

**UNITED STATES CUSTOMS
COUNTRY OF ORIGIN MARKING RULES
FOR
IMPORTED FRAMES AND LENSES**

FOR USE BY IMPORTERS OF OPTICAL PRODUCTS

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I. BACKGROUND OF COUNTRY OF ORIGIN MARKING RULES

A. MARKING REQUIREMENTS

United States Customs laws require that all goods (or in some cases their containers) that are produced outside of the United States must be legibly marked with information concerning the country where the item was produced. This rule is codified in Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). This section provides that, “unless excepted, every article of foreign origin imported into the United States 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 to the ultimate purchaser in the U.S. the English name of the country of origin.”

The country of origin marking statute defines the requirements for marking foreign made goods. The primary purpose of the statute is to provide the ultimate purchaser with information concerning the country of origin of the product to be used in making a decision whether to buy or not to buy the product.¹ The “ultimate purchaser” is defined in Section 134.1(d) of the Customs Regulations as the last person in the U.S. who will receive the article in the same form in which it is imported.

It is easy to apply the marking rules in cases where a frame is wholly manufactured in one country. However, marking decisions become more complicated when the manufacturing process occurs in more than one country, or where a finished frame is produced from components from several countries, or where an unfinished product or component parts are brought into the United States for additional work needed to complete the finished product.

Customs will consider the amount of work performed in each country, as well as the value added, to determine the final country of origin. In making these

¹ See, United States v. Friedlaender & Co., 27 C.C.P.A. 297, 302 (1940).

decisions Customs has said that the country in which a “substantial transformation” of the item occurs will be considered to be the country of origin for marking purposes. The courts have ruled that “substantial transformation” occurs “when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process.” See, Texas Instruments Inc. v. United States, 681 F2d 778 (1982).² When substantial transformation occurs outside the United States the country where a substantial transformation occurs is the country of origin, and the frame must be so marked.

In this compendium we have reviewed numerous published Customs cases concerning optical frame products and have extrapolated some general rules which can be used as guidance for importers of optical products to determine if their products are properly marked. However, Customs considers each matter on a case by case basis and importers who have manufacturing processes that differ from these examples may wish to contact Customs and obtain an individual ruling to insure that they are in compliance.

It should also be noted that some of the marking rules may differ slightly for goods imported into the United States from NAFTA countries. Thus, companies importing from NAFTA countries may want to seek additional advice to insure marking compliance.

B. EXCEPTIONS TO THE MARKING RULES

An imported article which will undergo significant changes (i.e. substantial transformation) in the United States before it is sent to the ultimate purchaser does not have to be marked with the country of origin. In these cases country of origin markings on the exterior packing which is to be delivered to the entity that will be making the changes will satisfy the rules. Once the product is transformed subsequent packaging does not have to bear country of origin markings.

For optical products the exceptions are as follows: (Note: The detailed requirements that must be met to qualify for these exceptions will be discussed below).

- (i) Imported ophthalmic frames which will undergo a substantial transformation in the United States.

² See also, Customs Ruling HQ 561867 (March 2, 2001), for a recent application of the substantial transformation rules set forth in the Texas Instrument case.

- (ii) Imported frames to be used for readers into which corrective lenses will be inserted in the United States and sold over the counter in the United States as a finished optical product.
- (iii) Imported sunglass frames into which non-prescription sunglass lenses will be inserted in the United States and sold over the counter as a finished optical product.
- (iv) Imported lenses need not be marked as Customs has determined that country of origin markings on the lens itself may injure the lens. Thus marking the lens container with the country of origin satisfies the requirement.³

³ See, Customs Ruling HQ 732334 (1989).

II. SPECIFIC MARKING RULES FOR FRAMES AND LENSES

A. MANUFACTURING AND SHIPPING PROCEDURES FOR FRAME COMPONENTS

1. Multi step processing in the manufacturing of a frame may constitute substantial transformation.

If frame components are manufactured in country A and shipped to country B for finishing, a substantial transformation may occur if a significant amount of processing is performed in country B. If the frame is shipped to the US Country B would be the country of origin.

One process, or several insignificant processes, will not constitute substantial transformation. Multi step processes such as soldering, drilling, bending, mitering and polishing of raw frame components are examples of the kinds of processing steps that are necessary for substantial transformation to occur.

An example of the kind of processes that have been ruled to constitute substantial transformation can be found in Customs Ruling HQ734771, (1992). In this case raw frame components were imported into the U.S. The approved process involved machining, mitering, applying hinges and nose pads, drilling and polishing the temples and fronts which were imported in an unfinished and unusable conditioned. Customs ruled that the imported temples and frames did not have to bear country of origin markings as they underwent substantial transformation in the United States. Thus, the ultimate purchaser of the unfinished components was the US frame manufacturer and the marking on the containers designating the country of origin satisfied the marking requirements.

