
DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Ch. I

[T.D. 00-44]

Country of Origin Marking Rules for Textiles and Textile Products Advanced in Value, Improved in Condition, or Assembled Abroad

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final interpretive rule.

SUMMARY: This notice advises the public that Customs will no longer apply 19 CFR 12.130(c) for purposes of country of origin marking of textiles and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States (HTSUS), does not apply for country of origin marking purposes.

EFFECTIVE DATE: October 10, 2000.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202-927-1254).

SUPPLEMENTARY INFORMATION:

Background: In T.D. 85-38, 50 FR 8710 (March 5, 1985), Customs adopted as a final rule an interim amendment to the Customs Regulations, consisting of the addition of a new section 12.130 (19 CFR 12.130) to establish criteria to be used in determining the country of origin of imported textiles and textile products for purposes of multilateral and bilateral textile agreements entered into by the United States pursuant to section 204, Agricultural Act of 1956, as amended. In T.D. 85-38, Customs stated that section 12.130 is applicable to merchandise for all purposes, including duty and marking. A similar statement was made in T.D. 90-17, 55 FR 7303 (March 1, 1990).

Paragraph (c)(1) of section 12.130 provides in part as follows:

* * * In order to have * * * a single country of origin for a textile or textile product, notwithstanding paragraph (b), merchandise which falls within the purview of Chapter 98, Subchapter II, Note 2, Harmonized Tariff Schedule of the United States, may not, upon its return to the U.S., be considered a product of the U.S.

Paragraph (c)(2) of section 12.130 accords essentially the same treatment to products of insular possessions.

Chapter 98, Subchapter II, U.S. Note 2(a), HTSUS, (Note 2(a)), provides in pertinent part as follows:

* * * Any product of the United States which is returned after having been advanced in value or improved in condition abroad by any process of manufacture or other means, or any imported article which has been assembled abroad in whole or in part of products of the United States, shall be treated for the purposes of this Act as a foreign article.

Subsequently, in connection with the development of the final NAFTA Marking Rules, Customs concluded that Note 2(a) should not apply for general country of origin purposes, including marking. 60 FR 22312, 22318 (May 5, 1995). Accordingly, in order to clarify the applicability of this position for marking purposes, on June 15, 1998, Customs published a notice of proposed interpretation (hereinafter "proposed interpretation") in the Federal Register (63 FR 32697) to the effect that section 12.130(c) of the Customs Regulations should not control for purposes of determining the country of origin marking of textile and textile products, and that Note 2(a) does not apply for country of origin marking purposes. The notice solicited public comments on the proposal, and the public comment period was extended to December 18, 1998.

Discussion of Comments:

A total of 7 entities submitted comments in response to the notice. Although all of the commentors were generally supportive of the proposed interpretation, two were opposed to the proposal as it pertains to textiles whose origin is determined by where the fabric is formed. The specific points made by the commenters are discussed below.

Comment: Several comments were received on particular operations that should or should not be allowed abroad in order for a U.S.-origin textile or textile product to remain of U.S. origin. One commenter strongly supports the proposed interpretation since minor operations performed on U.S. garments abroad should not force a change in origin solely because of 19 CFR 12.130(c). This commenter stated that imported articles that undergo a similar process in the United States do not undergo a change in origin in the United States. Another commenter supports the proposed interpretation as it would permit apparel produced in the United States that is exported for minor finishing operations such as silk screening, embroidery, stone washing, etc., to better compete against foreign competition.

Another commenter states that textiles and textile products made in the United States and sent abroad to be advanced in value or improved in condition should be considered products of the United States for marking purposes provided they: (a) "Do not undergo a change of tariff heading (sic) at the eight digit level; (b) do not otherwise undergo a substantial transformation; and (c) undergo no assembly operation while abroad." The commenter states that if decorative components such as epaulets, patches, flaps, etc. are added to a U.S.-origin article while abroad, the article should still be able to be marked as a product of the United States. Other foreign operations that should be allowed without the U.S.-made article losing its origin are suggested to be washing, printing, painting, garment dyeing, and embroidery. The commenter also states that value-added criteria should not be considered in determining how articles shall be marked.

