Country of Origin Determination and Marking

Hosted by Amber Road’s Global Trade Academy on
Thursday, December 3, 2015

Responses from the Q&A Portion of the Broadcast

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1. **Are you saying that the origin rules in Part 102 apply when your manufacturing process takes place in a NAFTA country, regardless if you are exporting it to a NAFTA or non-NAFTA country?**

   If you are exporting to a non-NAFTA country, then the general “Wholly Obtained/Substantial Transformation” criteria are most likely to apply. It would be wise also to look into whether the country to which you are exporting has any different or additional rules regarding origin and marking. With regard to Part 102, please note the following cite:

   - **19CFR Part 102.0 Scope**
     - With the exception of §§102.21 through 102.25, this part sets forth rules for determining the country of origin of imported goods for the purposes specified in paragraph 1 of Annex 311 of the North American Free Trade Agreement (“NAFTA”).

   - **19 CFR Part 102.11 General Rules**
     - The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by §102.21.

2. **It seems that the transformation definition is subjective. Is there a method or equation to use? For instance, 60% transformed, etc.**

   You are correct, it is subjective. As noted in the presentation, substantial transformation is to be determined on a case-by-case basis and no single attribute is necessarily determinative. The subjective nature of “substantial transformation” is precisely the reason why there are a large number of Customs rulings and court cases involving this term.

3. **What is meant by “is it that anything that is foreign cannot be included as originating material.” A tariff shift does not apply?**

   I believe that this question refers to “Wholly Obtained.” The term means that there may be no foreign inputs. “Tariff Shift” is not a concept that relates to “Wholly Obtained.”

4. **What about remanufactured goods? If we apply the NAFTA Marking rules (102.11-102.20), we would meet the tariff shift, but rulings found in CROSS show that remanufactured goods have the original country of origin. What**
do you do when you don’t know the original country of origin of either the good or the material that imparts the essential character?
I would suggest that you discuss this situation with your Customs attorney or apply for a Customs Binding Ruling.

5. **When do you use the 102.1-102.20 rules versus the General Note NAFTA FTA rules?** Do you only use the 102.1-102.20 if you are not claiming FTA benefit, or do you use one for marking and one for preferential treatment only? **Is possible for goods to be marked with one country and then the NAFTA origin be different for claiming benefit?**

The HTSUS General Note 12 rules are the rules you apply to see if your product qualifies for NAFTA Duty Preference. Separate from Note 12 are the rules in 19 CFR Part 102 for determining NAFTA Region Origin.

6. **Would programming an article be considered a "substantial transformation?**
Please see Customs binding ruling H241177 in which the following is stated: “... [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that defines its use generally constitutes substantial transformation. See also Headquarters Ruling Letter ("HQ") 558868, dated February 23, 1995 (programming of Secure ID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation);...”

7. **Is there a rule of thumb to use value added % to determine COO?**
Would that it were so! No, there is not any such rule of thumb. Value could be claimed as one of the attributes (along with others) to support a claim of “Substantial Transformation,” but there is no guarantee that value alone would be determinative.

8. **In regards to wholly obtained, can corn be grown with seeds or fertilizer from another country?**
I would suggest that you discuss the situation with your Customs attorney, or apply for a Customs Binding Ruling.

9. **Is the general 35% content not the maximum foreign content and not the minimum local content for preferential origin under GSP model?**
The 35% GSP requirement is a minimum local content requirement.

10. **We have been asked to mark the carton as well as the product. What is the legality to this request?**
As I noted in the presentation, I am not an attorney and thus cannot provide you with legal advice. However, I can point you to 19 CFR Part 134, and the FAQ’s on the CBP website:

- **Marking of Containers:** Usual containers imported filled must be marked with the name of the country of origin of the contents of the usual container, unless
the contents are marked with the country of origin and the usual containers can be readily opened for inspection of the contents.

Usual containers imported empty to be filled may be excepted from individual marking if they reach the person or firm that will fill them in a carton or other container marked with the country of origin.

Unusual containers imported empty, to be filled in the United States, must be marked “Container made in (country).”

- **What is a usual container?** The container in which an imported article will ordinarily reach the ultimate purchaser. Usual containers or holders are not required to be marked with their own origin when imported filled.

Usual containers, which are goods from a NAFTA country, are not required to be marked with their own origin, whether or not filled.

- **What is an unusual container?** These may include containers not ordinarily sold at retail with their contents, or containers which have further use or value after their contents are consumed.

Unusual types of containers must be marked to indicate their own origin when imported filled, in addition to any marking required to indicate the origin of their contents. For example, a vase made in France containing candy made in England must be marked: “Vase made in France, candy made in England.”

