MASTER CUSTOMS SPECIALIST (MCS) COURSE

Part 2: Compliance | Module 5: Country of Origin/Rules of Origin

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INTRODUCTION

Those that took the NEI's CCS Course learned quite a bit regarding Country of Origin marking requirements and Country of Origin determination for various Free Trade Agreements. This module will teach you how to determine Country of Origin for non-FTA purposes. **Note that the process is very different.**

Rules of origin are used:

- To implement measures and instruments of commercial policy such as anti-dumping duties.
- To determine whether imported products are eligible to receive preferential treatment.
- For the purpose of trade statistics
- For the application of labeling and marking requirements

Lesson 1: Which Country of Origin Rules Should You Use?

- If you're shipping to a USMCA country – the U.S., Canada, or Mexico – you should use the USMCA rules of origin that can be found in General Note 11 of the Harmonized Tariff Schedule.
- If you are importing from anywhere else in the world, you should use the rules of origin that you will learn in this module.

Lesson 2: Substantial Transformation

U.S. Customs defines country of origin as the country where an article was wholly grown, manufactured, or produced, or if not wholly grown, manufactured, or produced in one country, the last country in which the article underwent a substantial transformation.

To determine the rules of country of origin, one must clearly understand substantial transformation.

- A substantial transformation occurs when an article emerges from a manufacturing process with a **name, character, or use** different from that of the original material subjected to the process (19 CFR 134.35).
- Given the wide variety of products and production scenarios to which this test can be applied, origin determination is fact specific and involves different analytical approaches with differing weight given to various factors depending on the particular product and manufacturing process.

Let's say that you're making chocolate chip cookies in your kitchen in the U.S.

Here are your ingredients:

- Sugar from Indonesia
- Flour from India
- Eggs from Canada
- Baking soda from Botswana
- Chocolate chips from Germany
- Butter from the Netherlands

Using substantial transformation, what is the country of origin of our cookies?

Because all of your ingredients were substantially transformed into cookies with a different name, character, and use, they underwent a substantial transformation in your kitchen in the United States and are therefore U.S. origin.

For this example, we have a package of frozen mixed vegetables. The vegetables were cut, mixed, frozen, and packaged in Mexico.

Here are the ingredients:

- Corn from Romania
- Green beans from Spain
- Carrots from China
- Green peas from Canada

What is the country of origin of our frozen vegetable medley?

Because the vegetables were only cut, mixed, frozen, and packaged in Mexico, and none of those operations allow the ingredients of our medley to be substantially transformed, we will have to note the countries of origins of each ingredient on the package of our frozen vegetable medley.

In determining when a substantial transformation occurs in the manufacturing of products such as pharmaceuticals or chemicals, U.S. Customs and Border Protection (CBP) has consistently examined the complexity of the processing and whether the final article retains the "essential character" of the raw material.

In general, for medicines and pharmaceuticals, CBP has held that the country of origin of a given product is the country of origin of the active ingredient.

For example, if an active ingredient from Country A is shipped to country B where it is blended with excipients and placed in tablet form, the origin of the finished tablet is Country A for U.S. marking purposes) (see HQ ruling 561975).

CBP has consistently held that the processing of an active ingredient into a finished formulated product does not change the chemical composition of the active ingredient.

Furthermore, CBP has consistently held that merely processing an active ingredient in bulk form into measured doses, or altering the mechanism for delivery or delivery rate of a drug dose, does not constitute substantial transformation (see HQ 562889).

If a pharmaceutical product is formulated from one active ingredient, which is sourced from multiple countries and the active ingredients are blended to make the finished product, CBP has held that a substantial transformation has not occurred.

More specifically, CBP has ruled that an article produced by the blending of one input material sourced from different countries must be marked to indicate each country of origin of the input material (e.g. Made in Country A and Country B; See HQ ruling 560855).

There are two limited circumstances in which CBP has ruled that the processing of active ingredients into finished formulated products results in a substantial transformation.

1. Where two active ingredients are combined and formulated into a finished product, CBP has held that a substantial transformation occurs because the effectiveness of the finished product is significantly greater than the effectiveness of either active ingredient alone (See HQ Ruling 563207).

2. CBP has found a substantial transformation to have occurred where an active ingredient that is unsuitable for human use is processed into a final product ready for human use (See HQ Ruling 731731).

