

CUSTOMS-NOTES

Written by George R. Tuttle Law Offices for informational use by the trade and import community on selected topics of general interest concerning Customs and import related matters.

NEW RULES OF ORIGIN FOR TEXTILE AND APPAREL PRODUCTS EFFECTIVE JULY 1, 1996

The new Rules of Origin to determine the country of origin of textile and apparel products for visas, quota, and marking requirements took effect on July 1, 1996, for goods entered for consumption or withdrawn from warehouse without any grace period. These rules apply to products shipped prior to July 1, 1996, and entered for consumption or withdrawn from warehouse after July 1, 1996.

The rules are based on section 334 of the Uruguay-Round Trade Agreements Act, codified in 19 U.S.C. §3592, incorporated into the Customs Regulations under 19 C.F.R. §102.21, and published as T.D. 95-69 (29 Customs Bulletin 37, September 13, 1995.) Section 102.21 replaces §12.130 of the Regulations, except for products produced in a NAFTA country or Israel.

I. OVERVIEW OF THE NEW DEFINITION OF TEXTILE AND APPAREL PRODUCTS:

The definition of textile and apparel products is that utilized by the World Trade Organization and includes products not previously subject to textile restraints.

The major change for textile and apparel articles is that the country of assembly determines the country of origin, subject to certain limitations and

the specific rules set forth in the Customs Regulations.

A. Scope of the Rules [§101.21(b)(5)]

The Rules of Origin apply to all goods classified in HTS Chapter 50 through 63 **and** to goods classified under specific tariff provisions [§102.21(b)(5)]. The general tariff headings include the following categories:

3005	Nonadhesive wadding, gauze bandages
3921	PVC and PU sheets, film, etc.
4202	Luggage, handbags, etc.
6605	Footwear of textiles
6601	Umbrellas
7019	Fiberglass yarns and fabrics
8708	Automobile seat belts
8804	Parachutes
9113	Watch Straps
9404	Comforters, quilts, pillows
9502	Doll clothing
9612	Typewriter ribbons

The additional specific headings or subheadings for the above products are as follows:

3005.90	4202.92.15-30	6502	7019.20
3921.12.15	4202.92.60-90	6503	8804
3921.13.15	6405.20.60	6504	8708.21
3921.90.2550	6406.10.77	6505.90	9113.90.40
4202.12.40-80	6406.10.90	6601.10-99	9404.90.10
4202.22.40-80	6406.99.15	7019.10.15	9404.90.80-95
4202.32.40-95	6501	7019.10.28	9502.91
			9612.10.9010

B. Exceptions:

The new Rules of Origin are not applicable to Products from Israel: The criteria under the existing §12.130 are applicable. If under §12.130 Israel is not the country of origin, then apply the new textile and apparel Rules of Origin under §102.21 without consideration of any assembly or manufacturing performed in Israel. Since cutting under confers origin, (except, in general, for tailored or complex garments) the apparel products will be quota and duty-free. A statement of policy will be issued by Customs.

The new Rules of Origin are not applicable to NAFTA-qualifying products from Mexico or Canada. The NAFTA preference override in §102.19(a) excludes these products from the new Rules of Origin. This override includes components which are of U.S. origin, and exported and returned from a NAFTA country. The country of origin is the last NAFTA country in which processing occurred. See T.D. 96-48.

Finally, The new Rules of Origin are not applicable Companies whose contracts with foreign suppliers were approved by Customs.

II. INCORRECT DECLARATIONS OF THE COUNTRY OF ORIGIN

A. Declarations under §12.130(f)

Customs Headquarters has reaffirmed the requirements for the accuracy of the single and multiple country of origin textile declarations required under §12.130(f) is applicable to the new Rules of Origin in a *Federal Register* notice on June 12, 1996. Customs will deny release of textiles and apparel until the country of origin determination can be made by Customs. Further, demands for redelivery will be made for products subsequently determined to be inaccurately represented during the 180 day conditional release period for textiles under §141.113(b).

