

# SELECTED RULING EXCERPTS

## RE: COUNTRY OF ORIGIN

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. In general, as provided at 19 CFR 134.1, the country of origin of an article is the country in which it was manufactured, produced, or grown. Additional processing or manufacture in another country must effect a substantial transformation in order to render such other country the country of origin. A substantial transformation is said to occur if processing or manufacture imparts a new name, character, or use to the imported article.

## RE: ULTIMATE PURCHASER

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b), Customs Regulations (19 CFR 134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain. Section 134.1(d) defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. 19 CFR 134.1(d)(1) states that if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article. The case of U.S. v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character or use differing from that of the constituent article will be considered substantially transformed and that the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35.

## RE: SUBSTANTIAL TRANSFORMATION

The case of U.S. v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character or use differing from that of the constituent article will be considered substantially transformed and that the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35.

## RE: COUNTRY OF ORIGIN MARKING FOR IMPORTED GOODS

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article

## RE: PERMANENT

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain. With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable

## **RULING NY L87621 October 12, 2008**

### COUNTRY OF ORIGIN MARKING OF BUSHINGS, PULLEYS AND FLYWHEELS

The articles in question are described as bushings, pulleys and flywheels manufactured in China. The articles are either boxed or banded. The boxes and bands indicate product information and are marked "Made in China". You indicate that the articles will not be repackaged after importation and the articles will be sold in their condition as imported to their ultimate purchasers. You inquire whether the marking of the articles as indicated above is acceptable. You also indicate that your client is considering the inclusion of the logo "Canadian Manufacturer" near the Maska name on instructions packed with the articles and/or on the outside of the boxes and bands containing the articles..

Based on examination of the marked samples, we find that the current marking of the packaging for the imported bushings, pulleys

and flywheels, as described above, is conspicuous, legible and permanent, and meets the marking requirements of 19 U.S.C. 1304 and [19 CFR Part 134](#). However, the proposed addition of the "Canadian Manufacturer" logo to the current marking would be acceptable only if the requirements of Section 134.46, Customs Regulations (19 CFR 134.46) are met.

Section 134.46, Customs Regulations (19 CFR 134.46), deals with cases in which the name of a foreign country or locality other than the country or locality in which the article was manufactured appears on an imported article or its container. We find that the addition of the marking "Canadian Manufacturer" to the current marking of the boxes and bands may mislead the ultimate purchaser as to the actual country of origin.

Accordingly, to render the proposed marking acceptable, the boxes and bands must be marked, legibly and permanently, in close proximity to the proposed "Canadian Manufacturer" logo, and in at least a comparable size, with "Made in China", or other words of similar meaning. In order to satisfy the close proximity requirement, the country of origin marking must generally appear on the same side(s) or surface(s) on which "Canadian Manufacturer" appears. With regard to instruction sheets that may be packed together with the articles, whether or not they are printed with the "Canadian Manufacturer" logo has no bearing on the marking of the articles or their containers.

## **RULING [NY L87348](#) October 7, 2005**

### COUNTRY OF ORIGIN MARKING OF IMPORTED CONDUIT BOXES, END PLATES, STATOR FRAMES AND FAN HOUSINGS

This is in response to your letter, dated September 6, 2005, requesting a ruling on [whether imported Conduit Boxes, End Plates, Stator Frames and Fan Housings are required to be individually marked with the country of origin if they are later to be processed in the U.S. by a U.S. manufacturer](#). The items concerned (listed below) are metal castings which are imported by Southland Metals, Inc. and exclusively sold to Baldor Electric Company which machines the items and assembles them, as components, into motor and gear boxes. We are in receipt of an affidavit from Baldor Electric Company which acknowledges that Baldor is aware that these items are imported from their country of origin, Brazil:

19 CFR 134.1(d)(1) states that if an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article. The case of *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character or use differing from that of the constituent article will be considered substantially transformed and that [the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked](#). See, 19 CFR 134.35.

In this case, the imported Conduit Boxes, End Plates, Stator Frames and Fan Housings are substantially transformed as a result of the U.S. processing, and therefore the U.S. manufacturer is the ultimate purchaser; under 19 CFR 134.35, only the containers which reach the ultimate purchaser are required to be marked with the country of origin, Brazil.