    - CBP narrowly interprets when an active ingredient is "unsuitable for human use." For example, CBP found that merely showing an active ingredient is "toxic" if ingested in an improper manner does not mean the active ingredient is unsuitable for human use. One must establish a substantial transformation that the active ingredient must be inactivated or destroyed in the human body unless properly formulated (See HQ Ruling H073995).

Lesson 3: **Preferential Rules of Origin**

Preferential rules of origin are part of a free trade or preferential trade arrangement which includes tariff concessions.

While the requirement of substantial transformation is universally recognized, some free trade agreements apply the criterion of change of tariff classification, the "ad valorem percentage" criterion, or other criterion. It's important to pay close attention to the specific requirements of each free trade agreement when determining country of origin for that purpose.

Lesson 4: **Country of Origin Marking**

Under U.S. law, all foreign origin goods or their containers imported into the United States must be marked in English in permanent, legible, and conspicuous fashion so that the ultimate purchaser knows the country of origin of the product (19 CFR Part 134).

In addition, if the product or its container contains a marking or geographic indicator other than the actual country of origin, then the actual country of origin marking must be placed in close proximity to and in the same type face as the other marking or geographic indicator.

For example, if a box of foreign origin goods is marked with the U.S. address of the importer, then there must also be a marking with the actual foreign origin of the good in close proximity and in the same type face as the U.S. address of the importer. (19 CFR 134.46).

CBP has held that imported articles sourced from multiple countries must be marked with the actual country of origin of the article imported.

CBP policy is that in most circumstances, it is not acceptable for purposes of 19 U.S.C. 1304 to mark an article or container with the statement "Product of _____ or _____". A disjunctive marking is only allowed if the importer can establish that it would be economically prohibitive to identify the origin of the actual article imported (HQ ruling 562115).

However, it is notable that CBP will allow a marking method whereby the package label lists possible countries of origin and once the packaged article is filled the appropriate origin for the individual product is checked (HQ Ruling 560776).

Lesson 5: **Exceptions to Marking Requirements**

There is a list, referred to as the "J List" that contains exceptions to marking requirements (19 CFR 134.33 (a)(3)(J)):

- The article is incapable of being marked
- The article cannot be marked prior to importation without injury
- The article cannot be marked prior to importation except at an expense which is economically prohibitive
- The marking of the container will reasonably indicate the origin of the article
- The article is a crude substance
- The article will be used by the importer and not intended for sale

- The article will be processed in the U.S. by the importer or for his account and any processing will obliterate, destroy or permanently conceal the mark.

Lesson 6: **Goods Made in the USA**

For goods marked or advertised as "Made in the USA" the Federal Trade Commission (FTC) requires that a product be "all or virtually all" made in the U.S.

The product should contain no or negligible foreign content, and all significant parts and processing that go into the product must be of U.S. origin.

If a product includes foreign components, it may be marked "Assembled in USA" when its principle assembly takes place in the U.S. and the assembly is substantial (i.e. considered substantial transformation).

Use of a screwdriver for assembly in the U.S. of foreign components into a final product would not qualify for the "Assembled in USA" claim. However, welding of aluminum tubing together into a bike frame would qualify.

Lesson 7: **Fines and Penalties**

Failure to provide the correct country of origin marking shall result in the goods being subject to special non-penal marking duties of 10 percent of the value of the imported goods (19 U.S.C. 1304 (f); 19 CFR Part 134).

CBP will impose the additional duty unless the importer exports, destroys or properly marks the goods under CBP supervision, or properly marks the goods after importation under CBP regulations.

CBP may assess the 10 percent additional marking duty on the goods after the goods are released by CBP, on all unliquidated entries (**typically up to 314 days after the goods are entered**).

In addition, after CBP releases imported goods it may require the importer to redeliver the goods to confirm proper marking. If the importer fails to redeliver the goods to CBP (e.g. because the goods have already been sold into commerce), then CBP may impose liquidated damages upon the importer, not to exceed the amount of the importer's bond.

Failure to properly mark an article or to make a false statement of origin may also subject the importer to civil penalties under 19 U.S.C. 1592 (section 592). The amount of penalties under section 592 varies depending on the level of negligence of the importer.

- Failure to exercise reasonable care may lead to a penalty equal to 20 percent of the value of the imported products.
- If the importer acted fraudulently, then CBP may impart a penalty equal to the value of the imported product.
- CBP may also impose penalties upon incorrect entries made over the preceding five-year period (19 U.S.C. 1621).

Lastly, the intentional removal or defacement of country of origin marking is a criminal offense (19 CFR 134.4).