

Rules of Origin:

Interaction between the CBP origin determinations and those of other agencies *

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General Marking Requirement

19 U.S.C. §1304:

- [Unless excepted by 1304], every article of foreign origin imported into the U.S. shall be marked in a
- **conspicuous** place as:
- **legibly**
- **indelibly**, and
- **permanently**
- as the nature of the article (or **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.



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Intent of 19 U.S.C. §1304

- Congressional intent in enacting 19 U.S.C. §1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will."
- *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).



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Development of CBP's Administration of 19 U.S.C. §1304

- Case-by-case analysis established by the courts with respect to identifying when a substantial transformation has occurred.
 - CBP's rulings process continually fills the gaps between the court cases with respect to the process to create a more comprehensive body of law.
- Rules of origin for textiles.
- NAFTA and other FTAs.



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What is a “Substantial Transformation?”

A “Substantial Transformation” occurs when an imported article emerges from processing as a **new and different article, with a new name, character and use.**



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Birth of the Substantial Transformation Concept: U.S. v. Gibson-Thomsen

- Imported wood blocks combined with bristles to form hairbrushes and toothbrushes in the U.S.
- Subsequent manufacturing results in change in name, character and use
- U.S. processor is the “ultimate purchaser” of the imported articles.



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Development of the Substantial Transformation Concept

- Assembly Operations
 - Uniroyal, Inc. v. U.S. 3 CIT 220 (1982)
- Machining Operations
 - National Hand Tool Corp. v. U.S. 16 CIT 308 (1992)
- Blending Operations
 - National Juice Products Assn v. U.S., 10 C.I.T. 48 (1986)
- In each instance, the court has focused on what constitutes the essence of the finished article



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Substantial Transformation in Assembly Operations



- Leather shoe upper attached to an outsole to form a shoe
- Court held that the imported uppers were NOT substantially transformed and that the uppers imported the essential character to the finished products.



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Substantial Transformation in Machining Operations (1)



- Imported hand tool forgings processed in U.S.:
- Operations include:
 - Some reshaping with power press
 - Handle Grips knurled
 - Heat treatment
 - Cleaning (by sandblasting, tumbling or chemical vibration)
 - Electroplating
 - Some assembly operations



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Machining Operations (2)

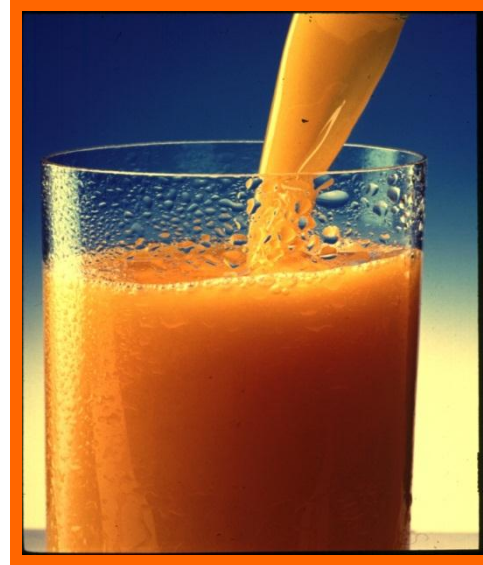
- No substantial transformation in the U.S. because tool components were hot forged or cold formed into their final shape before importation.



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Substantial Transformation in Blending Operations

- Imported juice concentrate blended with:
 - Water
 - Orange Essences
 - Orange Oil
 - U.S. juice concentrate



- No Substantial Transformation - imported juice concentrate is the “very essence” of the finished products



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Who is the Ultimate Purchaser?



- Last person in the U.S. to RECEIVE the imported article in the form it was imported
- For NAFTA articles, the last person to PURCHASE the article in the form it was imported.



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U.S. DEPARTMENT OF AGRICULTURE (USDA)

“COOL” Regulations - 7 C.F.R. §60 and 7 C.F.R. §65

- Covered Commodities: certain cuts of beef, veal, pork, lamb, goat, and chicken; wild and farm-raised fish and shellfish; fresh and frozen fruits and vegetables; peanuts, pecans, and macadamia nuts; and ginseng.
- Country of origin per 19 U.S.C. §1304 controls for products NOT substantially transformed in the United States.



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USDA's and CBP's Jurisdiction

- “COOL” Regs defer to CBP's Jurisdiction on Imported products.
- 7 C.F.R. §60.200(f). *Labeling Imported Products That Have Not Undergone Substantial Transformation in the United States*. An imported covered commodity shall retain its origin as declared to U.S. Customs Protection at the time the product entered the United States, through retail sale, provided that it has not undergone a substantial transformation in the United States.



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Federal Trade Commission (FTC)

“Made in the U.S.A”

- In the United States, the FTC has jurisdiction over claims of domestic origin.
- The "Made in USA" Standard:
 - “ALL OR VIRTUALLY ALL” of the product must indeed be made in America. All significant parts, processing and labor that go into the product must be of U.S. origin.
- Claims of domestic origin are optional (except for automobiles and textile and wool products).
- CBP merely advises importers to contact the FTC, Division of Enforcement, for specific guidance.



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FTC's and CBP's Jurisdiction

- As a practical matter, imported products rarely if ever satisfy the FTC's "all or virtually all" standard in order to be eligible to be labeled as a product of the United States.
- In cases where an imported product has been incorporated into a new item within the United States, it will either be considered substantially transformed or fall under one of the many exceptions to 19 U.S.C. §1304, thus mitigating overlap between the FTC's and CBP's jurisdiction.



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Conclusions from CBP's Experience with USDA and FTC Origin Determinations

Why do to the CBP origin determinations avoid conflict with those of the USDA and FTC?

- USDA, FTC, and CBP origin rules share the similar goal of providing consumers with origin information about products.
- COOL covers a limited number of commodities under a limited number of scenarios, thus ensuring clarity on when CBP's jurisdiction ends and when USDA's begins.
- The "Made in the USA" standard is sufficiently more difficult to satisfy that it does not conflict with CBP's substantial transformation standard.



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CBP's Role in Collecting Antidumping Duties for the Department of Commerce

- The authority to determine the applicable antidumping duty rate is within the jurisdiction of the Department of Commerce. See 19 U.S.C. §§ 1673-1675, 1677(1).
- CBP has a ministerial role in liquidating antidumping duties and merely follows Commerce's instructions when assessing and collecting said duties. See *Mitsubishi Electronics America, Inc. v. United States*, 44 F.3d 973, 977 (Fed. Cir. 1994) (holding that CBP has a ministerial role in liquidating antidumping duties and "cannot modify Commerce's determinations, their underlying facts, or their enforcement").



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Can Commerce Use CBP's Origin Determinations in the AD/CVD Context?

Different goals:

- CBP identifies origin of products in order to inform the ultimate purchaser while Commerce potentially uses origin in identifying when to assess AD/CV duties.

Different circumstances:

- With a goal of applying duties in the context of potentially complicated supply chains, an antidumping order may not be able to simply incorporate to CBP origin determinations without becoming vulnerable to undesirable circumvention.



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Conclusions

- The regulatory framework and trade practices allow the CBP origin determinations to function in relative harmony with those of the FTC and USDA.
- CBP's ministerial role with respect to implementing Commerce's antidumping orders is well-settled. Thus, the possibility of referring to CBP's origin determinations depends on the manner in which a given order is drafted.
- However, in many circumstances, the goal of the antidumping order likely cannot be accomplished by tying it to CBP's substantial transformation analysis.



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