In HQ555595 (1990) Customs ruled that a mere bending of temples was not sufficient to constitute substantial transformation. In HQ 732489 (1989) Customs ruled that a process involving heating, reshaping, trimming, mitering, assembling and adjusting constituted substantial transformation. In HQ 734663 (1992) Customs held that dyeing the frame followed by assembly of minor pieces did not constitute a substantial transformation.

2. Mere assembly of frame components is not substantial transformation.

If finished frame parts machined in country A are assembled in country B, substantial transformation has not occurred in country B, and country A would have to be designated as the country of origin on a frame

shipped into the US.⁴

3. Packaging and shipping of a frame does not constitute substantial transformation.

If a frame is manufactured in country A and shipped to country B for packaging and shipping to the United States substantial transformation has not occurred in country B, and the frame marking must designate country A as the country of origin.

4. Merely stamping a frame with the name of a country does not constitute substantial transformation.

If a frame is manufactured in country A and shipped to country B for the purpose of stamping "Frame Country B" on the frame, substantial transformation has not occurred in country B, and country A is the country of origin and the marking "Frame Country B" violates the Customs laws.

B. COLORING

Customs has ruled that coloring an imported frame will not constitute substantial transformation unless the coloring process involves more than mere dipping or dyeing.⁵ In order to meet the substantial transformation requirements for coloring a showing of multiple processes will be necessary. For example, a process that involved cleaning, plating, applying lacquer or coloring with syringes or spray guns, a three staged baking process, and subsequent assembly was determined to constitute substantial transformation.⁶

C. LENS INSERTION

1. Ophthalmic Frames. Insertion of lenses into ophthalmic frames does not constitute a substantial transformation.

Frames manufactured in country A that are to be joined with prescription lenses in country B must bear markings indicating that country A

⁴ In Customs Ruling HQ 728504 (1985) Customs pointed out that the mere assembly of frames does not constitute substantial transformation. This ruling has been followed in subsequent cases. See also, HQ 733883 (1991); HQ 734663 (1992).

⁵ In C.S.D. 92-10 (1990) Customs found that applying epoxy and paint to sunglass frames did not constitute a substantial transformation.

⁶ See, Customs Ruling HQ 731902 (1989).

is the country of origin. Customs has ruled that, because the purchasing selection of the frames occurs independently from the lens purchasing decision, the customer purchasing the frames is the ultimate purchaser and is entitled to country of origin information concerning the frames to assist in making the buying decision.⁷

2. Readers. Insertion of lenses into imported readers constitutes a substantial transformation.

Customs has ruled that frames into which lenses are inserted to be sold as over the counter reading glass undergo substantial transformation because the frames lose their separate identity and are merged into a new article. The reading glasses which result from the production process will be used as an aid to diminished focusing ability of the human eye and the customer is making a purchasing decision based upon the combined frame and lenses and not just on the frame only. Thus for marking purposes the ultimate purchaser of the imported product is the importer and country of origin markings on the frame container will satisfy the Customs Rules.

Examples:

- (i) Frames imported from country A into the United States, where lenses are to be inserted to create over the counter readers, need not bear country of origin marking as substantial transformation creating a new product will occur in the United States.⁸ The importer will be considered the ultimate purchaser of the frames and the country of origin markings must be on the frame shipping container.
- (ii) Frames which are manufactured in country A and shipped to country B for the insertion of lenses and then shipped to the U.S. to be sold as over the counter readers must bear the marking of country B as the country of origin as substantial transformation has occurred in country B.⁹

⁷ See for example, Customs Ruling 730963 (1988).

⁸ See for example, Customs Ruling HQ 732717 (1990).

⁹ See, Customs Ruling HQ 558944 (1995).

3. Sunglasses. Insertion of lenses into imported sunglasses constitutes a substantial transformation.

Sunglass frames imported from country A into which non-prescription sunglass lenses will be inserted in the United States and sold as over the counter sunglasses need not bear country of origin markings from country A. Customs has ruled that the insertion of non-prescription lenses in sunglass frames in the US constitutes a substantial transformation as the finished item is now a pair of sunglasses. Purchasers make their decision while inspecting frames and lenses already combined. Thus, the importer is the ultimate purchaser of the frames and the country of origin markings are required to be on the outermost container in which the frames are shipped and not on the frames.

In most cases placing the country of origin marking on the shipping carton of sunglass frames into which lenses will be inserted will satisfy the marking rules. When multiple sunglass frames in a carton are shipped to ultimate purchaser, the marking rules will be satisfied by placing the country of origin markings on the shipping carton, and the packaging of the individual frames inside the outermost carton will not have to be marked. The exception to this rule is a situation where individual frames are removed from the carton and then sold to another purchaser who will perform the lens insertion. In this case the entity that performs the lens insertion will be considered to be the ultimate purchaser, and the container in which the individual frame is shipped will have to be marked with the country of origin.

