



# Country of Origin & U.S. Customs Marking Requirements (Non-NAFTA/Non-Textile)

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PRESENTED BY  
GEORGE R. TUTTLE, III  
GEORGE R. TUTTLE LAW OFFICES  
THREE EMBARCADERO CENTER, SAN FRANCISCO  
PHONE (415) 986-8780  
[GEO@TUTTLELAW.COM](mailto:GEO@TUTTLELAW.COM)  
WEB [WWW.TUTTLELAW.COM](http://WWW.TUTTLELAW.COM)

# Country of Origin



- Knowing an article's **Country of Origin** is important, why?
  - Relates to admissibility of the article
  - Critical for marking purposes
  - Critical for AD/CV Duty application
  - Critical for qualifying FTA and special trade programs
  - Critical for Government Procurement and the Buy America Act (TAA waivers)
  - Critical for products with "quota" and quantitative restrictions
  - Requirement on entry documentation
- C/O Marking and C/O declarations are not required by all countries or on all products
- C/O rules are not uniform from country to country

# Country of Origin



- Importer is ultimately responsible for providing Customs with correct “country of origin” and marking on product:

- *19 U.S.C. § 1484*

... parties qualifying as “importer of record” ... shall, using **reasonable care** — file with [CBP] ... documentation or ... information as is necessary to enable [CBP] to determine whether the merchandise may be released from custody

... filing ... the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, other information as is necessary to enable the Customs Service to—

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

# Country of Origin



## ➤ § 134.3 Delivery withheld until marked and redelivery ordered

- Any imported article (or its container) held in Customs custody for inspection, examination, or appraisement will not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(f)
- Port director may demand redelivery to Customs custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked
- A demand for redelivery will be made, as required under §141.113(a) of this chapter, not later than 30 days after—
  - The date of entry or a “conditional release”

# Country of Origin Marking: The Statute

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## 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.

# Country of Origin Marking: The Statute



## ➤ No Exemption

### ○ **Marking of certain pipe and fittings**

- No exception from marking may be made with respect to **pipes** of iron, steel, or stainless steel, **pipe fittings** of steel, stainless steel, chrome-moly steel, or cast and malleable iron
- Each must be marked with the English name of the country of origin **by means of die stamping, cast-in-mold lettering, etching, engraving, or continuous paint stenciling**
- If it is technically or commercially infeasible to mark by one of the five methods ... the article may be marked by an equally permanent method of marking or, in the case of small diameter pipe, tube, and fittings, by tagging the containers or bundles

### ○ **Marking of compressed gas cylinders**

- No exception from marking may be made with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases

### ○ **Marking of certain manhole rings or frames, covers, and assemblies thereof**

- No exception from marking may be made with respect to manhole rings or frames, covers, and assemblies

# Country of Origin Marking: The Statute

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## ➤ Marking Not Required

- The marking requirements of 1304(a) and (b) [articles and their containers] do not apply to:
  - Certain **coffee and tea** products
  - Certain designated **spices**
  - Certain **silk products**



# Important Questions

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



# Country of Origin & Marking: The Regulations

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- 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

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- Two basic concepts determine the origin of goods:
  - “*Wholly obtained*” products and
  - Products having undergone a “*substantial transformation*.”

# Origin Rules: “Wholly Obtained”



- 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
- Some examples of products wholly obtained or produced entirely in a country or territory are:
  - Minerals and ores, vegetables and plants, live animals
  - Goods obtained through hunting, trapping, or fishing
  - Further processed goods obtained from the “wholly obtained products or materials,” such as: food, leather goods, paper and lumber, articles of metal

# The Substantial Transformation Rule

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- Traditional concept of **Substantial Transformation** is common to many areas of customs law:
  - Marking
  - GSP and some older preference programs
  - Drawback
  - Dumping/CV subsidies origin
  - Government Procurement

# Origin Rules: Substantial Transformation

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- If **two or more countries** are involved in the production of the good or its materials
- The country of "last substantial transformation" determines the origin of the goods

# Origins of The Substantial Transformation Rule

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"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).

