U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, January 2, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO COUNTRY OF ORIGIN OF CERTAIN GIRLS' KNITTED DRESSES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to the country of origin of certain girls' knitted dresses.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter relating to the country of origin of certain girls' knitted dresses. Similarly, Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation and modification was published on November 28, 2001, in Vol. 35, No. 48, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This modification and revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 18, 2002.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textile Branch, (202) 927–2339.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice was published on November 28, 2001, in the CUSTOMS BULLETIN, Vol. 35, No. 48, proposing to modify New York Ruling Letter (NY) G82930, dated November 8, 2000. No comments were received in response to the notice of proposed action.

As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on merchandise subject to this notice, should have advised the Customs Service during the notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of

lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY G82930, dated November 8, 2000, and any other rulings not specifically identified, that is contrary to the position set forth in this notice, to reflect the proper country of origin of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter HQ 964794 as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions that is contrary to the position set forth in this notice.

In accordance with 19 U.S.C. 1625 (c) this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: December 28, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 28, 2001.

CLA–2 RR:CR:TE 964794 SS
Category: Classification
Tariff No. 6104.42.0020

MR. EDWARD HENG
GROUP LOGISTICS MANAGER
GHIM LI FASHION CO. PTE. LTD.
No. 7 Kampong Kaya Road
Singapore 438162

Re: Modification of NY G82930; Classification and country of origin determination for two girls' knit cotton dresses; 19 CFR 102.21(c)(4).

DEAR MR. HENG:

On November 8, 2000, the New York Office of the Customs Service issued New York Ruling Letter (NY) G82930 to you regarding the classification and country of origin determination for two girls' knit cotton dresses. This letter is to inform you that upon review of NY G82930, it has been determined that the ruling should be modified to the extent that it addresses the country of origin determination. This ruling does not modify or revoke the classification of the dresses. This letter sets forth the correct country of origin determination.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on November 28, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 48, proposing to modify NY G82930 and to revoke the treatment pertaining to the country of origin of certain girls' knitted dresses. No comments were received in response to this notice.

Facts:

The dresses were described in NY G82930 as follows:

> Both dresses have sleeveless polo shirt type styling and lettuce hems. They are made from 1 by 1 rib knit cotton fabric. The garments have shirt collars and three button plackets which fasten right over left. One dress is made of yarn dyed fabric. The other dress is made of solid color fabric and has an embroidered flower near the placket. For purposes of this ruling, we assume the dresses will be sized for girls' 7 to 16.

The dresses were properly classified under subheading 6104.42.0020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, among other things, girls' knitted dresses of cotton.

Two possible manufacturing scenarios for the dresses were set forth as follows:

First Production Plan

Country A

- pattern marking and making
- piece goods are cut into component shapes
- making up of collar
- making up of the front placket and joining it to the front panel
- joining the shoulder seams of the front and back panels
- attaching the collar to the front and back panels using self fabric piping
- attaching main care labels

Country B

- making of button holes for front placket and attaching buttons
- sewing side seams of front and back panels
- sewing of sleeve using inner facing self fabric binding and topstitch (it is assumed that the operation refers to the seaming of the armhole openings since the dresses are described as "sleeveless")
- hemming of bottom lettuce edge
- cutting threads
- final inspection
- packing

Second Production Plan

Country A

- pattern marking and making

Country B

- piece goods are cut into component shapes
- making up of collar
- making up of the front placket and joining it to the front panel
- joining the shoulder seams of the front and back panels
- attaching the collar to the front and back panels using self fabric piping
- attaching main care labels

Country A

- making of button holes for front placket and attaching buttons
- sewing side seams of front and back panels
- sewing of sleeve using inner facing self fabric binding and topstitch (it is assumed that the operation refers to the seaming of the armhole openings since the dresses are described as "sleeveless")
- hemming of bottom lettuce edge
- cutting threads
- final inspection
- packing

Issue:

What is the country of origin of the subject merchandise?

Country of Origin—Law and Analysis:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for

textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:"

Paragraph (e) in pertinent part states that "[t]he following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

* * * * * * *

HTSUS	Tariff shift and/or other requirements
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession."

Section 102.21(e) states that the country of origin for the dresses, is the country where the unassembled components are wholly assembled. Since the dresses are not assembled in a single country, Section 102.21(c)(2) is inapplicable.

Section 102.21(c)(3) states that, "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:

> (i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or
>
> (ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled."