Additionally, the visa and origin marking may not be valid if the new Rules of Origin result in a country that is different from that reached under the previously applied rules.

Finally, Customs notes that under 19 U.S.C. §1484 reasonable care must be exercised when declaring the country of origin, including the accurate completion and/or verification of the country of origin of the textile declarations. Hence, civil penalties under 19 U.S.C. §1592 may also be assessed if an importer does not have evidence available to establish that reasonable care was exercised to verify the correct country of origin.

When the importer is unable to determine with certainty the country of origin, a ruling request should be submitted to customs with all the relevant facts.

B. Shipments from Hong Kong and Macao

Customs has issued specific instructions, effective June 17, 1996, requiring additional “origin” assurances on goods in the following categories: nightwear (351), underwear (352/652), skirts (342/442/644), dresses (336/636), and men and boys suits (443/643).

Customs is requiring additional documentation which may be verified by the Customs inspection teams at the manufacturing facilities in Macao or Hong Kong. The additional certifications include:

1. A complete textile declaration with **original signature** by the manufacturer or subcontractor.
2. A certification from the importer that the textile declaration is accurate, including a statement from the importer outlining what steps have been taken to assure its accuracy.
3. A single entry bond in the amount of the value plus duty.

These additional requirements have been imposed based upon Customs’ analysis of the transshipment history indicating probable transshipment from China.

C. Country of Origin Definitions [§102.21(b)] Applied to Products:

The following definitions are set forth in the regulations:

COUNTRY OF ORIGIN: The country, territory, or insular possession in which the good originates or of which a good is the growth, product, or manufacture [§102.21(b)(1)].

FABRIC-MAKING PROCESS: The fabric-making process is any manufacturing operation that begins with the polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips, and results in a textile fabric.

KNIT-TO-SHAPE: The term *knit-to-shape* applies to any good of which 50% or more of the exterior surface area is formed by a “major part” that has been knitted OR crocheted directly to the shape used in the good with no consideration being given to patch pockets, appliqués, or the like. Minor cutting, trimming or

Major parts means integral components, but it does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim accessories, and similar parts [§102.21(b)(4)].

TEXTILE AND APPAREL PRODUCTS: See definition on page 1 and 2 which is applicable to chapters 50-63 plus additional headings or subheadings.

WHOLLY ASSEMBLED: “Wholly assembled” means that all components (**at least two**) preexisted in essentially the same condition as found in the finished good, and were combined to form the finished good in a single country, territory, or insular possession [§102.21(b)(6)].

III. APPLICATION OF THE RULES ON A SEQUENTIAL BASIS

The general Rules of Origin are set forth in §102.21(c) and are to be applied on a sequential basis of paragraph (c)(1-5), plus the additional requirements or conditions of §102.12-102.19. These sections are the Rules of Origin for

NAFTA, set forth in T.D. 96-48 and made effective as of August 5, 1996. The sequential application of these paragraphs involves the following determinations:

A. Wholly Produced [§102.21(c)(1)]:

The country in which the product is wholly produced and the textile is completely produced or manufactured in one country, except for minor parts.

B. Change of Tariff Classification in a Single Country for Each Component: The Special Classification Rules [§102.21(c)(2) and (e)]:

There must be applied the rules set forth in the subsection (e), which utilize the definitions and set forth the requirements for origin. Where a product does not meet the requirement of these rules, the next rule is then applied. In general these rules provide the following:

YARNS: The country in which the yarn, thread, twine, cordage, rope, cable, braiding is created.

- **Staple yarn-- country in which the yarn is spun**
- **Filament** yarn--country in which the filament is extruded.
- Plied, gimped, and cabled yarns--country in which the fibers or filaments used in the yarn are spun or extruded.