# Origin Rules: Substantial Transformation



- A “**substantial transformation**” can be 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 add 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

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- 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



# 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 (1997)
  - Denying duty-free status to Mexican manufacturer's rack stereo systems, because part of systems first manufactured in China failed to make goods substantially transformed in Mexico
  - 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).

# Commonly Cited Substantial Transformation Cases

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- [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

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- [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
- [SDI Techs.](#), 21 C.I.T. at 899 (1997) – Court finds that because neither the character nor the use of the chassis changed when it became a stereo rack system, the chassis did not undergo substantial transformation

# The Substantial Transformation Rule

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- 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

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

**Trade Agreement Contacts:**

Katrina Chang, Branch Chief  
Craig Briess  
Seth Mazze

For Questions Related to Trade Agreements, email the FTA inbox:  
[FTA@dhs.gov](mailto:FTA@dhs.gov)

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# Common Examples of Substantial Transformation

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- 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

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- 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

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## ➤ Pharmaceuticals

- Whether a substantial transformation occurs in the manufacture, Customs 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)
- NY N257814 (2014)
- 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

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- 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

# Marking Rule for Sets, Mixtures, and Composite Goods

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- Treasury Decision (T.D.) 91-7, dated January 16, 1991
  - 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
    - See HQ H050245, February 9, 2009 for a discussion of the application of this rule



# X-Box Marking Ruling

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- 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 were manufactured in China
    - The HDDs were 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

# Country of Origin Marking: The “Ultimate Purchaser”

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- Marking must be sufficient to 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
  - If the imported article is distributed as a gift the recipient is the "ultimate purchaser", unless the good is a good of a NAFTA country



## § 134.32 General Exceptions To Marking Requirements

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- 134.32 Exceptions To Marking Requirement:
- a) The article is incapable of being marked
  - b) The article cannot be marked prior to importation without injury
  - c) The article cannot 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 in their imported or any other form
  - 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



## § 134.32 General Exceptions To Marking Requirements

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- 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 cannot 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

## § 134.32 General Exceptions To Marking Requirements

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- A word about 134.32(f)
  - In general, this exception applies only to articles imported for the importer's personal use HQ H044166 (2009)
    - Acceptable uses under section 134.32(f) have included:
    - Samples for sales presentations, articles for testing, articles for showroom display, and machines, equipment, and supplies in carrying on a business. See HQ 563312 October 17, 2005.
  - The marking of the container of such article(s) must still reasonably indicate the origin of all articles.



# § 134.32 General Exceptions To Marking Requirements



- 134.32(h) -- The Ultimate Purchaser . . . reason of the circumstances of its importation must necessarily know the origin of the article
- HQ H250459 (2014)
  - Hershey imports the subject chocolate and confectionary solely for export to non-U.S. markets.
  - The merchandise has different packaging from merchandise destined for consumption in the U.S.
  - Differences include item numbers, distribution information, and brand names. Furthermore, Hershey repackages the subject merchandise in its warehouse before re-exporting it.
  - As such, Hershey, like the importer in HQ H186975, is the only entity to handle the merchandise in the U.S.
  - Hershey is the ultimate purchaser of the subject merchandise
- The outermost container must still be marked to indicate the country of origin of the article.



# Country of Origin Marking: “J” List exceptions

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- “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

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## ➤ 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

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- 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

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- 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
  - Should ask before using or applying any abbreviation that has not been previously accepted by Customs

# Abbreviations of Country Names

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- Customs 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”

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- Customs 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

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- 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

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- 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

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- 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

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- 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

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### ➤ 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

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- 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

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- Customs policy is that in most circumstances, all origins must be identified
  - Generally 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.