As the subject merchandise is neither knit to shape, nor wholly assembled in a single country, Section 102.21(c)(3) is inapplicable.

Section 102.21(c)(4) states, "[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory or insular possession in which the most important assembly or manufacturing process occurred."

In NY G82930, Customs stated that the sewing of both sleeves to the main body and sewing of the side seams to join the front and back panels constituted the most important assembly processes. However, since there are no sleeves to be sewn to the main body on a "sleeveless" dress, Customs decided to revisit the matter. Although no rulings on identical merchandise were identified, Customs finds that the sewing of side seams and attachment of sleeves do not generally constitute the most important assembly processes for a girls' knit polo-style shirt. See HQ 958930, dated May 28, 1996. In HQ 958930, the most important assembly operations consisted of attaching the front and back panels by sewing the shoulder seam, forming and attaching the placket to the front panel, forming and attaching the collar and attaching rib cuffs to the sleeves. Applying this rationale, it is Customs belief that the joining of the front and back panels by sewing the shoulder seams, forming and attaching the collar and forming and attaching the placket constitute the most important assembly process for the subject dresses. Accordingly, the country of origin under the first production plan is country A and the country of origin under the second production plan is country B. This holding is also consistent with HQ 960059, dated February 24, 1997 and NY F84192, dated April 7, 2000.

Holding:

NY G82930 is hereby modified.

The country of origin of the girls' dresses in the first production plan is country A. The country of origin of the girls' dresses in the second production plan is country B.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING OF DISPOSABLE TUBE CONTAINERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a country of origin marking ruling letter and treatment relating to the country of origin marking of disposable tube containers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the country of origin marking of disposable tube containers and to revoke any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed modification was published in Vol. 35, No. 44 of the CUSTOMS BULLETIN dated October 30, 2001.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 15, 2002.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, (202) 927–0657.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice of proposed modification of HQ 561829, dated December 15, 2000, was published in Vol. 35 of the CUSTOMS BULLETIN dated October 30, 2001. No comments were received.

As stated in the proposed modification, this modification covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter; internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs is modifying any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the law. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In Headquarters Ruling Letter ("HQ") 561829, dated December 15, 2000, (Attachment A), Customs ruled on whether foreign-made empty disposable plastic tube containers may be marked with a U.S. address and the phrase "Made in U.S.A." when the tubes will be filled in the U.S. with a U.S.-origin product. Customs held that the foreign-made tubes could not be marked with the phrase "Made in U.S.A." at the time of importation pursuant to 19 U.S.C. 1304. This ruling is in conflict with a

line of Customs rulings. For instance, in HQ 734240, dated December 24, 1991, Customs held that the phrase "Made in U.S.A." on foreign-made tubes and aerosol cans imported empty to be filled in the U.S. with U.S.-origin products would not mislead an ultimate purchaser as to the origin of the disposable container, as long as the outer container of the disposable foreign-made containers was properly marked. *See also* HQ 734781, dated December 24, 1992; and HQ 734573, dated August 10, 1992.

Based on the line of cases cited above, we find that pursuant to 19 U.S.C. 1304, the foreign-origin disposable tubes imported empty may be imported bearing the phrase "Made in U.S.A.," assuming that the disposable tubes will be filled by the ultimate purchaser of the tubes with U.S.-origin products and the outer container of the imported disposable tubes is marked with the country of origin of the tubes.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HQ 561829, and any other rulings not specifically identified, to reflect the proper interpretation of 19 U.S.C. 1304 pursuant to the analysis set forth in HQ 562109 (see Attachment B to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is modifying any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Dated: January 3, 2002.

MYLES HARMON,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 15, 2000.

MAR–2 RR:CR:SM 561829 KSG
Category: Marking

ERNESTO BUSTAMANTE
OPERATIONS MANAGER
WILLIAM F. JOFFREY, INC.
P.O. Box 698
Nogales, AZ 85628–0698

Re: Country of origin marking of imported tubes to be filled with cosmetics; 134.22(d)(2); usual container; NAFTA.

DEAR MR. BUSTAMANTE:

This is in response to your letter of July 17, 2000, on behalf of Thatcher Tubes, requesting a binding ruling concerning the country of origin marking requirements for imported tube containers. You submitted a sample for our examination.

Facts:

Thatcher Tubes plans to import empty disposable plastic tube containers and caps that are made in Mexico. Once imported into the U.S. through the port of Nogales, Arizona, the plastic tubes will be shipped to customers who will fill and seal the tubes to form the finished article. The tubes will be filled with various products of U.S. origin, including hand cream. The filled and sealed tubes will be sold to ultimate purchasers in the U.S.

