Origin Rules

PERSPECTIVES FROM U.S. IMPORTERS

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Complexity, Transparency and Unpredictability

- Difficult to identify applicable rules globally
- Inconsistent rules require complex labeling or packaging
- Multiple preferential FTA rules add expense and complexity, working against one another
- In the US, use of "Non-Preferential Rules" for trade remedies creates negative preference rules
- Evolving standards in US make supply chain optimization difficult
- Separate standards to avoid consumer deception

Example of Complexity

- Chinese materials shipped to Canada or Mexico
- Assembled into completed products and exported to US
- Qualify for duty-free entry to US under NAFTA preferential rules
- Qualify to be marked Made in Mexico or Canada under NAFTA marking rule
- Subject to Section 301 duties on articles of China under non-preferential substantial transformation rule
- See, e.g., H306349 (Nov. 26, 2019)

Export Considerations

- Some countries have requirements for origin labeling on exported goods
- For example, 35% content reported as the requirement for Made in Taiwan and Made in Vietnam labels
- US import test does not rely on strict percentage of value
- Causes conflict in packaging and declaration requirements

Other Local Requirements

- Mexico NOMs
- Nigeria prohibits dual or multiple markings
- UAE requires origin marking in Arabic (and permits English with Arabic)
- Sweden has no origin marking requirement (but prohibits false claims)

Taipei Concerns

- Anecdotal but numerous reports of enforcement for imports to PRC
- Apparently not official policy
- Unacceptable marking for further shipment to US
- Causes need for complex packing or relabeling operations

Evolving US Standards

- Recognizing more complex supply chains
- Increased use of software/firmware
- CBP moving faster than the Courts to address modern manufacturing
- Duties on products of China, aluminum, steel and antidumping/CVD cases has increased focus on origin

Baseline: Gibson-Thomsen (CCPA 1940)

The courts have held that a substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267, C.A.D. 98 (1940); National Hand Tool Corp. v. United States, 16 CIT 308 (1992), aff'd, 989 F. 2d 1201 (Fed. Cir. 1993); Anheuser Busch Brewing Association v. The United States, 207 U.S. 556 (1908) and Uniroyal Inc. v. United States, 542 F. Supp. 1026 (1982).

HQ N308693 (Jan 28, 2020)
Cited by 1085 published US CBP Rulings since 1998

Adding bristles in the US to Japanese wooden handles

Country of Origin determination:

USA

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Caveat 1: Uniroyal (CIT 1982)

