an importer to a demand for liquidated damages under §134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592. CR 134.26(e)

Imports Of Goods From Multiple Countries



- Customs policy is that in most circumstances, it is not acceptable for purposes of 19 U.S.C. 1304 to mark an article or container with the legend "Product of ____ or ____". HQ 562115. July 6, 2001
- T.D. 75-187 Customs allows disjunctive listing of multiple countries of origin when the articles (semiconductor devices, including transistors, diodes, and integrated circuits) were commingled for a bona fide reason, and subsequently repackaged for sale to an ultimate purchaser.
- C.S.D. 84-56, Customs allowed fasteners to be marked "from one or more of the following countries...." to indicate the country of origin of fasteners, where there were many varieties from many countries. The major source countries were required to be indicated.

Treatment of articles found to be not legally marked



- Origin and Marking relate to admissibility of goods
 - Customs may detain, seize, or demand redelivery of goods that are not properly marked
 - CF-4647 "Notice to Mark and/or Redeliver"
- Goods will be detained until marked by importer, exported or destroyed under Customs Supervision

DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

**NOTICE TO MARK
AND/OR
NOTICE TO REDELIVER**

REMOTE

1. FROM
U.S. Customs and Border Protection
555 Battery Street
Room 428
San Francisco, CA 94111

2. NAME OF CONTACT PERSON
[Redacted] Senior Import Specialist

3. TELEPHONE NO.
(415) 752-9365

4. TO (Importer of Record Name and Address)
[Redacted]

5. PORT OF ENTRY
2801

6. ENTRY NO.
[Redacted]

7. DATE OF ENTRY
04/15/2014

8. BROKER OR IMPORTER FILING NO.
[Redacted]

9. STATUTE (REFERENCE TO THE U.S. CUSTOMS AND BORDER PROTECTION ACT)
19 U.S.C. 1592 (a)(1) (Penalty for false marking)

10. DESCRIPTION OF MERCHANDISE
[Redacted]

11. QUANTITY
[Redacted]

12. IDENTIFYING MARKS AND NUMBERS
[Redacted]

13. SHIPPER/MANUFACTURER
[Redacted]

14. ACTION REQUIRED OF IMPORTER
☒ Merchandise must be brought into compliance as specified below or returned to CBP custody within 30 days of this Notice or other time specified.
☐ Marking or other corrective action must be done under CBP supervision.
☒ CBP supervision of marking or other corrective action not required. All for all merchandise has been brought into conformity with U.S. marking requirements. Complete the certification below and return copy to CBP.
WARNING: All merchandise must be released and you are notified by CBP that corrective action is acceptable.

15. REMARKS/INSTRUCTIONS/NOTES/REASON REQUIRED OF IMPORTER
U.S. Law requires that every article of foreign origin imported into the U.S. shall be marked with the English name of the country of origin, fiber content & RN in a conspicuous place, as legibly, indelibly, and permanently as the nature of the article will permit, at the time of importation into the U.S. (See continuation)

16. SIGNATURE OF CBP OFFICER
[Redacted]

17. DATE
04/15/2014

SECTION III - IMPORTER CERTIFICATION (To Be Completed By Importer/Authorized Agent)
IMPORTER: APPROPRIATE ITEMS MUST BE COMPLETED, SIGNED, AND DATED BEFORE ACCEPTANCE BY CBP.

☐ Merchandise to be: ☐ exported. ☐ destroyed under CBP supervision in lieu of marking or other required corrective measures. ☐ I certify that all merchandise has been marked to indicate the country of origin in accordance with U.S.C. 1592 (a)(1) and (a)(2) and the applicable marking requirements.

Place: [Redacted] Date: [Redacted] Time: [Redacted]

(I/We) guarantee the payment of all expenses incurred in the above action.

SIGNATURE OF IMPORTER OR AUTHORIZED AGENT: [Redacted] TITLE: [Redacted] TELEPHONE: [Redacted] DATE: [Redacted]

☐ Merchandise accepted from marking under: [Redacted]

☐ Merchandise has been legally marked or otherwise accepted into commerce and client consents (signature): [Redacted] under CBP supervision. ☐ Certification accepted.