Examples:

- (i) When sunglass frames manufactured in Country A are shipped to Country B for the insertion of non-prescription sunglass lenses, and then shipped to the United States for sale as over the counter sunglasses, Country B will be the country of origin as a substantial transformation has occurred by the insertion of the non-prescription sunglass lenses in country B.¹⁰

For example, if a sunglass frame made in China is shipped to Italy, and sunglass lenses are inserted in Italy, Italy is the country of origin. Thus the frame must bear markings designating Italy as the country of origin

¹⁰ See, Customs Ruling HQ 735537 (1994).

- (ii) When Sunglass frames from Country A are imported into the United States and sunglass lenses from Country B are inserted into the frame in the US the frame need not bear country of origin markings as substantial transformation occurs in the United States
- (iii) Sunglass frames manufactured in country A and shipped to the United States for the insertion of prescription lenses must bear country of origin markings from country A.¹¹

Important note:

Customs Ruling, Ruling HQ 735504 (1995), indicates that in cases where imported lenses are inserted into sunglass and reader frames the importer must be able to demonstrate that additional processing beyond “mere assembly” was performed in the country of lens insertion to meet the substantial transformation requirements. This can be accomplished by showing that the imported lens blanks underwent further processing in the country of insertion such as cutting, edging and coating, in addition to being inserted into the frame.

In Ruling HQ 735504 (1995) the sunglass importer failed to provide Customs with information which described the lens insertion process. Absent this information Customs ruled against the importer stating:

“Although information detailing the assembly operation was not submitted to review, in our opinion it appears that the frames and lenses of Hong Kong origin are substantially finished articles when imported in New Zealand. No further processing needs to be performed to the individual frames and lenses in New Zealand, except assembly which appears to be a simple operation which does not constitute a substantial transformation.. After being assembled, the frames and lenses retain their original shape and form. There is no change in the microstructure or chemical composition as result of the new Zealand Processing.” Thus Hong Kong was determined to be the country of origin.

4. Lenses.

In 1989 the Optical Manufacturers Association (OMA) petitioned Customs to obtain clarification concerning the proper procedures for marking

¹¹ See, Customs Ruling HQ 733654 (1990).

lenses imported into the United States. This petition was in response to an earlier Customs Ruling¹² requiring that a sticker designating the country of origin be affixed to the surface of imported ophthalmic plastic lenses. OMA on behalf of its Lens manufacturer members argued that affixing an adhesive sticker on the lens could injure the lens surface and any coatings applied to the lens. Customs ruled that “[C]ountry of Origin markings of imported ophthalmic (sic) plastic lenses by means of adhesive stickers affixed to the lenses, or by means of marking worked into the lens is not required. Such marking would be injurious to the lenses.” Customs said that designating the country of origin on the envelopes which act as containers for the lenses would satisfy the requirements.¹³

D. USE OF THE TERM "HONG KONG" AS THE COUNTRY OF ORIGIN

Hong Kong can be designated as the county of origin for frames made or substantially transformed in Hong Kong. It cannot be used for frames made or substantially transformed in China and shipped to another country through Hong Kong.

On May 19, 1997 the US Customs issued a Notice of Policy (TD 97-47) indicating that there would be no change regarding the country of origin marking of goods produced in Hong Kong as a result of the reversion of that region's sovereignty to China. Thus, the country of origin marking for frames produced in Hong King which are shipped to the United States and will not undergo substantial transformation in the US should be "Frame - Hong Kong." However, since the implementation of this policy Customs has made it clear that it is illegal to designate "Hong Kong" as the country of origin for goods manufactured in China and merely shipped through Hong Kong to the US. In fact, customs has actively been involved in enforcement actions in cases where goods have been produced in China or other Asian countries and shipped to the US through Hong Kong with "Hong Kong" improperly designated as the country of origin.

Thus, if a frame is manufactured in China and shipped through Hong Kong, with no substantial transformation occurring in Hong Kong, then China, and not Hong Kong, is the country of origin and the frame must be so marked.

¹² See, Customs Ruling HQ 554914.

¹³ See, Customs Ruling HQ 732334.

E. MARKING METHODS

In Treasury Decision 74-38, Customs stated that frames must be marked by means of die stamping in a contrasting color, by raised lettering, by engraving, or by some method producing a permanent mark. The marking must be legible and conspicuous and must clearly indicate the country of origin to the ultimate purchaser in the United States.

In regard to raised lettering (debossing), Customs ruled that raised lettering is not automatically considered conspicuous. Raised lettering must be easy to find and readable without strain to meet marking requirements.¹⁴

Embossed marking must be in contrasting colors to be sufficiently legible to meet the requirements of Treasury Decision 74-38.¹⁵

It is also important to note that under the provisions of TD 74-38 the marking of the country of origin alone may not be sufficient as this decision requires the marking to state: "Frame-(country of origin)," or "Frame made in (country of origin)."