FABRICS: The country of origin where the fabric is woven, KNITTED, TUFTED, NEEDED, FELTED, ENTANGLED, OR CREATED by any other fabric making process. The term “fabric-making process” is defined as any manufacturing operation that results in a fabric being created [§102.21(b)(2)].

- Dyeing, printing, lamination or other finishing process does not confer or change the country of origin.
- Quilted products--the country of origin is the country of the fabric.

D. 3. TEXTILE PRODUCTS AND APPAREL: The country in which each foreign material underwent an applicable change of tariff classification are “**wholly assembled.**” “Wholly assembled” means that all components (**at least two**) preexisted in essentially the same condition as found in the finished good, and were combined to form the finished good in a single country, territory, or insular possession [§102.21(b)(6)].

E. C. Wholly Assembled in One Country

TEXTILE PRODUCTS AND APPAREL: The country in which the components are “**wholly assembled.**” “Wholly assembled” means that all components (**at least two**) preexisted in essentially the same condition as found in the finished good, and were combined to form the finished good in a single country, territory, or insular possession [§102.21(d)(6)].

Minor attachments and minor embellishments, such as appliqués, beads, spangles, embroidery, buttons, and minor subassemblies, such as collars, cuffs, plackets, and pockets will not effect the status of the goods as wholly assembled in a single country. Cutting the fabric into components, printing, dyeing, or finishing of fabric will not confer the country of origin.

The *De Minimis* Rule for NAFTA products under §102.13(c) is applicable where the non-conforming portion is 7% or less by weight of the entire article. See TD. 96-84 (61 F.R. 289 56, June 6, 1996).

F. D. Special Rules [§102.21(3)]

G. 1. Knit-to-Shape Products

The country in which the good is “knit-to-shape” applies to any good of which 50% or more of the exterior surface area is formed by a “major part” that has been knitted OR crocheted directly to the shape used in the good with no consideration being given to patch pockets, appliqués, or the like. Minor cutting, trimming or sewing is excluded, [§102.21(b)(3)]. Major parts means integral components, but it does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim accessories, and similar parts [§102.21(b)(4)].

H. 2. Articles Produced From Yarns Classified Under HTS 5609

The country of origin for articles made from yarn, strips, twine, cordage rope, or cables is the country where the yarn, etc. is produced. The applicable quota category is for the finished article.

I. 3. Certain Articles Produced From Fabrics:

The country in which the **fabric is produced** is the country of origin for the products classified under the following textile provisions [§101.21(c)(3)]:

5807	Labels, badges, emblems
5811	Quilted textile products in the piece
6209.20.5040	--baby diapers
6213	Handkerchiefs
6214	Shawls, scarves, mufflers, mantillas, veils, etc.
6301	Blankets, traveling rugs
6302	Bed linen, table linen, toilet linen, kitchen linen
6303	Curtains drapes, interior blinds, valances
6304	Bedspreads, furnishings
6305	Sacks and bags for packing
6306	Tarpaulins, awnings, sunblinds, tents, sails, camping goods
6307.10	Dustcloths, mop clothes, polishing clothes, shop towels, bar mops, dishcloths
6307.90	Labels, cords, tassels, corset and footwear lacings, toys for pets, wallbanners, surgical towels, tufted towels, pillow shells, quilt shells, comforters, national flags, moving pads
6308	Needlecraft sets
9404.90	Pillows, cushions, quilts and comforters

J. 4. Specific Rules Based on Tariff Classification [§102.21(e)]

Products must undergo an applicable change of tariff classification in addition to requiring that products must satisfy and/or meet any other requirements set forth for specific HTSUS provisions set forth in the Regulations. See Appendix A setting forth these provisions. **Companies must, therefore, examine these specific statutory requirements for each of the products imported.**

For example, products classified under headings 5208 through 5212 relate to the classification of cotton woven fabrics. There must be a change to 5208-5212 (cotton woven fabrics) from any classification outside that group and must result from a fabric-forming process.