☐ Merchandise was: ☐ exported. ☐ destroyed under CBP supervision. ☐ Other, namely: [Redacted]

18. SIGNATURE OF CBP OFFICER: [Redacted] 17. DATE: [Redacted]

CBP Form 4647 (08/08)

Treatment of Articles Found to be Not legally Marked



- Articles not legally marked after released from Customs custody
 - Customs has 30 days from date of Entry to issue a request for Sample (CF-28)
 - Customs issues notice to mark or redeliver to Customs Custody
 - Demand to redeliver must be issued within 30 days of date of examination (See 19 C.F.R. 141.113) (**C/O origin only, non-textile**)
 - Importer may protest demand for redelivery (19 USC 1514)
 - Importer may redeliver articles for remarking, or may, upon request, mark articles on premises and certify to Customs that goods have been properly marked
 - Marking may also occur at importers premise under Customs supervision

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection REQUEST FOR INFORMATION 19 CFR 151.11		OMB No. 1551-0023 Exp. 03-31-2014	
1. Date of Request		2. Date of Entry and Importation	
3. Manufacturer/Seller/Shipper	4. Carrier	5. Entry No.	
5a. Invoice Description of Merchandise	5b. Invoice No.	6. HTSUS Item No.	
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.	
9. TO:		10. FROM:	
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to U.S. Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.		11a. Port	11b. Date Information Furnished
General Information and Instructions on Reverse			
12. Please Answer Indicated Question(s)		13. Please Furnish Indicated Item(s)	
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise. <input type="checkbox"/> B. Identify and give details of any additional costs/ expenses incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto. <input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates. <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article. <input type="checkbox"/> D. Submit samples: Article number and description _____ from container _____ mark(s) and number _____ Samples consumed in analysis, and other samples whose return is not specifically requested, will not normally be returned. <input type="checkbox"/> E. See item 14 below.	
14. CBP Officer Message			
15. Reply Message (Use additional sheets if more space is needed.)			
16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form in response to this inquiry is true and correct, and that any samples provided were taken from the shipment covered by this entry.		16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	16b. Signature
		16c. Telephone No.	16d. Date
17. CBP Officer	18. Team Designation	19. Telephone No.	

CBP Form 28 (03/11)



Treatment of Articles Found to be Not legally Marked

➤ Liquidated Damages

- Failure to redeliver goods subject to a notice of redelivery equal to value of goods, plus duties. (Applies only to C/O marking violations)
- Breach of Customs Bond provisions
- Liquidated damages are not subject to protest and administrative review
- May file administrative petition for mitigation of assessment
- Check to make sure that CF-4647 was issued timely.

➤ Marking duties

- Any article found to be not legally marked is subject to marking duties of 10%
- Assessment of marking duties is subject to protest and administrative review
- Burden is on importer to prove goods properly marked.

Taxation +

Customs -

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Rules of Origin > Non-Preferential Origin

Introduction

A) General aspects of non-preferential origin

Non-preferential rules are used for all kinds of commercial policy measures, like, for instance, anti-dumping duties and countervailing duties, trade embargoes, safeguard and retaliation measures, quantitative restrictions, but also for some tariff quotas, for trade statistics, for public tenders, for origin marking, and so on. In addition, the EU's export refunds in the framework of the Common Agricultural Policy are often based on non-preferential origin.

There are two basic concepts to determine the origin of goods namely '*wholly obtained*' products and products having undergone a '*last substantial transformation*'.

If only one country is involved the "wholly obtained" concept will be applied. In practice this will be restricted to mostly products obtained in their natural state and products derived from wholly obtained products.

If two or more countries are involved in the production of goods, the concept of "last, substantial transformation" determines the origin of the goods.

In general the criterion of last substantial transformation is expressed in three ways:

- by a rule requiring a change of tariff (sub) heading in the HS nomenclature;
- by a list of manufacturing or processing operations that do or do not confer on the goods the origin of the country in which these operations were carried out;
- by a value added rule, where the increase of value due to assembly operations and incorporation of originating materials represents a specified level of the ex-works price of the product.

B) Legal framework for non-preferential origin

The legal basis for the non-preferential rules of origin is Articles 22 to 26 of Council Regulation No. 2913/92 (CC), Articles 35-65 and Annexes 9 to 11 of Commission Regulation No. 2454/93 (IPC).

Article 23 (2) CC contains the definition of "goods wholly obtained in a country".

Article 24 CC determines the origin of goods whose production involves more than one country.

