A Brief Overview of Several Decisions Discussing Substantial Transformation

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Properly determining the country of origin of imported merchandise is critical for many reasons. These include ensuring compliance with marking requirements, determining eligibility for various special duty programs and determining whether an imported good is subject to Section 301 duties. When a finished article is manufactured or assembled in the same country where its constituent components or materials are sourced, there can be little doubt as to country of origin. However, in instances where components or materials are sourced from a country or countries other than where the final assembly occurs, determining country of origin is not as straight forward. Under these circumstances, a determination must be made as to whether the components were substantially transformed as a result of the assembly process. That is to say, has the assembly process transformed the components into a new article with a different shape, character and use. If yes, then generally the country of assembly will be considered the country of origin of the finished article. If no, the origin of the constituent components must be considered to determine the article's origin. To illustrate the fact intensive nature of the substantial transformation test, below are summaries of several cases wherein courts have considered various assembly processes and made what appears to be divergent substantial transformation determinations.[2]

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[2] It must be noted that the cases discussed and applied the substantial transformation test under differing statutes. However, because the particular statute being applied is not relevant to this discussion, I discuss only the assembly process and the ultimate substantial transformation determination.

A.

***United States v. Gibson-Thomsen Co*.,**
27 C.C.P.A 267 (Court of Customs and Patent Appeals 1940)

Gibson-Thomsen involved wooden brush blocks and toothbrush handles which had been imported into the United States from Japan. After importation, holes were drilled in the brush blocks and toothbrush handles, bristles were inserted, the bristles were trimmed, the brush blocks and handles were polished and stamped. *Gibson-Thomsen Co*., 27 C.C.P.A. 267, 269. The court noted that the brush blocks and toothbrush handles constituted a small portion of the cost of the final products. *Id.* Specifically, while the imported toothbrush handles constituted 30 percent of the final value, the bristles accounted for 40 percent and the labor accounted for an additional 20 percent. *Id*. With respect to the hair brushes the wood brush blocks constituted 20 percent of the value while the bristles were "'by far the most valuable element.'" *Id*. The question presented was whether the finished hairbrushes and toothbrushes were products of the United States. After considering the operations, the court found that the brush blocks and toothbrush handles "are so processed in the United States that each loses its identity in a tariff sense and becomes an integral part of a new article having a new name, character and use; that as such new articles are produced in the United States they are products of the United States ...". *Id*. at 270.

B.

***Uniroyal, Inc. v. United States*,**
542 F. Supp. 1026 (Ct. Intl Trade 1982)

Uniroyal dealt with "[f]ootwear uppers consisting of complete shoes except for an outsole" manufactured in, and imported, from Indonesia. *Uniroyal*, *Inc*., 542 F. Supp. 1026. The footwear uppers were sold to manufacturers in the United States who affixed pre-made soles

to the uppers and marketed the finished shoes to retailers. *Id.* at 1027-28. Affixing the soles consisted of relasting the upper, applying cement to create a temporary bond, removing the last and then attaching the outsole by stitching. *Id*. at 1028. The questions presented was these operations substantially transformed the uppers into a new distinct article. In conducting its analysis, the Court noted that the upper was the essence of the shoe and had already attained its ultimate size, shape and form in Indonesia. *Id*. at 1029. The Court noted that attaching the soles was eight times quicker than manufacturing the uppers and was eight times less costly. *Id*. at 1028. The Court also noted that while manufacturing the uppers required five highly skilled workers, attaching the soles required only one. *Id*. Based on these facts the Court held that "a substantial transformation of the upper has not occurred since the attachment of the outsole to the upper is a minor manufacturing or combining process which leaves the identity of the upper intact. *Id*. at 1029-1030. Further, "the upper—which in it condition as imported is already a substantially complete shoe—is readily recognizable as a distinct item apart from the outsoles to which it is attached." *Id*. "And the manufacturing process . . . is a minor assembly operation which requires a small fraction of the time and cost involved in producing uppers." *Id*.

C.

***Belcrest Linens v. United States*,**
573 F. Supp. 1149 (Ct. Intl. Trade 1983)

Belcrest Linens involved finished embroidered pillowcases imported into the United States. *Bellcrest Linens*, 57 F. Supp. 1149, 1150, *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). The manufacture of the pillowcases began with weaving fabric in the Peoples Republic of China. *Id*. at 1150-1151. While still in China, the finished fabric was marked with a stencil at premeasured lengths demonstrating where the fabric should be cut to create the finished pillowcases, the fabric was embroidered with flowers or birds and the fabric was folded and shipped to Hong

Kong. *Id.* at 1151. In Hong Kong, the fabric was laid out, cut along the stenciled marks, and the scalloped edges were sewn with colored thread. *Id*. The cut fabric was then folded in half and sewn along two edges. *Id*. The item was then turned inside out, moistened, pressed, folded, wrapped, and packaged. *Id*. No evidence was submitted comparing the time, cost and labor performed in China and Hong Kong. *Id*. The question presented was whether the operations performed in Honk Kong on the Chinese fabric were such that the finished pillowcases became a product of Hong Kong. *Id*. at 1150. In finding that operations performed in Hong Kong transformed the Chinese fabric into products of Hong Kong, the Court noted "the process performed in Hong Kong—cutting the fabric at the determined lengths, scalloping the border on one edge of the fabric, hemming and the sewing along two edges of the piece goods—caused a change in the character and identity of a bolt of woven cloth into an article designed specifically for the purpose of enclosing a pillow." *Id*. at. 1153. The Federal Circuit concurred and affirmed

D.