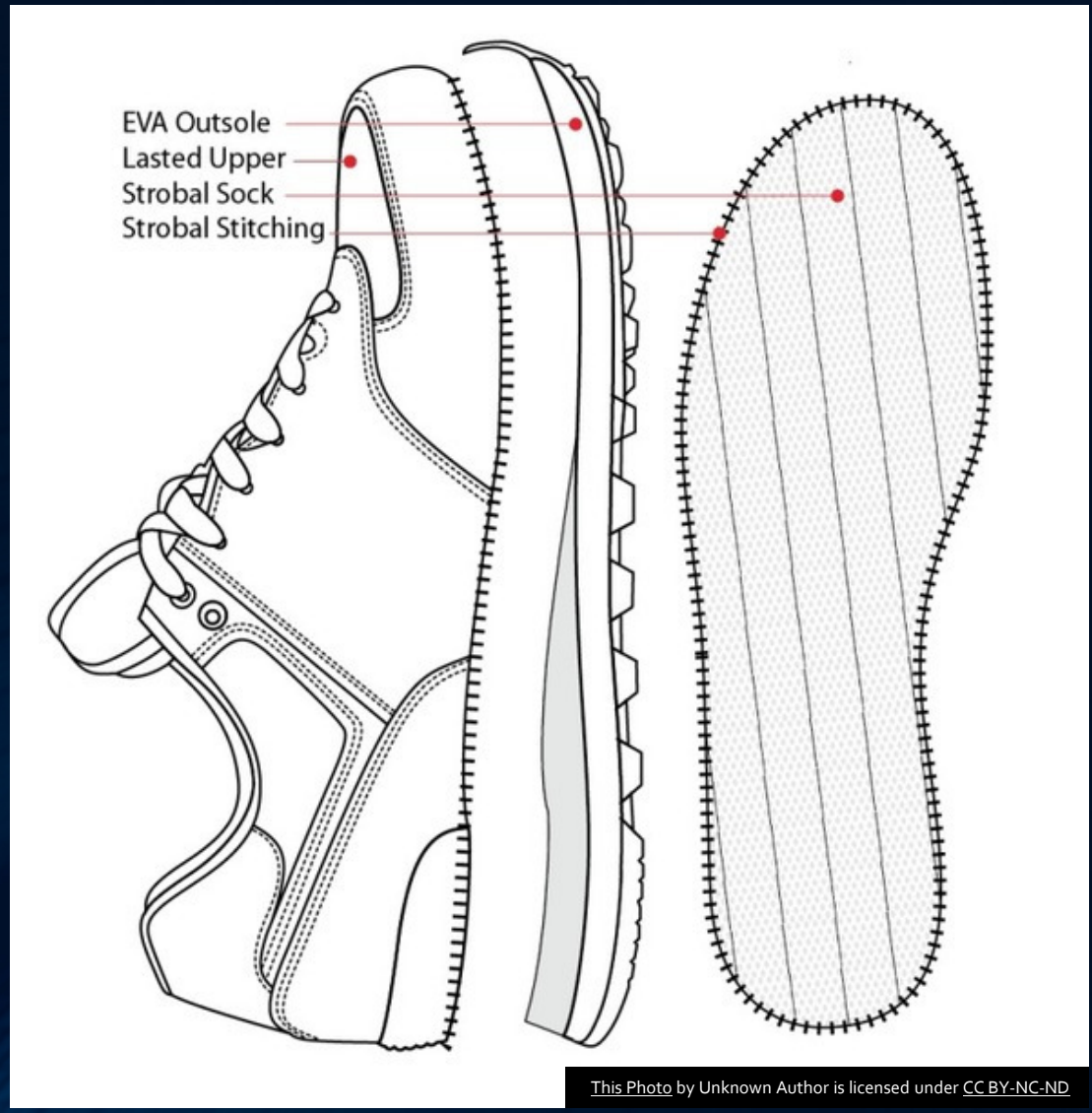
However, if the manufacturing or combining process is merely a minor one that leaves the identity of the article intact, a substantial transformation has not occurred. Uniroyal, Inc. v. United States, 3 CIT 220, 542 F. Supp. 1026, 1029 (1982), aff'd, 702 F.2d 1022 (Fed. Cir. 1983). Substantial transformation determinations are based on the totality of the evidence. See Headquarters Ruling (HQ) W968434, date January 17, 2007, citing Ferrostaal Metals Corp. v. United States, 11 CIT 470, 478, 664 F. Supp. 535, 541 (1987).

HQ H308693 (Jan. 28, 2020)
Cited by 360 published US CBP rulings since 1988.

Gluing then stitching outsoles to imported shoe uppers

Country of Origin determination:

Indonesia



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Caveat 2: Energizer (CIT 2016)

The court reviewed the "name, character and use" test utilized in determining whether a substantial transformation had occurred and noted, citing Uniroyal, Inc., 3 CIT at 226, that when "the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change." Energizer at 1318. The court also noted that "when the end-use was pre-determined at the time of importation, courts have generally not found a change in use." Energizer at 1319, citing as an example, Nat'l Hand Tool Corp. v. United States, 16 CIT 308, 311-12, aff'd, 989 F.2d 1201 (Fed. Cir. 1993). Furthermore, courts have considered the nature of the assembly, i.e., whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