For tariff classification under 5204 through 5207 for cotton yarns, the shift must be from any other heading, if the shift results from a spinning process, which defines the country of origin for spun yarns.

Comment: The applicable visa and quota category is for the **finished imported article** from the country in which the textile or yarn or fabric is produced. For example, handkerchiefs, knit or embroidered in Italy from fabric produced in China, would have the applicable quota and visa from China for the handkerchief.

Comment: Customs will seek to identify the country in which the most important processing takes place without regard to the cost or time to complete.

Comment: Where the fabric or yarn is produced in two countries, one of which may be more significant, such as a pillow top which is embroidered, and the bottom which is plain, Customs will look at the entire process and contribution of each country.

K. E. The Multi-Country Rule [§102.21(c)(4)(5)]

1. The country in which the **most important** assembly or manufacturing process occurs, or
2. if one cannot determine the country in which an important manufacturing process occurs.

Comment: Where processing occurs in a first and second country and the product is returned to the first country for final fabrication, Customs will compare the processes in each country on a cumulative basis. For example, twisting of a plied yarn in two countries will result in the origin for the country where the yarns are twisted together.

Customs Headquarters has issued specific rulings, published on the Customs' bulletin board, regarding specific factual circumstances particularly for multi-country marking requirements. Customs Headquarters states that these rulings cannot be relied upon unless the specific facts set forth therein are applicable to the imported products. Headquarters recommends that ruling requests be filed in connection with multi-country assembled products to ensure the correct country of origin or wherever any other areas of question exist.

IV. V. THE NEW REGULATIONS TO BE APPLIED ON A HIERARCHICAL BASIS TO DETERMINE COUNTRY OF ORIGIN §102.21(C)(1-5):

The general Rules of Origin are to be applied on a sequential basis of paragraphs (c)(1-5) or other conditions of sections 102.12-102.19, as follows:

(1) Country of origin of the textiles is the single country in which the good was wholly obtained or produced.

(2) When a determination cannot be made under (1), the *single country* in which each foreign material incorporated in that good underwent an applicable change of tariff classification, **and/or** met any other requirement specified for the good in subparagraph (e) of §102.21 (Appendix A);

Where the foregoing are not applicable, the following rules are to be used:

- For goods knit-to-shape, the *single country* in which the good was *knit-to-shape*;
- For goods not knit-to-shape, *with the exception* of goods under headings, 5609, 5807, 5811, 6213, 6214, 6301 to 6306, 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, the country in which the *good* was *wholly assembled*.
- If the origin cannot be determined under the foregoing, the *country*, in which the most important assembly or manufacturing process occurred;
- If the foregoing are not applicable, in the country in which an important assembly or manufacturing occurred.

V. VI. **ADDITIONAL REQUIREMENTS:**

Specific rules for determining the country of origin for products which undergo a change of tariff classification as required under 102.21(c)(2) are set forth in §102.21(e) and summarized in Appendix A. These rules require a tariff shift (change in classification) plus other specified requirements.

A. A. Sets §102.21(d):

If goods classifiable as a set include one or more components that are textile or apparel products, and the single country of origin for all of the components cannot be determined under (c) above, the origin of *each* textile or apparel component is to be determined under paragraph (c).

B. B. Insular Possessions:

The new Rules of Origin will be used to determine whether goods qualify as a product of the insular possession under general note 3(a)(iv) of the HTSUS. Customs will continue its current treatment of garments as containing originating materials, where the fabric is subject to the double transformation rule involving two significant manufacturing operations i.e., cutting to shape and subsequent assembly within the insular possession.

C. C. 9802 Exemptions for Textiles Cut-to-Shape in the United States §10.25.

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| D. | 1. | Note 2(a) to chapter 98, subchapter 2 Determines Duty Assessment. |
| E. | 2. | Section 12.130(c) Determines Quota. |
| F. | 3. | Section 102.21 Determines Marking. |

Components cut-to-shape in the U.S. from foreign fabric will continue to receive the 9802.00.80 exemptions for products exported for assembly in another country, following the requirements of §10.16 and the documentation and valuation requirements set forth in sections 10.17, 10.18, 10.21, and 10.24.