National Hand Tool Corp. v. United States,
16 CIT 308 (Ct Intl. Trade 1992)

National Hand Tool Corp. involved various hand tools. *National Hand Tool Corp*. 16 CIT 308 (1992), *aff'd*, 989 F.2d 1201 (Fed. Cir. 1993). The plaintiff imported various tool components, including handles and heads. The components were used in the United States to create finished "flex sockets, speeder handles, and flex handles," which are tools used for loosening nuts and bolts. After importation the components underwent one or more processes, including the etching of cross-hatched patterns to create grips, reshaping, heat treatment and/or electroplating. *National Hand Tool,* 16 CIT 308*,* 309-311. The components were then manually assembled into finished hand tools in a process requiring "skill and dexterity to put components together with a screw driver." *Id.* at 310. The issue before the Court was whether these

processes resulted in a substantial transformation in the United States. *Id*. at 310. In finding that the processes did not result in a substantial transformation of the imported components, the Court found, first, that the processing did not change the name of the imported components. For example, the Court noted that one component, referred to as a "g-head," was still referred to as a "g-head" in the finished tool. Next, the Court found that the assembly process did not change the character of the imported components because the processing generally did not change the shape or composition of the imported goods. Specifically, other than the speeder handle bars which were reshaped after importation, all of the components were cold or hot-forged into their final shape prior to importation and the electroplating of the components did not change their chemical composition. *Id*. at 309. Finally, the Court found that the assembly process did not change the uses of the components because before and after the assembly, the components were designed to be used in hand tools. *Id.* at 311. The Court found, in essence, that because the imported articles were parts designed, shaped and intended for use in the assembly of finished hand tools, they could not be substantially transformed by being assembled into finished hand tools. The Federal Circuit concurred and affirmed.

E.

Ran-Paige Co. v. United States,
35 Fed. Cl. 117 (Ct. of Fed. Cl. 1996)

Ran-Paige involved a General Services Administration (GSA) procurement contract. *Ran-Paige Company, Inc.*, 35 Fed. Cl. 117 (1996). In *Ran-Paige* the Court of Federal Claims (CFC) had to determine whether the post-importation processing of imported pans, lids and handles into finished pans resulted in a substantial transformation. *Id.* at 119. After importation, the handles were attached to the pans by machine and then secured with rivets and hand fasteners. *Id*. The pans were then cleaned and tested for the security of the handle. *Id*. After

consulting precedents from the Court of International Trade, including *National Hand Tool*, the CFC found that the assembly of finished pans from pan components did not result in a substantial transformation. *Id.* at 121. In coming to that determination, the CFC first found that the imported components were referred to as pans, covers and handles both before and after being assembled into a finished pan. *Id.* at 120-121. Second, the Court found that the character of the pan, which it defined as "a feature or trait that forms the individual nature of a thing," was to contain food. Next, the Court determined that the use of the cover and the handles, which was to enclose the food and to manipulate the pans, did not change after being assembled into finished pans. *Id*. at 121. Finally, the Court concluded that the use of the components did not change as a result of the assembly because, at importation, they already had predetermined uses. *Id*.

F.

Energizer Battery, Inc. v. United States,
190 F. Supp. 3d 1308 (Ct. Intl Trade 2016)

Energizer dealt with the Generation II military flashlight. *Energizer Battery, Inc*., 190 F. Supp. 3d. 1308, 1310. The flashlight was comprised of approximately fifty different components. *Id.* The flashlight included a white, red, green, blue and infrared light emitting diode. *Id*. at 1311. Other than the white LED (which was manufactured in the United States but further processed in China) and the hydrogen getter, all of the components were of Chinese origin. *Id*. All of the components, other than electrical wires and the red LED, were specifically designed for use in the Generation II Flashlight. *Id*. at 1312. However, the wire was pre-cut to the lengths required for the Generation II and the red LED was soldered to the printed circuit board of the Generation II flashlight while in China. *Id*. Finally, several of the components were assembled in China to the lens subassembly. *Id*. After importation into the United States the

components were assembled into finished flashlights at two work stations. *Id*. At Work Station I, the partially completed lens head was combined with several other components to finish the Generation II flashlight lens head. *Id*. At Work Station II, the finished lens head was combined with the remaining Gen II components to create a finished Gen II flashlight and the flashlight was tested and placed in a box. *Id.* The assembly testing and boxing took approximately seven minutes and ten seconds. *Id.* The question presented was whether the assembly process which was undertaken in the United States resulted in substantially transforming the imported components such that the resultant flashlight was a product of the United States. In determining that the assembly did not substantially transform the imported components, the Court explained that the assembly process did not change the name, character or use of the imported components. More specifically, the Court held that there had been no change in the character of the imported components because the assembly operations did not result in a change of "shape or material composition." *Id*. at 1321. Next, the Court held that the components retained their names after assembly thus there had been no change in name. *Id*. Finally, because the components had pre-determined end uses, the assembly process did not result in a change in use. "When articles are imported in prefabricated form with a pre-determined use, the assembly of those articles into the final product, without more, may not rise to the level of a substantial transformation." *Id*. at 1322. The Court also noted that the assembly process, which only took between seven and thirteen and a half minutes was comprised largely of attaching mechanisms, was not sufficiently complex to have resulted in a substantial transformation. *Id*. at 1323.

As can be seen from this small sampling of cases, it is not easy to draw a distinction between an assembly process which will substantially transform imported components and one which will not. Because the analysis is so fact intensive, the inquiry must be assessed on a case-

by- case basis. owever, it does appear that the complexity operations required to substantial transform components has increased since *Gibson-Thomsen.* One queries if the operations performed in *National Hand-Tool* and *Energizer* would have been found sufficient to substantially transform the components by the *Gibson-Thomsen* or even *Bellcrest* Courts.