11. **We import components from China and assemble in the US into full valve assemblies. We have always called this "US origin" because of the time, skill, and assembly process, although every component may be of foreign origin. Is this correct?**

As I noted in the presentation, I am not an attorney and thus cannot provide you with legal advice. Having said that, origin for NAFTA region (and marking for export to Canada or Mexico) would be determined by application of the regulations in 19 CFR Part 102. If you are talking about origin for the purposes of exportation outside the NAFTA Region, then origin should be based on the country of last substantial transformation. If you are talking about “Made in USA” marking for goods manufactured in the U.S. for U.S. consumption, then you need to apply the FTC rules and the “all or virtually all” criterion.

12. **Is the COO always the country that the parts were manufactured in?**

Absolutely not. Here is info from the CBP Website:

Does altering the article in a second country change the country of origin?
The country of origin of an article may be changed in a secondary country if one of the following occurs:

- If the further work or material added to an article in the second country constitutes a substantial transformation. A substantial transformation occurs if a new article with a different name, character, and use is created.

- For a good from a NAFTA country: if under the NAFTA Marking Rules (19 CFR Part 102) the second country is determined to be the country of origin of the good; or
For an article considered to be a textile or apparel product (regardless of whether it is a good from a NAFTA country): if the country of origin is determined by the general rules set forth in 19 CFR Part 102.21 to be the second country. For purposes of determining whether a textile or apparel product is from Israel, the general rules in 19 CFR 12.130 apply.

13. Please cite the Customs ruling for the TW screw driver blade not undergoing substantial transformation.
The ruling may be found in the Customs repository of previous rulings ruling number N024981 dated March 20, 2008

14. If a package includes more than one country of origin, should COO label include other countries as well?
Yes, the marking should include all countries.

15. Are labor and packaging costs considered "inputs" for NAFTA origin determination?
No. Refer to the rules in 19 CFR Part 102.11 through 102.20

16. Can “fabricated in” be abbreviated by “FAB” when labelling size is constrained?
It is my opinion that I see no instance where the abbreviation “FAB” would convey to the ultimate purchaser the country of origin. However, you are welcome to try asking that question to your local Customs office or applying for a Customs binding ruling.

17. How do you differentiate COO vs. “Made in...” vs. “Assembled in...” markings?
Here is what the Customs publication says on origin states:

The phrase “made in” is required only in the case where the name of any locality other than the country or locality in which the article was manufactured appears on the article or its container and may mislead or deceive the ultimate purchaser. The marking “made in (country)” or other words of similar meaning must appear in close proximity to, and in comparable size letters of, the other locality to avoid possible confusion. Use of the words “assembled in” may be used to indicate the country of origin of an article where the country of origin of the article is the country in which the article was finally assembled. “Assembled in” may be followed by the statement “from components of (the name of the country or countries of origin of all the components).”

18. Suppose I had finished good’s parts that are made in China (fewer than 5 parts) and then shipped to Japan where the parts are painted, assembled into a finished good and packed. What is the country of origin?
It depends on evaluation of whether substantial transformation occurred and where. Keep in mind that minor processing is not considered “Substantial Transformation.”
You can find a definition for minor processing in 19 CFR Part 102.1

19. Should you mark products made in Taiwan if they are manufactured there or should they be marked 'Made in China'?
The U.S. considers Taiwan and China to be two separate countries. Therefore, if you have determined that the last country of substantial transformation was Taiwan, then marking must indicate Taiwan.

20. **We are a manufacturer who has significant manufacturing operations in the US but also import components and finished goods from all over the world. Our manufactured, assembled and purchased products are sold in a number of regions of the world. Our current business system in the US allows for only one country of origin to be recorded. However, there may be two or even three countries that may apply to the same item. We are not about to change our business system or create multiple part numbers. How do you recommend that we handle this?**

This reminds me of a situation that I had to deal with in my private sector career. What we ended up doing was to set up a flag in our ERP system which required our warehouse people to handle these exception situations manually. There may be other ways to handle this, but this is what we ended up with.

21. **Many of our customers require a Certificate of Origin from the Chamber of Commerce. Our Chamber is very accommodating, but they have made it known that it is very labor intensive for them to issue us 40-50 COO’s per week. Do you have any suggestions on alternative ways to handle this situation?**

Our Chambers of Commerce certifications in the US are not the same as other countries. In other countries this is a very official certification. But, in the US, the Chamber certification is essentially just a stamping of what you supply to them. Now, if you are sending the same goods to the same customer on a repeated basis (e.g., monthly, semi-annually, annually) would they accept a COO for that time period?

You may also want to contact the U.S. Chamber of Commerce executive office. There is an electronic solution called “eCertify,” which is an online tool to obtain Chamber of Commerce seals. A number of local offices participate in this service. You may find that your local Chamber office is a participant.

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