The imported empty tubes will be marked with the name and address of the U.S. manufacturer of the various products (for example, hand cream) to be inserted into the tubes as well as instructions on use of the product. The sample submitted is an empty tube for Neutrogena hand cream. On the back of the tube, there is a U.S. address of Neutrogena Corporation and the phrase "Made in U.S.A."

Issue:

What are the country of origin marking requirements for imported tube containers, as described above?

Law and Analysis:

Section 304 of the Tariff Act of 1930, as amended, (19 U.S.C. 1304) provides that, unless excepted, every article of foreign origin imported into the U.S. 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 of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements of 19 U.S.C. 1304.

Section 134.22(d)(1), Customs Regulations (19 CFR 134.22(d)(1)), defines "usual container' as a container in which a good will ordinarily reach its ultimate purchaser. With regard to a good of a NAFTA country which is a usual container, section 134.22(d)(2) provides that:

> A good of a NAFTA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

In a similar case, Customs held in Headquarters Ruling Letter ("HRL") 559073, dated June 28, 1995, that empty cosmetic containers imported into the U.S. to be filled with U.S.-made cosmetics were excepted from being marked with their country of origin pursuant to 19 CFR 134.22(d)(2). However, the outermost containers in which the cosmetic containers are imported and reach the ultimate purchaser in the U.S. are required to be marked with the country of origin of the cosmetic containers. Also see HRL 560705, dated January 28, 1998.

Based on the above, we find that pursuant to 19 CFR 134.22(d), the imported tubes and caps in this case are "usual containers" and are excepted from individual marking pursuant to 19 CFR 134.22(d)(2). The outermost containers in which the tubes and caps are imported and reach the ultimate purchaser in the U.S. are required to be marked with the origin of the tubes and caps.

The term "ultimate purchaser" for a good of a NAFTA country is defined in 19 CFR 134.1(d) as "the last person in the U.S. who purchases the good in the form in which it was imported." In this case, the customers in the U.S. who fill the plastic tubes with their products would be considered the ultimate purchasers of the tubes. *See* 19 CFR 134.24(c)(1).

Section 134.46, Customs Regulations (19 CFR 134.46), as amended, provides:

> In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

The U.S. address on the sample tube submitted is the address of the ultimate purchaser and therefore, it would not trigger the special marking requirements of 19 CFR 134.46

since the ultimate purchaser would not be confused or misled by its own address. However, it would be unacceptable under 19 U.S.C. 1304 for the imported empty tube containers to be marked "Made in U.S.A." as they are of foreign origin. Whether the tubes may be marked "Made in U.S.A." after they are filled in the U.S. is within the jurisdiction of the Federal Trade Commission.

Holding:

Pursuant to 19 CFR 134.22, the imported empty tubes and caps are usual containers and are excepted from being marked with their own country of origin. The outermost containers in which the unfinished tubes and caps are imported are required to be marked with the origin of the tubes and caps (Mexico).

At the time of importation, the empty foreign-origin tubes may not be marked "Made in U.S.A."

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

MYLES HARMON,
(for John Durant, Director,)
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

MAR–2 RR:CR:SM 562109 KSG
Category: Marking

ERNESTO BUSTAMANTE
OPERATIONS MANAGER
WILLIAM F. JOFFREY, INC.
P.O. Box 698
Nogales, AZ 85628–0698

Re: Country of origin marking of imported tubes to be filled with cosmetics; modification of HQ 561829; "Made in U.S.A." marking on disposable containers.

DEAR MR. BUSTAMANTE:

This is in reference to Headquarters Ruling Letter ("HQ") 561829, that was issued to you on December 15, 2000, on behalf of Thatcher Tubes which dealt with the country of origin marking requirements for foreign-made tubes imported empty to be filled in the U.S. We have reviewed this ruling in light of our previous rulings and have determined that the portion of HQ 561829 relating to the "Made in USA" marking on the empty tube containers is incorrect. Therefore, this ruling modifies HQ 561829 and sets forth the proper country of origin marking requirements for the foreign-origin tubes.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of HQ 561829 was published on October 30, 2001, in the CUSTOMS BULLETIN, Volume 35, No. 44. No comments were received in response to this notice.