The country of origin for quota and tariff purposes, however, is the country determined to be applicable within these Rules of Origin.

In a recent notice, Customs has indicated that the description in 9802.00.8055 requires that one or more components of the assembled article be of U.S. origin to be properly classified under this provision.

As a result, Customs indicates that non-U.S. fabric, cut in the United States, would not qualify for the exemption, unless a zipper or other article is of U.S. origin. The Legislation creating the U.S. Rules of Origin permits the duty exemption for components cut in the United States from foreign fabric. Hence, this classification must be evaluated further.

G. D. 9802 Exemptions for Textiles Cut to Shape in the United States and Assembled in Mexico:

When the components are assembled into a garment in Mexico, specific requirements exist for classification under 9802.00.8065.

For products assembled in Mexico, **not** subject to NAFTA, classification is made under HTS 9802.00.8055 and the Additional U.S. Note 3(c) to Section XI. These products exported to Mexico are also subject to Mexico non-originating tariff preference levels.

H. E. Textile and Apparel Articles Imported from a “Beneficiary” CBI Country:

Specific rules apply to textile and apparel articles assembled in a CBI country. Such articles assembled from fabricated component products of the United States and excepted from CBI treatment under §10.26(a). Such products, however, can receive the benefit of a reduction for those components that are of U.S. origin, classified under a subheading that carries a textile or apparel category, including up to 15% of the U.S. materials which may count toward the 35% requirements for CBI.

I. F. Summary of Procedures to be Followed to Determine Origin (§102.21):

J. Classification: Verify the correctness of the classification to ensure the proper quota **category** and applicable rule.

1. **Wholly Produced Products:** Determine if the product is wholly produced in the exporting country.
2. **Wholly Assembled Rule:** Determine if the product is assembled wholly in one country, undergoes a change in classification, and meets the tariff requirements specified in §102.21(e). Appendix A.
3. **Knit-to-Shape:** Determine if the product is a knit-to-shape article in which 50% or more of the exterior surface is formed by a major part [§102.21(b)(3) and (4) apply.]
4. **Yarns:** Determine the country of origin for an article produced from yarns classifiable under HTS 5609.
5. **Specific Fabric Articles:** Determine the country of origin for specific fabric articles identified by HTS headings or subheadings.
6. **Most Important Process:** Determine the country of most important process.
7. **Last Important Process:** Determine the country of last important process.

VI. VII. MARKING REQUIREMENTS UNDER 19 U.S.C. §1304

The requirements under §12.30 for the marking of textile products have now been replaced by §102.21 for textile and apparel products except for NAFTA or Israeli products.

A. The Use of the Word “Assembled In”

The words “assembled in” may be used to identify the final country of assembly as set forth in §134.43(e) in TD 96-48, effective August 5, 1996, finalizing the NAFTA Marking Rules of Origin.

Products produced as a result of an assembly operation where the country of origin is the country of final assembly may contain the following:

8. “Assembled in” to identify the country of final assembly, or
9. “Assembled in” to identify country of final assembly of all components (identify country or countries of all components), or
10. “Made in” or “Product of” the country of final assembly.

Comment: Where the product is dyed, or embroidered in one country and the product assembled in another country, the product must show “made in” to identify the country of origin. Headquarters indicates that “assembled

Comment: Where the product does not undergo a change of origin as a result of the assembly, it will not be required to have any country of origin marking. Current §10.22, which provides that the product of the country of assembly is the country of origin for marking and allows “assembled in” for products made entirely from U.S. materials, will be deleted.

Section 102.14, provides that U.S. goods advanced in value and proved in condition are considered products. The advancement occurred will be deleted. Customs indicates that they are reviewing TD 90-17 to determine how this section will effect other non-textile products.