Customs Response: The textile rules of origin of section 334 of the Uruguay Round Agreements Act (URAA) (codified at 19 U.S.C. 3592), as implemented by section 102.21 of the Customs Regulations, are in most cases determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad. Therefore, the origin rules provided for [[Page 42635]] in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product under those rules by virtue of the processing performed abroad. In response to the commenter's statement that U.S. textiles and textile products should not be considered U.S. products for marking purposes if they undergo a tariff change at the eight digit level, Customs presumes the commenter means from one eight digit classification to another eight digit classification. In examining 19 CFR 102.21, Customs notes that there are limited instances where a change is allowed at the eight-digit level. However, these rules reflect section 334 of the URAA, as amended by the ``Trade and Development Act of 2000'', Public Law 106-200, 114 Stat. 251 (May 18, 2000).

In reference to the commenter's statement that U.S. textiles and textile products should not be considered U.S. products if they undergo a substantial transformation abroad, Customs simply notes that section 334 of the URAA, as amended, represents the view of Congress on how the substantial transformation principle should be applied. See T.D. 95-69, 60 FR at 46195. Therefore, to the extent that a U.S. textile product undergoes a change in origin abroad as set forth in 19 CFR 102.21, it would be considered a foreign product for marking purposes. Additionally, Customs notes that, in general, the textile rules of origin at 19 CFR 102.21 provide that the complete assembly of two or more integral components in a single country will result in a change in origin, thereby requiring most U.S. textile products that are assembled abroad to be marked as foreign articles.

Furthermore, under the 19 CFR 102.21 rules, the attachment of minor decorative components to a U.S. textile product while abroad would not result in a change in origin. For example, affixing an emblem classified in heading 5810, HTSUS, to a U.S. T-shirt classified in heading 6109, HTSUS, in a foreign country would not result in a change in the T-shirt's origin. 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6101-6117. Therefore, the U.S. T-shirt may be returned as a product of the United States, and would not be required to be marked as a foreign article for purposes of 19 U.S.C. 1304 as previously required by 19 CFR 12.130(c). However, the T-shirt would be required to be labeled in accordance with the Textile Fiber Products Identification Act which is within the jurisdiction of the Federal Trade Commission (see further discussion below).

Customs also notes that a U.S. T-shirt sent abroad for silk-screening, painting, or printing would also not change origin by virtue of these processes occurring, and the returned T-shirt would not be required to be marked as a foreign article. A similar result would apply to U.S. jeans that are washed, stonewashed, dyed, or embroidered abroad. However, U.S. T-shirt components or jean components sent abroad for assembly into T-shirts or jeans would change origin as a result of the assembly and would require marking as a foreign article pursuant to 19 CFR 102.21.

The tariff shift rules at 19 CFR 102.21 also do not include value-added criteria. To the extent that origin may not be determined under the applicable tariff shift rule of 19 CFR 102.21(e), the origin is determined by referring to the country in which the ``most important assembly or manufacturing process occurred''.

Comment: Two comments were received concerning the application of the proposed interpretation, as it would pertain to textiles whose origin is determined by where the fabric is formed. One commenter opposes the proposed interpretation, as it would apply to articles such as scarves, handkerchiefs, and bandannas. The other commenter opposes the proposed interpretation as it would apply to household linens and apparel accessories made overseas with domestic fabric.

The commenters claim that the proposed interpretation would allow U.S.-made woven fabric made into scarves, etc. abroad to be labeled with a qualified "Made in U.S.A." statement, while scarves, etc. made in the United States using foreign-made woven fabric would have to be labeled as being of foreign origin pursuant to 19 CFR 102.21(e) tariff shift rules for HTSUS headings 6215-6217(2). It is stated that domestic manufacturers of scarves, etc. use both domestic and imported fabric. The fabric may be imported in a finished or greige condition, and may be bleached, dyed and/or printed in the United States. The finished fabric is also cut and sewn to manufacture scarves, etc. It is claimed that this would place domestic manufacturers at a significant competitive disadvantage, because if imported finished fabric or greige fabric is used and made into scarves in the United States, for example, the article is required to be marked as a foreign article. The commenters state that the purpose of the marking statute, 19 U.S.C. 1304, is to let the consumer know when they are purchasing foreign-made products, and that the proposed interpretation ignores this purpose. It is claimed that the fact the Federal Trade Commission will require some form of qualification does not really eliminate the potential of consumer deception. Therefore, these commenters suggest a modification to the proposed interpretation to exclude household linens and apparel accessories.

However, a third comment from a domestic manufacturer of bedding and bath products supports the proposed interpretation and believes that its adoption is necessary to ensure the uniform application of the country of origin rules for textile products promulgated pursuant to 19 U.S.C. 3592. The commenter claims that 19 CFR 12.130(c) contradicts the intent of Congress as set forth in 19 U.S.C. 3592 which provides that the textile rules of origin shall govern for the purposes of the Customs laws and the administration of quantitative restrictions, and 19 U.S.C. 3592(b)(2)(A) provides that the origin of certain products, such as sheets, shall be the country in which the fabric was formed.