The definition there is of a general nature but specific criteria are mentioned for determining the origin of textile products (Articles 36 to 38, Annexes 9 and 10 IPC) and of a limited number of other products (Annexes 9 and 11 IPC).

Article 25 CC contains an anti-circumvention provision. This provision applies in cases where the working or processing on a product is only carried out in order to circumvent provisions applicable to these products from certain countries.

Article 26 CC provides for the possibility in customs legislation or specific legislation to require a proof of origin.

Articles 35-40 IPC lay down specific provisions for applying the rule of last substantial transformation for textiles and a limited number of other products.

Articles 41-46 IPC contain specific provisions on origin relating to accessories, spare parts and tools that form part of the standard equipment of machines, apparatus or vehicles.

Articles 47-54 IPC contain provisions relating to the conditions that certificates of origin have to fulfil.

Articles 55-65 IPC contain specific provisions relating to certificates of origin for certain agricultural products that are subject to special import arrangements.

Summary:

Non-preferential rules are used for all kinds of commercial policy measures, like, for instance, anti-dumping duties and countervailing duties, trade embargoes, safeguard and retaliation measures, quantitative restrictions, but also for some tariff quotas, for trade statistics, for public tenders, for origin marking, and so on. In addition, the EU's export refunds in the framework of the Common Agricultural Policy are often based on non-preferential origin.

1) Products wholly obtained in a single country :

Goods wholly obtained in a single country in the sense of Article 23 of Council Regulation No [2913/92](#) (CC) are originating in this country.

2) Other products :

When two or more countries are involved in the production of a good, the origin of the good must be determined in accordance with Article 24 of Council Regulation No [2913/92](#) (CC).

Articles 24 CC states: "Goods whose production involved more than one country shall be deemed to originate in the country where they underwent their last, substantial, economically justified processing or working in an undertaking equipped for that purpose and resulting in the manufacture of a new product or representing an important stage of manufacture".

2.1) Products covered by specific provisions in IP :

It is not always easy to say when these criteria have been met. Thus in some cases for particular goods rules have been laid down in order to determine certain operations carried out on their own that do, or do not, confer non-preferential origin on a product. These rules have been decided upon over the years to clear up particular cases where there has been a need for additional clarity. For some products, other than textiles, the rules are found in Annexes 9 and 11 of Commission Regulation No [2454/93](#) (IPC). Annex 9 contains a description how to apply the rules of Annexes 10 and 11. Annex 11 of IPC contains rules in the form of specific working or processing, which must be fulfilled for the products mentioned in that annex.

For textiles and textile articles of Section XI of the [Combined Nomenclature](#) (CN) the general rule is that the working or processing carried out on the non-originating materials must result in a classification under another heading of the CN for the products obtained. This rule is known as "*Change of Tariff Heading*" (CTH) (Art. 37 IPC).

However, for certain textile products Annex 10 of IPC gives specific processes that must be fulfilled in order to obtain the non-preferential origin. This annex must be read in combination with Annex 9 of IPC describing how to apply the rules of Annex 10.

Furthermore, certain working or processes never confer non-preferential origin on a textile product



Rules of origin

Determining where a product comes from is no longer easy when raw materials and parts criss-cross the globe to be used as inputs in scattered manufacturing plants. Rules of origin are important in implementing such trade policy instruments as anti-dumping and countervailing duties, origin marking, and safeguard measures.

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Links to rules of origin section of the WTO guide “Understanding the WTO”

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[Explanation of the Rules of Origin Agreement](#)

Browse or download the text of the “Rules of Origin Agreement” from the [legal texts gateway](#)

Find decisions of WTO bodies concerning the Rules of Origin Agreement in the [Analytical Index](#) – Guide to WTO Law and Practice

Work on rules of origin in the WTO, and official documents

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RULES OF ORIGIN: TECHNICAL INFORMATION

Technical Information on Rules of Origin

Definition [back to top](#)

Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.

There is wide variation in the practice of governments with regard to the rules of origin. While the requirement of substantial transformation is universally recognized, some governments apply the criterion of change of tariff classification, others the ad valorem percentage criterion and yet others the criterion of manufacturing or processing operation. In a globalizing world it has become even more important that a degree of harmonization is achieved in these practices of Members in implementing such a requirement.

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Rules of origin are used: