



COUNTRY OF ORIGIN MARKING

MARKING PURPOSE

The purpose of marking laws: Congress intended that the ultimate purchaser should, at the time of purchase, know where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will. *United States v. Friedlaender & Co.*, 27 CCPA 297, C.A.D. 104 (1940)

MARKING CITATION

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted by law, 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 the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

COUNTRY OF ORIGIN

The country of origin of a product is determined by the country of manufacture, production, or growth of the article. Generally, the country of origin is where the product was "wholly obtained", or where the imported good consists in whole or in part of materials from more than one country, the "substantial transformation" rule is applied. As such, any further work or material added to an article in another country must effect a substantial transformation in order to render a different country of origin.

ULTIMATE PURCHASER

The "ultimate purchaser" is defined generally as the last person in the U.S. who will receive the article in the form in which it was imported. If an imported article will be used in domestic manufacture, the manufacturer may be the "ultimate purchaser" if [s]he subjects the imported article to a process which results in a substantial transformation of the article. However, if the manufacturing process is a minor one, which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the "ultimate purchaser."

MARKING ON THE IMMEDIATE CONTAINER

Generally, articles imported in containers are eligible to be excepted from individual country of origin marking, as articles for which marking of their containers will reasonably indicate their country of origin. For the container exception to apply, Customs requires the article to be imported in a properly marked container, and Customs officials at the port of entry must be satisfied that the ultimate purchaser will in



all foreseeable circumstances receive the article in its original unopened marked container. In certain limited instances, a correctly marked article may be packaged in a container without the necessity of repeating country of origin marking on the package. For example, a correctly marked crystal vase could be placed in an unmarked container, provided the container remains unsealed at the point of sale. Customs believes the ultimate purchaser is extremely likely to open the container of such an article and closely examine the vase before purchase, consequently seeing the origin marking (see CFR 134.26(f)).

MARKING PENALTIES

Articles not marked as required may be subject to additional duties of 10 % of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry. The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake.

DELIVERY MAY BE WITHHELD UNTIL PROPERLY MARKED

Any imported article (or its container) found to be improperly marked or not marked, can be held in Customs custody until marked with its country of origin.

REDELIVERY MAY BE DEMANDED

The 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. Failure to redeliver will result in penalties equal to the value of the goods not returned.

TIME LIMIT FOR ACCEPTABLE MARKING

If after 30 days from date of notice of redelivery, the importer does not redeliver or properly mark the goods, liquidated damages will be assessed at the value of the articles not properly marked.

NOTE ON NAFTA

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA") and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.