

U.S. Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, June 30, 2009

The following documents of U.S. Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*



19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO COUNTRY OF ORIGIN MARKING

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of ruling letter and revocation of treatment relating to country of origin marking.

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 and Border Protection (“CBP”) is modifying a ruling letter pertaining to country of origin marking. CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on April 24, 2009. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective September 22, 2009.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien,
Valuation & Special Programs Branch, (202) 324-0044.

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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), a notice was published in the *Customs Bulletin* on April 24, 2009, proposing to modify NY N029916, dated July 1, 2008, which involved country of origin marking. No comments were received in response to the notice.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N029916 based upon the analysis set forth in HQ H046759, attached. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

DATED: June 29, 2009

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

ATTACHMENT

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H046759
June 29, 2009
OT-RR:CTF:VS H046759 GOB
CATEGORY: Marking

ERIC P. ARNESON
DIRECTOR OF LOGISTICS
STEPHAN COMPANY
22 West Frontage Road
Northfield, IL 60093

RE: Modification of NY N029916; Country of Origin Marking; Polyurethane Resin

DEAR MR. ARNESON:

In NY N029916, dated July 1, 2008, the National Commodity Specialist Division of U.S. Customs and Border Protection ("CBP") responded to your ruling request. We have reexamined NY N029916 and have determined that it needs to be modified. Our modification follows.

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, 2186 (1993), notice of the proposed modification of HQ N029916, as described below, was published in the *Customs Bulletin* on April 24, 2009. No comments were received in response to the notice.

FACTS:

In your letter of June 2, 2008, you requested a tariff classification and country of origin ruling with respect to Stepanfoam RI 9736-B, which is described as the B-component of a two-part polyurethane system used in the manufacture of rigid polyurethane foam products. Stepan Company will manufacture Stepanfoam RI 9736 polyurethane resin base material as a bulk liquid at its Chicago factory and then export it to its facility in Mexico, where HCFC-141b blowing agent will be blended into the Stepanfoam RI 9736. The Stepanfoam RI 9736-B will be repackaged into intermediate bulk containers for export.

In NY N029916, the National Commodity Specialist Division stated in pertinent part as follows:

Based on the information provided, the goods described above qualify under the NAFTA Preference Override in Section 102.19(b) of the Customs Regulations (19CFR102). Therefore, the country of origin for Customs duty and marking purposes will be Mexico, which is the last NAFTA country in which the goods were advanced in value or improved in condition. In accordance with the Country of Origin Marking requirements of Part 134 of the Customs Regulations (19CFR134) the intermediate bulk containers shall be legibly, indelibly and permanently marked in a conspicuous place: "Made in Mexico."

We believe that this determination is incorrect with respect to country of origin marking.

ISSUE:

What is the country of origin for marking purposes of the Stepanfoam RI 9736-B?

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 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 United States the English name of the country of origin of the article. Part 134, CBP Regulations implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304.

Section 102.19(b), CBP Regulations (19 CFR § 102.19(b)), provides as follows:

If, under any other provision of this part, the country of origin of a good which is originating within the meaning of section 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States. [Emphasis added.]

Pursuant to 19 CFR § 102.19(b), the country of origin of the Stepanfoam RI 9736 for duty purposes is Mexico. However, 19 CFR § 102.19(b) has no effect on the country of origin for marking purposes. See, for example, HQ 562020, dated May 16, 2001.

Section 134.1(b), CBP Regulations, provides:

“Country of origin” means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part; however for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j), CBP Regulations, provides that “[t]he ‘NAFTA Marking Rules’ are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.” Section 134.1(g), CBP Regulations, defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico, or the United States as determined under the NAFTA Marking Rules.”

Section 102.11, CBP Regulations, sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 provides in pertinent part that the country of origin of a good is the country in which:

- (a) The country of origin of a good is the country in which:
 - (1) The good is wholly obtained or produced;
 - (2) The good is produced exclusively from domestic materials; or
 - (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good . . .

Because the Stepanfoam RI 9736-B is manufactured in the U.S. and blended with a blowing agent in Mexico, it is neither wholly obtained or produced (19 CFR § 102.11(a)(1)), nor produced exclusively from domestic materials (19 CFR § 102.11(a)(2)).

We next examine the tariff shift rule of 19 CFR § 102.11(a)(3). The Stepanfoam RI 9736-B is classified in subheading 3909.50.50, Harmonized Tariff Schedule of the United States (“HTSUS”). The Stepanfoam RI 9736-B is a mixture of U.S.-origin polyurethane, classified in subheading 3909.50.50, HTSUS, and Mexican-origin dichlorofluoroethane, classified in subheading 2903.49.60, HTSUS. The U.S. origin polyurethane is the “foreign material” referenced in 19 CFR § 102.11(a)(3). *See* the definition of “foreign material” in 19 CFR § 102.1(e). The applicable tariff shift rule in 19 CFR § 102.20 provides: “A change to heading 3901 through 3915 from any other heading, including another heading within that group, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer content.” In this instance, the tariff shift rule is not satisfied.

Therefore we look to the rule of 19 CFR § 102.11(b)(1) involving essential character. Section 102.18(b)(1)(iii), CBP Regulations provides:

If there is only one material that is classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good, then that material will represent the single material that imparts the essential character to the good under § 102.11.

The only material considered for the tariff shift of 19 CFR § 102.11(a)(3) is the U.S.-origin polyurethane. As stated above, the applicable tariff shift rule is not satisfied. Therefore, pursuant to 19 CFR § 102.18(b)(1)(iii), the essential character of the Stepanfoam RI 9736-B is imparted by the U.S.-origin polyurethane. Accordingly, pursuant to 19 CFR § 102.11(b)(1), the country of origin for marking purposes of the Stepanfoam RI 9736-B is the United States. The Stepanfoam RI 9736-B is not required to be marked.

HOLDING:

The country of origin for marking purposes of the Stepanfoam RI 9736-B is the United States. The Stepanfoam RI 9736-B is not required to be marked.

EFFECT ON OTHER RULINGS:

NY N029916 is modified. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

MYLES B. HARMON,
Director,
Commercial Trade & Facilitation Division.