The commenter submits that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, and that the country of origin rules governing textile products should be uniformly applied for country of origin marking purposes. This commenter states that it has invested in state-of-the-art equipment for weaving fabric from raw cotton and man-made fibers and that these investments have allowed them to compete in the world marketplace. The commenter claims that with the enactment of 19 U.S.C. 3592, it is appropriate to re-examine T.D. 85-38 and T.D. 90-17 to assess what statutory policies are being furthered by the application of 19 CFR 12.130(c) to textile products such as sheets that are produced abroad from U.S.-origin fabric.

Customs Response: Customs is of the opinion that 19 CFR 12.130(c) should no longer be applied for country of origin marking purposes. Section 12.130(c) states that merchandise which falls within the "purview of Chapter 98, Subchapter II, Note 2, HTSUS," may not, upon its return to the U.S., be considered a product of the United States.

As suggested by the supporting commenter that the proposed interpretation should extend to all textile products, not merely those classifiable in Chapter 98, Customs notes that the returned article need not necessarily be classifiable in Chapter 98, but must only be within the purview of Note 2. For example, U.S. greige fabric dyed abroad would not be classifiable in Chapter 98, but rather would be fully dutiable. See *Dolliff & Company, Inc. v. United States*, 455 F. Supp. 618 (CIT [[Page 42636]] 1978), aff'd, 599 F.2d 1015 (Fed. Cir. 1979). However, the returned dyed fabric would be within the purview of Note 2 as it is a U.S. product sent abroad and advanced in value. Therefore, under the position stated in T.D. 85-38 and in T.D. 90-17, the returned fabric would be required to be marked as a foreign article. Because Customs applied section 12.130(c) for marking purposes due to the statements made in T.D. 85-38 and T.D. 90-17, 19 CFR 12.130(c) should no longer apply for country of origin marking purposes in light of the comments supporting the proposed interpretation, and in light of Customs previous statements made in connection with the NAFTA Marking Rules. 60 FR 22312, 22318 (May 5, 1995).

In regard to the marking of scarves, handkerchiefs, bandannas, household linens, etc., since 19 U.S.C. 3592 sets forth the rules of origin for textile and apparel products for purposes of the customs laws, Customs lacks authority to carve out any exception for these articles. However, Customs notes that with the passage of the "Trade and Development Act of 2000", in particular section 405, some of the concerns raised by the commenter appear to have been alleviated as certain fabrics and articles will no longer be considered to originate where the fabric is made.

Comment: One commenter submits that 19 CFR 12.130(c) should no longer apply for country of origin marking purposes and for quota purposes. The commenter states that T.D. 85-38 was promulgated to prevent the circumvention of visa or export license requirements contained in multilateral and bilateral textile restraint agreements. The commenter notes that the Tariff Act of 1930 never addressed issues concerning country of origin determinations for quota purposes. Nonetheless, this rule was applied for marking and quota purposes because Customs believed that Congress did not intend Customs to apply one rule of origin for duty and marking purposes and a different rule for quota purposes.

This commenter states that it is unaware of any bilateral agreement that requires the imposition of quota restraints on products that are deemed to be of U.S. origin pursuant to the rules set forth in 19 CFR 102.21(e). As an example, the bilateral textile agreement negotiated between the United States and Fiji is presented, which requires Fiji to limit exports to the United States of cotton and man-made fiber textile and textile products of Fiji. The commenter notes that if a sheet is produced in Fiji using Australian fabric, Fiji would not possess authority to limit the exports of such sheets to the United States; however, it presently would if U.S. fabric were used, thus placing U.S. fabric manufacturers at a competitive disadvantage to fabric producers in non-quota countries such as Australia.

Another commenter questions whether Customs would still require a textile visa for textiles and textile products under the new proposed position.

Customs Response: With regard to the comments received regarding the applicability of 19 CFR 12.130(c) for quota purposes, we note that this would be more appropriately addressed to the Committee for the Implementation of Textile Agreements which issues instructions concerning these issues.

Comment: The Federal Trade Commission (FTC) notes that with respect to marking, the ordinary textile rules of origin, prescribed in 19 U.S.C. 102.21, as interpreted by Customs, would apply, but that the Textile Fiber Products Identification Act (TFPIA), set forth at 15 U.S.C. 70 et seq., and the FTC rules implementing the TFPIA, set forth at 16 CFR Part 303, would also still apply.