Facts:

Thatcher Tubes plans to import empty disposable plastic tube containers and caps that are made in Mexico. Once imported into the U.S. through the port of Nogales, Arizona, the plastic tubes will be shipped to customers who will fill and seal the tubes to form the finished article. The tubes will be filled with various products of U.S. origin, including hand cream. The filled and sealed tubes will be sold to ultimate purchasers in the U.S.

The imported empty tubes will be marked with the name and address of the U.S. manufacturer of the various products (for example, hand cream) to be inserted into the tubes as well as instructions on use of the product. The sample submitted is an empty tube for Neutrogena hand cream. On the back of the tube, there is a U.S. address of Neutrogena Corporation and the phrase "Made in U.S.A."

Issue:

Whether the foreign-origin disposable tubes may be imported bearing the phrase "Made in U.S.A."

Law and Analysis:

Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304), as amended, provides that unless excepted, every article of foreign origin imported into the U.S. 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 of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements of 19 U.S.C. 1304.

In Headquarters Ruling Letter (HQ) 734240, dated December 24, 1991, Customs held that the phrase "Made in U.S.A." on foreign-made tubes and aerosol cans imported empty to be filled in the U.S. with U.S.-origin products would not mislead an ultimate purchaser as to the origin of the disposable container, as long as the outer container of the disposable foreign-made container was properly marked. Therefore, the disposable containers were excepted from individual marking and the phrase "Made in U.S.A." could appear on the disposable containers at the time of importation. *See also* HQ 734781, dated December 24, 1992; and HQ 734573, dated August 10, 1992.

In this instance there is no implication that the tube is of U.S. origin; the reference plainly is to its future U.S. contents. The marking "Made in U.S.A." would not mislead an ultimate purchaser of the disposable containers, who have ample knowledge of the country of origin of the disposable tubes and know that the phrase "Made in U.S.A." is on the disposable tubes to refer to the origin of the future contents of the tubes. Provided that the outer container of the disposable tube is marked as to the origin of the disposable tubes, the country of origin marking requirements of 19 U.S.C. 1304 will be satisfied. Consistent with this ruling, we propose to modify HQ 561829.

The Federal Trade Commission ("FTC") has jurisdiction concerning the use of the phrase "Made in the U.S.A.," or similar words denoting U.S. origin. Consequently, any inquiries regarding the use of such phrases reflecting U.S. origin should be directed to Steven Ecklund at the FTC, at the following address: Federal Trade Commission, 6th & Pennsylvania Avenue, N.W., Washington, D.C. 20508 or by telephone at (202) 326–2841.

Holding:

The empty foreign-origin disposable tubes may be imported marked "Made in U.S.A.," assuming that the tubes will be filled by the ultimate purchaser of the tubes in the U.S. with U.S.-origin products and the outer container of the imported disposable tubes is marked with the country of origin of the tubes.

HQ 561829, dated December 15, 2000, is hereby modified to the extent that it is inconsistent with this ruling. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES HARMON,
(for John Durant, Director,
Commercial Rulings Division.)

EXTENSION OF GENERAL PROGRAM TEST REGARDING POST ENTRY AMENDMENT PROCESSING

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document announces that the general program test regarding post entry amendment processing is being extended for a period of one year. The test will continue to operate in accordance with the notice published in the Federal Register on November 28, 2000.

DATES: The test allowing post entry amendment to entry summaries is extended to December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Chief, Entry and Drawback Management Branch, Office of Field Operations (202/927–1082).

SUPPLEMENTARY INFORMATION:

Customs announced and explained the post entry amendment processing test in a general notice document published in the Federal Register (65 FR 70872) on November 28, 2000. That notice announced that the test would commence no earlier than December 28, 2000, and run for approximately one year. In fact, the test is scheduled to operate through December 31, 2001.

Briefly, the test allows importers to amend entry summaries (not informal entries) prior to liquidation by filing with Customs either an individual amendment letter upon discovery of an error or a quarterly tracking report covering any errors that occurred during the quarter. The previously published general notice explained how to file post entry amendments for revenue related errors and non-revenue related errors, and the consequences of misconduct by importers during the test. It also provided that there are no application procedures or eligibility requirements. This document announces that the test is being extended to December 31, 2002. To participate in the test, an importer need only follow the procedure set forth in the previously published general notice.

Comments received in response to the previously published general notice have been reviewed and the test is being evaluated. Changes to the test based on the comments and the evaluation will be announced in the Federal Register in due course. The test may be further extended if warranted. Additional information on the post entry amendment procedure can be found under "Importing and Exporting" at http://www.customs.gov.

Dated: December 31, 2001.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

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