HQ H306809 (Jan. 23, 2020)
Cited 71 times since June 20, 2018

Assembling 50 parts (48 from China) into a flashlight

Country of Origin determination: China

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China Section 301 Duties

- First imposed on China products as of June, 2018
- Four lists now covering $500 billion in import trade
- Apply to "products of China"
- Immediate reaction of importers was to re-assess HS classification
- Then diversify supply chain
- CBP issues and publishes binding origin rulings

Example: Volvo Motor Vehicles (HQ H302821 (Jul. 26, 2019))

- Vehicle components shipped to China from multiple locations
- Assembled in China into subassemblies
  - Painted body
  - Engine
  - Rear suspension
- Other parts shipped to Sweden
  - Hood, bumpers, battery module, fuel tank
  - Exhaust system, hoses and fuel lines, underbody panels and heat shields
  - Instrument panels, seats, cables, wheels

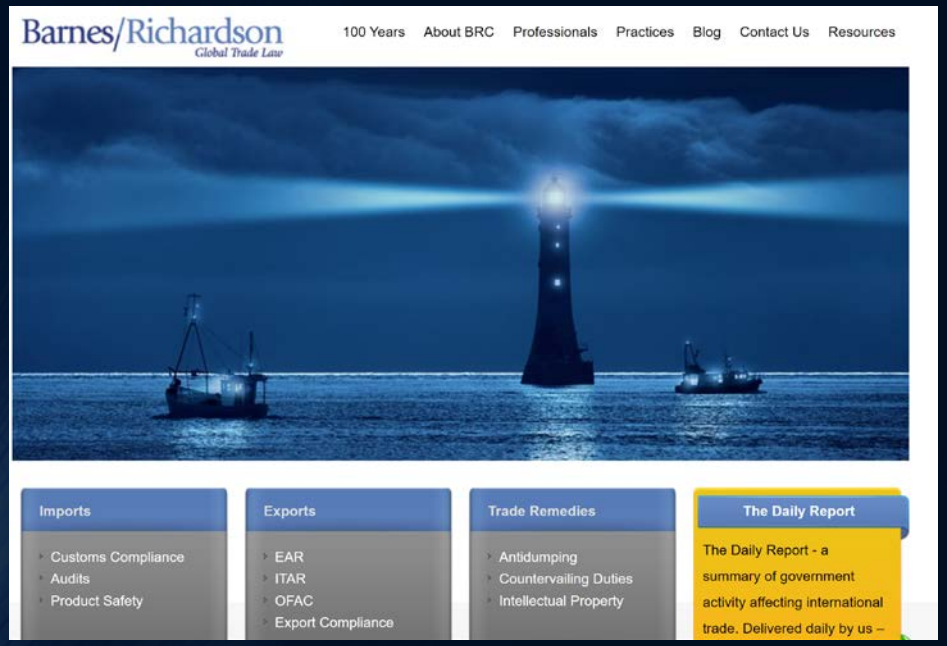
Volvo: Continued

- Three paragraphs explaining Energizer and pre-determined end use
- Focused on whether parts retained their names after assembly
- Also focused on other vehicle assembly rulings in which there were substantial US parts

Volvo: Holding

In the instant case, five subassemblies are manufactured in China from components from various countries. The five subassemblies and other components from China with the exception of high voltage cables and wheels from Europe will then be assembled into the passenger vehicles in Sweden. Unlike the situation in HQ H155115, HQ H118435, and HQ H022169, in this case, the complex assembly process occurs when producing the subassemblies in China. With respect to the final assembly, we find the manufacturing processes of the five subassemblies in Sweden do not rise to the level of complex processes necessary for a substantial transformation to occur. Further, the five subassemblies from China have a pre-determined end-use and do not undergo a change in use due to the assembly process in Sweden. Accordingly, we find that based on the information provided, the subassemblies and the foreign parts that are imported to Sweden are not substantially transformed as a result of the assembly operations performed in Sweden.

More Information



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Thank you

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