# Articles With Unknown Origin

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- Lack of knowledge of the country of origin does not except an imported item from country of origin marking requirements I
- HQ 735033 (1994)
  - By memorandum dated November 23, 1993 ... Entry Rulings Branch, determined that [appraisement entry procedures](#) may also be used when the importer does not have [sufficient information regarding country of origin](#) for the purpose of making a formal entry
  - Specifically, where GE cannot identify the country of origin of specified merchandise for the reasons specified above and certain conditions are met, an appraisement entry may be appropriate
  - Use of the appraisement entry procedures would enable GE to use a generic designation of "foreign" or to list the source countries in which the components may have originated on its entry documentation



# Country Of Origin Of Used Unmarked Articles

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## ➤ HQ 562548 (2002)

- It is claimed that the country of origin of the unmarked transmissions, which were used in the U.S. or Canada, is the U.S. or Canada. As support, HRL 732258 dated March 28, 1990; HRL 559968 ; and HRL 561642 dated January 9, 2002, are cited.
- In Ashdown, U.S.A. v. United States, 12 C.I.T. 808, 696 F. Supp. 661 (1988), the Court of International Trade held that an East German-made printing press, which was [continually used in West Germany for nine years](#) and which was not intended at the time of original sale to be exported to the U.S., became a [bona fide part of the commerce of West Germany](#) and was, therefore, not an import from a communist country.



# 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
- If released Customs can order the redelivery of the goods within 30 days

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

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

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) 782-9365

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

5. PORT OF ENTRY  
2801

6. ENTRY NO.  
[REDACTED]

7. DATE OF ENTRY  
04/15/2014

8. BROKER OR IMPORTER FILL NO.  
[REDACTED]

19. C/P# 1363, 17632 141112

7.4. Merchandise described below is in violation of statute(s)/regulation(s) as indicated, and cannot be entered into the commerce of the U.S. until brought into conformity as noted below in Section II. If it is not brought into conformity, redelivered, exported, or destroyed under CBP supervision within 30 days from the date of this Notice or by the time specified by another Government agency having jurisdiction over the importation, (avoided damages and/or criminal/s) penalties shall apply.

9. STATUTE(S)/REGULATION(S) VIOLATED  
☒ 19 U.S.C. 1311 (Section 1311, Tariff Act of 1930) (Country of Origin Marking Requirement) ☐ Other, namely: \_\_\_\_\_

10. DESCRIPTION OF MERCHANDISE  
[REDACTED]

11. QUANTITY  
[REDACTED] PCS

12. IDENTIFY K/M 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. After all merchandise has been brought into conformity with the statute(s)/regulation(s), complete the certification below and return copy to CBP.  
☐ CBP supervision of marking or other corrective action not required. After all merchandise has been brought into conformity with the statute(s)/regulation(s), complete the certification below and return copy to CBP.  
☐ Merchandise must be redelivered to CBP within 30 days from date of this Notice or other time specified.

15. REMARKS/INSTRUCTIONS/OTHER ACTION 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: ☐ imported, ☐ destroyed under CBP supervision in lieu of marking or other required corrective measures. ☐ exported, ☐ destroyed under CBP supervision in lieu of marking or other required corrective measures. ☐ Other, namely: \_\_\_\_\_

Place: \_\_\_\_\_ Date: \_\_\_\_\_ Time: \_\_\_\_\_

(I/We) guarantee the payment of all expenses incident to the above action.

SIGNATURE OF IMPORTER OR AUTHORIZED AGENT: \_\_\_\_\_ TITLE: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_ DATE: \_\_\_\_\_

☐ Merchandise accepted from marking under: \_\_\_\_\_

Merchandise has been legally marked or otherwise brought into conformity with the statute(s)/regulation(s): ☐ under CBP supervision ☐ certification accepted

☐ Merchandise was: ☐ imported, ☐ destroyed under CBP supervision, ☐ Other, namely: \_\_\_\_\_

16. SIGNATURE OF CBP OFFICER: \_\_\_\_\_ 17. DATE: \_\_\_\_\_

CBP Form 4647 (08/08)



# Treatment Of Articles Found To Be Not Legally Marked

- Articles not legally marked after release 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 providing sample (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 importer's premise under Customs supervision