A. B. The Close Proximity Rule

Marking for fabric cut in the United States and assembled into a garment may contain language which identifies the location of the cutting or the finishing. The description must meet the requirements of the Close Proximity Rule and be of the same size as the language “made in.”

VII. SAVE:

VIII. VII. THE RULES OF ORIGIN FOR TEXTILES AND APPAREL PRODUCTS IN 19 U.S.C. §3592:

A. A. General Rules

11. The product is wholly obtained or produced in a single country, territory, or possession.
12. The product is yarn, thread, twine, cordage, rope, cable, or braiding, and
 13. the staple fibers are spun, or
 14. the continuous filament is extruded in that country, territory, or possession.
3. The product is a fabric, including fabric classified under chapter 59 of the HTS and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric making process in that country, territory, or possession, or
 4. The product is any other textile that is wholly assembled in that country, territory, or possession from its component pieces.

B. B. Special Rules

1. Yarns classified under HTS 5609.
2. Certain fabric articles assessed under specific HTS provisions.
3. Knit-to-Shape textile products knit-to-shape in the country in which it is knit.

C. C. The Multi-Country Rule

4. Where classification cannot be determined under paragraphs A or B above, the good originates in, and the growth, product, or manufacture of:
 5. The country, territory, or possession in which the most important assembly or manufacturing process occurs, or
 6. If not determined, the country, territory, or possession in which an important assembly or manufacturing occurs.

D. D. Components Cut to Shape in the United States

The value of the component that is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States:

1. Shall not be included in the dutiable value of the article, and
2. May be applied toward determining the percentage referred to in General Note 7(b)(i)(B) of the HTS CBI.

No articles assembled in whole, described above, or components which are products of the United States, in a beneficiary country defined in General Note 7(a) shall be treated as a foreign article, or subject to duty where the components after exportation and the article itself before importation do not enter the commerce of any foreign country other than the beneficiary country.

E. E. Exception for the Israeli Free-Trade Agreement

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Public Policy:

The stated policy is to implement rules that more accurately reflect the location where the most significant production activity occurs. These rules will help to prevent transshipment and other circumvention of textile and apparel quotas, and will make the U.S. Rules of Origin consistent with the rules of other major textile and importing countries, thus advancing the goals toward harmonization of the International Rules of Origin, set out in the WTL Agreement. Consultations can occur where there is a disruption of trade or adverse effect on market access, if appropriate. Customs' position is that it is not able to determine whether the enactment of section 334 constitutes any breach of either the WTL or the NAFTA Agreements.

Customs has rejected all allegations that section 334 of the WTL Agreement constitutes an unauthorized broadening of the legislation. Customs also rejects the position that the scope of the regulations implementing section 334 should be limited by §12.130 of the Customs Regulations to the past criteria for determining the origins of textiles.

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Specific Procedures to Follow for Each Imported Product:

Importers should perform the following review of each of the products being imported:

3. Verify the classification of the imported textile products to ensure the correct application of the appropriate rule of origin.
4. Determine under which of the specific headings or subheadings under the Rules of Origin the product is classified.

5. Sequentially apply the general rules 1 through 5 of §102.21(c).
6. Determine if the products meet the specific requirements of Appendix A have been met for products identified in Appendix B after a tariff shift occurs.
7. For knit products, determine the country in which the product consists of a knit-to-shape article.
8. For textile products wholly assembled in one country utilize the country of origin after applying §102.21(c) and affidavit.
9. For countries where the textile product is made in more than one country, apply the rules in §102.21(c), but obtain a written ruling request to verify the conclusions.
10. Determine whether the products meet any specific requirements for tariff shift and other requirements of §102.21(c)(2) and (e).

SAVE:

The Rules of Origin are applicable to products classified under chapters **50** to **63** and the other specific headings or the subheadings in chapters **30, 39, 42, 64, 65, 66, 70, 87, 88, 91, 94, 95, or 96**.