## **RULING [NY R01119](#) December 16, 2004**

The tariff classification of hydraulic cylinders and parts from China

The articles in question are described as two similar hydraulic cylinders, which are identified as cylinder number 0127 and cylinder number 1503. You indicate that cylinder number 0127 will be imported as a finished product, assembled and painted, and that it is intended for use as a hydraulically operated linear actuator for light duty construction and agricultural equipment. [Cylinder number 1503 will be imported as components, which be assembled into to a complete cylinder intended for use as a hydraulic linear actuator in a pleasure boat lift/docking system.](#)

The imported components for cylinder number 1503 include a cylinder, rod assembly, cylinder bottom, gland, piston and pivot tube. The imported components will be assembled with domestic components in the United States and the completed cylinder will then be painted. Based on the information provided we find that the subject components are substantially transformed into articles with a new name, character or use, when incorporated with other components to produce finished hydraulic cylinders. Further, you state that Swanson has no intentions to market or sell the imported components separately. Accordingly, Swanson is the ultimate purchaser of the imported components. In accordance with 19 CFR 134.35, the subject components, provided that they are used by Swanson in the assembly of completed cylinders and not sold separately in their condition as imported, are excepted from individual marking and only the outermost containers of the imported articles must be marked with country of origin.

## **RULING [NY K88379](#) August 27, 2004**

## COUNTRY OF ORIGIN MARKING OF IMPORTED PARTS OF VALVES, ACTUATORS AND SPRINKLER HEADS

The articles in question are described as a solenoid, an actuator, a brass body for an anti-siphon valve, and a pop-up sprinkler body. You indicate that solenoid is assembled in China from parts originating in the United States and China. The actuator is assembled in the United States from two components originating in either China or Thailand. You also indicate that the actuator is always sold with the solenoid, and we assume for the purposes of this ruling that your client assembles the solenoid with actuator in the United States. The body for the anti-siphon valve is made in China and assembled in the United States with domestic components and may be sold with or without the actuator. The body for the pop-up is also made in China and assembled in the United States with domestic components into a complete pop-up sprinkler for use in irrigation systems. In your request you inquire as to the proper marking of the imported components and the articles that are assembled in the United States.

Based on the information made available, all the imported components are used by Champion Irrigation Products in the production of finished valves, actuators and sprinkler heads. [With the exception of the solenoid, which on occasion may be sold as a spare part, the imported components are not sold in their condition as imported.](#)

Accordingly, we find that the imported components are substantially transformed into articles with a new name, character or use, when incorporated with other components to produce finished valves, actuators and sprinkler heads, and that Champion Irrigation Products is the ultimate purchaser of such parts. In accordance with 19 CFR 134.35, the imported components, provided they are used by Champion Irrigation Products in the assembly of completed valves, actuators and sprinkler heads and not sold separately in their condition as imported, are excepted from individual marking and only the outermost containers of the imported articles must be marked with country of origin.

[However, on those occasions when the imported solenoids are not assembled into finished actuators and/or valves, but sold to customers as spare parts, the "ultimate purchaser" of the solenoids is not Champion Irrigation Products, but the customer to whom the solenoids are sold. In this regard, we note that where the outermost container of the solenoids are correctly marked with the country of origin of the articles contained within, the imported solenoids, including those solenoids that may be repacked and distributed as spare parts, are excepted from individual marking at the time of importation pursuant to 19 U.S.C. §1304\(A\)\(3\)\(D\) and CFR 134.32\(d\), provided that the certification set forth in 19 C.F.R. §134.26 is executed, and the spare parts will reach the retail purchaser marked in accordance with the requirements of 19 U.S.C. §1304 and 19 C.F.R. Part 134.](#)

[The spare parts must be individually marked to indicate to the customer that China is the country of origin. Your proposed use of a label or hang-tag to indicate that the solenoid are assembled in China from components originating from China and the United States is acceptable, provided the Port Director at the port of entry is satisfied that the proposed marking is conspicuous, legible and sufficiently permanent to reach the customer.](#)

### **RULING [NY R00587](#) August 16, 2004**

Housed ball bearing from China

The article in question is described as a housed bearing, part number BRG/00/0032. The housing is a two-bolt flange unit and incorporates a spherical ball bearing. You indicate that the housed bearing will be imported individually boxed and that the side of the box will be marked "Made in China" to indicate the country of origin. Descriptive information and drawings depicting the housed bearing and the marking were submitted.

The applicable subheading for the housed ball bearing will be 8483.20.4040, Harmonized Tariff Schedule of the United States (HTSUS), which provides for flange housed bearings incorporating ball bearings. The rate of duty will be 4.5 percent ad valorem.

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. [For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations \(19 CFR 134.44\), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.](#)

The proposed marking of the individually boxed housed bearing, as described above, is conspicuously, legibly and permanently

marked in satisfaction of the marking requirements of 19 U.S.C. 1304 and [19 CFR Part 134](#) and is an acceptable country of origin marking.