DEPARTMENT OF HOMELAND SECURITY U.S. Customs and Border Protection		OMB No. 1651-0023 Exp. 03-31-2014	
REQUEST FOR INFORMATION 19 CFR 151.11			
Any text that scrolls will not print		1. Date of Request	
3. Manufacturer/Seller/Shipper		2. Date of Entry and Importation	
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"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto.	
<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"/> 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



## § 113.62 Basic importation and entry bond conditions.

### Basic Importation and Entry Bond Conditions

\*\*\***(d) Agreement to Redeliver Merchandise.** If merchandise is **released conditionally** from Customs custody to the principal before all required evidence is produced, before its quantity and value are determined, or before its **right of admission** into the United States is determined, the principal agrees to redeliver timely, on demand by Customs, the merchandise released if it:

- (1) Fails to comply with the laws or regulations governing admission into the United States;
- (2) Must be examined, inspected, or appraised as required by 19 U.S.C. 1499; or
- (3) Must be **marked with the country of origin** as required by law or regulation.

It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the **conditional release period** (whichever is later). (See §§141.113(b), 12.73(b)(2), and 12.80 of this chapter.)

# Treatment Of Articles Found To Be Not Legally Marked



## § 141.113 Recall of merchandise released from Customs custody.

(a)(1) Merchandise not legally marked. Certain merchandise is required to be marked or labeled pursuant to the following provisions:

(i) Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), pertaining to marking with country of origin;

\*\*\*\* (2) If such merchandise is found after release to be not legally marked, the port director may **demand its return to CBP custody** for the purpose of requiring it to be properly marked or labeled.

The demand for marking or labeling shall be made not later than 30 days after the date of entry in the case of merchandise examined in public stores, and places of arrival, such as docks, wharfs, or piers. Demand may be made no later than 30 days after the date of examination in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director.

# Treatment Of Articles Found To Be Not Legally Marked

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## ➤ 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
- 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 (demand for redelivery) 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 are/were properly marked

# The FTC & Product Marking: The FTC & Product Marking/Marketing – Deceptive Labeling



- FTC requires that a product marked or advertised as *Made in USA* be "all or virtually all" made in the U.S.
  - All significant parts and processing that go into the product must be of U.S. origin
  - Product should contain no — or negligible — foreign content
- **Qualified claims**
  - Claims that describes the extent, amount or type of a product's domestic content or processing are OK
  - Product that includes foreign components may be called "Assembled in USA" when is principal assembly takes place in the U.S. and the assembly is substantial (I.e. substantial transformation)
  - "Screwdriver" assembly in the U.S. of foreign components into a final product doesn't usually qualify for the "Assembled in USA" claim

# The FTC & Product Marking/Marketing – Deceptive Labeling



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- The FTC's [Enforcement Policy Statement](http://www.ftc.gov/os/1997/12/epsmadeusa.htm) can be found at <http://www.ftc.gov/os/1997/12/epsmadeusa.htm>
  - FTC has a business guide, [Complying with the Made in USA Standard](http://www.ftc.gov/bcp/online/pubs/buspubs/madeusa.pdf), spelling out the details of the standard, with examples of situations when domestic origin claims would be accurate and when they would be inappropriate, which can be found at <http://www.ftc.gov/bcp/online/pubs/buspubs/madeusa.pdf>
  - See [ftc.gov/os/statutes/usajump.htm](http://ftc.gov/os/statutes/usajump.htm) for more information



# The FTC & Product Marking/Marketing – Deceptive Labeling



## ➤ **California** is the exception to the FTC “virtually all” rule

- Applies a narrower state standard unfair competition law and the false advertising law
- Product should contain no foreign content if labeled made in USA
- See Paz. v. AG Adriano Goldschmeid, Inc. (“AG”) and Nordstrom, Inc. (“The Protégé” brand jean);
- Benson v. Kwikset Corp., 62 Cal. Rptr. 3d 284 (locksets, including deadbolts, doorknob, sets, door lever sets, and door handle sets)
- Colgan v. Leatherman Tool Group, Inc., 38 Cal. Rptr. 3d 36, 135 Cal. App. 4th 663.