¹⁴ See, Customs ruling HQ 731524 (1989).

¹⁵ See, Customs Ruling HQ 561001 (1998).

III. SANCTIONS FOR VIOLATION OF CUSTOMS MARKING RULES

Importers who violate the marking rules subject themselves to significant civil and criminal penalties as well the possibility of being assessed additional duty and having goods seized and forfeited.

A. CRIMINAL PENALTIES

There are several criminal statutes that apply to marking violations. Thus a person charged for such violations could violate one or more of these statutes in a single act of importing an improperly marked item. The most relevant criminal statutes are set forth below.

- (1) A person who causes goods to enter the United States that are not properly marked can be found guilty of presenting false statements or information to an officer of the U.S. Customs Service in violation of Title 18 Section 542 of the United States Code. Violations of this statute are punishable by imprisonment not to exceed two years, and fines for individuals of up to \$250,000, and for organizations fines of up to \$500,000.
- (2) Anyone who with intent to conceal the information given in a marking defaces, destroys, alters, covers obscures, or obliterates any country of origin marking required to be placed on an article by the customs rules is subject to :
 - a. Upon conviction for the first violation, a fine of not more than \$100,000, or imprisonment for no more than one year, or both.
 - b. Upon conviction for the second or any subsequent violations, a fine of not more than \$250,000, or imprisoned for no more than one year, or both.¹⁶
- (3) Criminal penalties can be imposed on persons who intentionally cause goods with a false designation of origin to enter the United States under the provisions of Title 18 Section 545 of the United States Code. This statute can be applied to persons who knowingly import goods that are improperly marked and provides for fines and imprisonment of up to five years.

¹⁶ See, 19 U.S.C. 1304(I).

- (4) There is also a catch all criminal statute, 18 U.S.C. 1001, which permits the government to prosecute a person who makes a false statement to a US Government Agency. Person who violate this statue subject themselves to fines and up to five years imprisonment.

B. DUTY ASSESSMENTS

Articles that are not properly marked are subject to a 10% ad valorem¹⁷ duty unless they are properly marked, exported or destroyed under Customs supervision prior to the liquidation of the entry. Further, the importer shall be required to pay the expenses of Customs officers or employees assigned to supervise the exportation, destruction, or the marking needed to exempt articles from the application of the duty.¹⁸

C. CIVIL PENALTIES

1. A person who causes the entry into the U.S. of merchandise by means of a fraudulent material false statement can be fined in an amount equal to the domestic value of the merchandise, or eight times the loss of the duty revenue.
2. Anyone who is guilty of aiding unlawful importation of goods can be penalized in an amount equal to the domestic value of the merchandise.

D. SEIZURE AND FORFEITURE AND REDELIVERY

Customs has the authority to seize and cause merchandise that is improperly marked to be forfeited.¹⁹ Customs also has the authority to demand that falsely marked merchandise that has been released into commerce to be redelivered to Customs custody for further action.²⁰

¹⁷ The “ad valorem” duty is equal to 10% of the value of the imported item.

¹⁸ See, Title 19 U.S.C. § 1304(i).

¹⁹ See, Title 19 U.S.C. § 1595(a)(c)(2)(E).

²⁰ See, 19 C.F.R. 141.113(a).

IV. REQUIREMENT TO USE REASONABLE CARE

Customs requires an importer to exercise reasonable care in making sure that all entry information provided to Customs is correct and that the merchandise is properly marked. Customs suggests that an importer answer the following questions in order to determine whether reasonable care has been exercised:

1. Have you established reliable procedures to ensure that you report the correct country of origin on Customs entry documents?
2. Have you established reliable procedures to verify or ensure that the merchandise is properly marked upon entry with the correct country of origin?
3. Have you consulted with a Customs “expert” such as a lawyer, a Customs broker, or a Customs consultant, regarding the correct country of origin marking for the imported merchandise?
4. Have you taken reliable and adequate measures to communicate the U.S. Customs country of origin marking requirements to your foreign supplier prior to importation of your merchandise?
5. If you have obtained a Customs Ruling regarding the proper marking and country of origin of the merchandise, have you established reliable procedures to ensure that you followed the ruling and brought it to Customs attention?

V. CONCLUSION

All importers are required by law to comply with the country of origin marking requirements. Failure to comply with the marking rules can result in goods being held up at ports of entry or impounded by Customs as well as the possible imposition of civil and/ or criminal penalties. Therefore, it is a good business practice to understand the rules that apply to each importing situation.

It is the hope of VCA that this compendium will assist optical importers and their suppliers in developing procedures for the proper marking of optical products.

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