## **RULING [NY K85990](#) June 7, 2004**

This is in response to your letter dated May 20, 2004, on behalf of your client Bizerba USA Inc., requesting a ruling on [whether the proposed marking of the container in which certain replacement parts are imported with the country of origin in lieu of marking the articles themselves is an acceptable country of origin marking for the imported parts.](#)

The subject replacement parts are made in Germany by Bizerba GMBH and sold exclusively to Bizerba USA Inc. These parts are said to be sold exclusively for food slicing machines produced by Bizerba GMBH. You state that when imported these machines are properly marked with their country of origin, Germany. [The replacement parts will not be marked with their country of origin](#) but the outermost container will be marked to indicate the country of origin. You do not indicate whether the parts are individually packed or bulk packed, nor do you indicate who the end user will be or whether the goods are repacked after importation. The replacement parts are specifically manufactured as replacement parts for Bizerba machines and not as universal replacement parts for similar types of machines. You request that the individual replacement parts be excepted from country of origin marking and that the marking of the outermost container in which the goods are imported with the country of origin will be sufficient for the purposes of the marking statute.

Part 134, Customs Regulations ([19 CFR Part 134](#)), implements the country of origin marking requirements and the exceptions of 19 U.S.C. 1304. The "ultimate purchaser" is generally defined in 19 CFR 134.1(d), as the last person in the U.S. who will receive the article in the form in which it was imported.

Section 134.33, Customs Regulations (19 CFR 134.33), sets forth certain classes of articles, known collectively as the **J-list**, which are excepted from individual country of marking pursuant to 19 U.S.C. 1304(a)(3)(J). However, in the case of any article on the J-list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents.

[One class of articles on the J-list is "parts for machines imported from the same country as parts."](#) This item has been interpreted to cover replacement parts which are manufactured in the same country as the original machine which is exported to the U.S. The following principles are applicable to this exception:

- [\(1\) The word machine is used in a general sense and also applies to such things as vehicles;](#)
- [\(2\) The exception applies to replacement parts for machines which may be manufactured in more than one country, provided that Customs officers are satisfied that the machines exported to the U.S. are made only in one country;](#)
- [\(3\) The exception applies to replacement parts made and engineered for use on or in the particular machine involved, and also to parts made to standard or stock designs which are used in producing the machine; and](#)
- [\(4\) The exception is applicable only to replacement parts manufactured in the same country as the machine which is exported to the U.S.](#)

The underlying rationale for this particular J-list exception is that if the ultimate purchaser buys a specific machine which is properly marked as to its country of origin, then there is no need to mark a replacement part for that machine if it is manufactured in the same country as the original machine. The presumption is that the ultimate purchaser will assume that unless otherwise marked, the replacement part was manufactured as the machine itself.

Accordingly, in T.D. 75-85, Customs held that replacement parts for imported vehicles were excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(J), since the parts and vehicles were both manufactured in Germany. In addition, Customs stated that the exception for the German parts could apply even though vehicle models other than the vehicle model at issue were manufactured in countries other than Germany, provided that Customs officers were satisfied that the vehicle models exported to the U.S. market were only made in Germany. However, those parts made in countries other than Germany were not excepted from marking under the J-list.

In Headquarters Ruling Letter (HRL) 731864 dated April 7, 1989, Customs also held that although a Canadian entity manufactured machines in various countries, the imported Canadian parts were excepted from marking under the J-list since they were replacement parts for machines which were only manufactured in Canada. Relying on [HRL 720420](#) dated September 28, 1982, which allowed Customs officers at the port of entry to require an appropriate written statement to the effect that all replacement parts and the machine were made in the same country before allowing the marking exception under the J-list, [HRL 731864](#) stated that there was no reason to deny the exception from marking where the importer has shown that both the particular machines and the parts for these machines were made only in one country, namely Canada, and that the parts do not fit any other machine. As provided in 19 CFR 134.25, if the imported J-list product will be repacked prior to sale to the ultimate purchaser, the importer must certify to Customs that he will properly mark the new package or alternatively notify the repacker of the obligation to mark the new package. The certification procedures, which are for the purpose of ensuring that despite the repacking, the ultimate purchaser will

be advised of the country of origin, apply to imported J-list articles processed and repacked after importation unless the articles are substantially transformed prior to repacking.

Based on the facts of this case, we accept your assertion that the subject replacement parts are "parts for machines imported from the same country as parts." These parts are produced by Bizerba in Germany and are replacement parts for machines which were also manufactured by Bizerba in Germany and purchased by Bizerba USA. Accordingly, since the machines and the replacement parts are both manufactured in Germany, the replacement parts are excepted from marking requirements under the J-list. Proof, however, may be requested by the Customs officer at the port of entry that the machines imported into the U.S. are only produced in one country, and that the replacement parts for which an exception is sought are produced in the same country in which the machines are produced.

Based on the information you submitted, the marking requirements of 19 U.S.C. 1304 will be satisfied if the outermost container (i.e., the shipping container) of the replacement parts is marked "Made in Germany," the origin of the replacement parts; the certification procedures of 19 CFR 134.25 are followed if the goods are repacked for a purchaser other than Bizerba USA; and each bag in which the replacement parts are repacked, contains the marking "Made in Germany" and is the outermost container in which the ultimate purchaser receives these articles.