The FTC states that the TFPIA requires that textile products be labeled to show the country of origin, whether domestic or foreign. 15 U.S.C. 70b(b)(4)&(5). The FTC rules implement the statutory requirement; explain how it applies to products made, in part, in the U.S. and, in part, in another country; and provide examples of proper labeling. 16 CFR 303.33. Therefore, under the TFPIA, imported textile products must name the country where they were manufactured or processed. Textile products made in the United States of materials also made in the United States should be labeled as "made in USA", or words to that effect. Products made in the United States of imported materials should disclose both the U.S. manufacturing and the imported component--for example, "Made in USA of imported fabric" or "Knitted in USA of imported yarn." Similarly, textile products partially manufactured in a foreign country and partially manufactured in the United States should be labeled to show the manufacturing process both in the foreign country and in the United States--for example, "Imported cloth, finished in USA," "Sewn in USA of imported components," or "Made in (foreign country), finished in USA."

The rules state further that for purposes of determining how a particular product should be labeled, a manufacturer needs to consider the origin of only those materials that are covered under the TFPIA (i.e., those made of textile fibers) and that are one step removed from that manufacturing process (i.e., a fabric manufacturer must identify imported yarn; a garment manufacturer must identify imported fabric).

The FTC also provides several examples of how it would view the labeling requirements of textile products made in the United States which are sent abroad for some additional finishing process, where there is no change in origin under 19 CFR 102.21. When there is no change in origin, some returned U.S. articles may simply be labeled "Made in USA," but some additional foreign processes may have to be disclosed on the label. The FTC states that in many cases if the foreign processing were sufficiently minimal, disclosure would not be necessary for compliance with the TFPIA and the rules. Such processes would include: various kinds of washing or wet processing (stone washing, enzyme washing, acid washing, sizing, starching, etc.); dyeing or bleaching; application of ink designs (heat transfer or screen printing); pressing (including permapressing and similar processes to make apparel wrinkle free); repairs or alterations; tagging or labeling; closure of single-component knit products (such as hosiery); adding or changing buttons; and boarding (adding cardboard to give the garment shape). These processes, although they enhance the value of the goods, do not alter the basic identity or character of the product.

The FTC states that the addition of ornamentation or decorative trim that involves adding textile fibers to a textile product (by embroidery, for example) is addressed in 16 CFR 303.12 and 303.26. If such trim or ornamentation either (a) does not exceed 15 percent of the surface area of the item, or (b) does not exceed 5 percent of the product's fiber weight, it is exempt from the rules' fiber content disclosure requirement. If exempt from fiber content disclosure, it is also exempt from origin disclosure if added in another country. If the decorative trim or ornamentation is more than 15 percent of the surface area and more than 5 percent of the product's fiber weight, and is applied in another country, the foreign processing would have to be disclosed (for example, ``Made in USA, embroidered in Mexico").

In those situations where the foreign processing is more than minimal finishing of an already finished article, disclosure of the foreign processing would be required. 16 CFR 303.33(a)(4). For example, if components of a garment are manufactured in the U.S., but the garment is assembled elsewhere, both aspects of the origin would have to be disclosed (e.g., ``Assembled in Mexico of U.S. Components").

Customs Response: Customs appreciates the FTC's comments that clarify the marking requirements under the TFPIA. Further clarification of the rules administered by the FTC may be obtained by writing to:

Textile Program, Division of Enforcement,
Bureau of Consumer Protection, Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580.

Conclusion:

After analyzing the comments received and further consideration of the matter, Customs has decided to adopt the proposed interpretation that 19 CFR 12.130(c) does not apply for purposes of country of origin marking. As noted above, the textile rules of origin of 19 U.S.C. 3592, as amended, and as implemented by 19 CFR 102.21, will be determinative regarding the country of origin marking of a U.S. textile or textile product that is processed abroad and that is described in those statutory and regulatory provisions. Therefore, the origin rules provided by statute and in 19 CFR 102.21 must be referred to in order to determine whether a U.S. textile product becomes a foreign product by virtue of the processing performed abroad. Moreover, it should be noted that even if the U.S. textile product does not require labeling as a foreign product under those provisions, the interpretation adopted in this document does not exempt textile and apparel products imported into the United States from the labeling requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, enforced by the Federal Trade Commission.

Approved: April 14, 2000.
Raymond W. Kelly,
Commissioner of Customs.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

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