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**INTERNATIONAL TRADE &
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CBP Seeks to Change Country-of-Origin Rules for Imports

In a Federal Register notice on July 25, 2008, U.S. Customs and Border Protection (CBP) proposed revisions to its regulations for determining the country of origin of an imported good that is processed in, or contains materials from, more than one country. These changes may have a significant impact for U.S. importers because:

- 1) the country of origin can affect the import's duty rate, marking requirements and admissibility into the United States; and
- 2) the objectivity, transparency and predictability of these revisions can improve a company's decision making concerning production processes abroad.

CBP TOUTS TARIFF SHIFT METHOD'S OBJECTIVITY, TRANSPARENCY AND PREDICTABILITY

CBP has proposed that the country of origin for all imported goods be determined by the "tariff shift" method. Currently, CBP uses the tariff shift method for all imported goods from Canada and Mexico under the North American Free Trade Agreement (NAFTA) and most imports of textile products – which together, according to CBP, account for approximately 40 percent of total U.S. imports – and uses the "substantial transformation" method for all other imports. CBP proposed these changes because the tariff shift rules have "proven to be more objective and transparent and provide greater predictability in determining the country of origin of imported merchandise" than the substantial transformation method, which requires "case-by-case adjudication." These changes, CBP noted, "will therefore facilitate the exercise of reasonable care by importers with respect to their obligations regarding the identification of the proper country of origin of imported merchandise." The proposal would not affect existing free trade agreements specifying another method for determining country of origin.

Substantial Transformation Method

The substantial transformation method was developed from a series of federal court and CBP administrative decisions over the years. A good would be "substantially transformed" in a particular country and considered a product of that country if it lost its identity and became "an integral part of a new article having a new name, character, and use." This analysis has been applied on a case-by-case basis to imported goods in a wide range of scenarios with multiple criteria.



Tariff Shift Method

In contrast, the tariff shift method is based on a series of codified rules that primarily use specified changes in tariff classification under the Harmonized Tariff Schedule of the United States to express the substantial transformation concept. Under the tariff shift method, the substantial transformation that an imported good must undergo to be deemed a good of the country where the change occurred is usually expressed in terms of a specified tariff shift as a result of further processing.

CBP ALSO REVISES EXISTING TARIFF SHIFT RULES FOR CERTAIN PRODUCTS

In addition, CBP has also proposed certain changes to its already existing tariff shift rules for pipe fittings and flanges, printed greeting cards, glass optical fiber, certain textile products and rice preparations. In these five product areas, CBP over time has found that the outcomes of the tariff shift method and the substantial transformation method have been incompatible and has proposed changes to the tariff shift rules to improve consistency between the two methods.

PROPOSAL MAY IMPROVE DECISION MAKING ON FOREIGN PRODUCTION

CBP's proposal only affects U.S. companies importing products manufactured or processed in more than one country abroad. For those companies, the tariff shift method may alter a product's country of origin, leading to changes in duty rate, marking requirements and/or admissibility into the United States. To weigh its impact, companies will need to analyze their imports' current country-of-origin designations and determine whether the application of the tariff shift method – using the rules already in place for products under NAFTA – will change those designations.

While the tariff shift proposal would require companies to routinely obtain specific information from their vendors and suppliers about the content and origin of their imported products' components to determine and support the country-of-origin designation based on the tariff shift rules, it can improve companies' decision making concerning production abroad through a more consistent and predictable process. Companies should be able to ascertain in advance the country-of-origin outcome of the products they plan to manufacture abroad.

CBP has invited interested parties to submit comments on the proposed changes no later than October 23, 2008. This comment period can serve as a valuable opportunity for companies to shape the particular rules affecting their imports to maximize economic benefits.



FOR MORE INFORMATION

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