



Proper Identification Required

Marking the Country of Origin in a Global Economy



■ Every day, huge container ships that carry products from countries throughout the world are off-loaded at American ports. Here, three Mediterranean Shipping Co. (MSC) vessels are worked at the SSA Terminal's Pier A facility in the Port of Long Beach in California. (Photo Courtesy of the Port of Long Beach)

are standards for that, too. We will review the guidelines for making "Made in America" claims.

I. What is the "Country of Origin"?

"Country of origin" is defined as the country in which a product is wholly obtained or produced, or the country where an article is substantially transformed into another product. "Substantial transformation" occurs when a product is processed, manufactured, or changed into a new product with a new name, character and use. An example of substantial transformation is the combining of an armature, a motor and wiring to form an alternator.

Laws and rules requiring country-of-origin markings have two major purposes. First, they allow consumers to identify the country in which a product was made. Second, they enable U.S. Customs and Border Protection (CBP), a branch of the Department of Homeland Security, to determine the proper duty rate based on a product's country of origin when the product is imported. Additionally, the country of origin can affect marking requirements and participation in special trade programs, such as the North America Free Trade Agreement (NAFTA).

SEMA has taken steps to better inform its members about protecting intellectual property rights. For example, a story in last month's issue of *SEMA News* focused on design patents and trademarks, and a future article will take up utility patents and copyright. This article reviews the need to accurately label the country of origin on imported goods to help ease a product's entry into the United States.

If merchandise is not properly marked, the U.S. Customs and Border Protection (CBP) can delay or even seize goods while the origin issue is sorted out. This could result in lost sales and "face" time with prospective customers, especially in important marketing opportunities such as the SEMA Show and other exhibition venues.

Overview

U.S. law requires that the country of origin for a product imported into the United States be properly identified.

Conversely, most foreign countries have similar marking requirements for products exported from the United States. While the phrase "rules of origin" may sound simple enough, it becomes complex in a global economy in which a product may contain parts from multiple countries. This article will provide SEMA members with a basic overview for determining a product's country of origin and how to properly mark the product. Domestic products that are "Made in U.S.A." may be voluntarily marked as such, but there

II. Rules for U.S. Imports

As noted, U.S. law requires that virtually all imported products or their containers be marked with a foreign country of origin. The markings must be conspicuous, legible and durable and must be in English. They are for the benefit of the "ultimate purchaser" in the United States. Take, for example, an oil filter. At the retail level, the ultimate purchaser is the do-it-yourselfer who changes his own oil. At the distributor level, it is the service shops that purchase filters for their oil-change operations. Finally, at the manufacturing level, the ultimate purchaser is the auto manufacturer that installs the filter onto the engine.

A. Non-Preferential versus Preferential Rules of Origin

CBP has two sets of rules concerning country of origin: non-preferential and preferential rules of origin. For purposes of our discussion, we will first talk about the rules governing imports from all countries except Canada and Mexico. Second, we will explore the special relationship between the U.S., Canada and Mexico as a result of NAFTA.

1. Non-Preferential Rules of Origin

When determining a product's country of origin for all countries except Canada and Mexico, non-preferential rules of origin apply. The term "non-preferential" refers to all general trade that is not governed otherwise by special trading arrangements such as NAFTA. CBP analyzes the product to determine whether it has undergone a substantial transformation to the point where it has changed in name, character or use. For example, cutting and shaping a bulk sheet of laminated glass into a windshield would be deemed substantial transformation because the character and the use of the original product have changed dramatically.

2. Preferential Rules of Origin

If the goods originate in Canada or Mexico, they are accorded preferential rules of origin because NAFTA governs their treatment. Again, CBP looks to see if a substantial transformation has taken place, but then the threshold is whether

there has been a change in the tariff classification.

When a product has been processed or manufactured into a completely different product, CBP may change the tariff classification. Unfortunately, there is no standard test or criteria in the U.S. to determine when a product has undergone such a substantial transformation that the new product merits a tariff-classification change. Such cases are fact-specific and reviewed on a case-by-case basis. For example, merely changing the tariff class does not mean that a substantial transformation automatically has taken place. It may be that the product only underwent a minor assembly process to make it a single unit instead of several related pieces.

The United States classifies all import- and export-trade transactions using the Harmonized Tariff System. Every item that is imported or exported is assigned a unique 10-digit identification code that

helps classify and maintain statistics on imported and exported products. The U.S. International Trade Commission administers the Harmonized Tariff Schedule of the United States for imported goods, while the U.S. Census Bureau monitors exported goods using its own "Schedule B." (Please see Rules for U.S. Exports below.) To see the import-tariff schedule, go to http://hotdocs.usitc.gov/tariff_chapters_current/toc.html.

B. Obtaining a Pre-Importation Ruling from CBP

The importer has the responsibility to use "reasonable care" in determining the correct country of origin of imported goods. An importer may seek a pre-importation or advance ruling from CBP in order to determine whether the merchandise is eligible for preferential tariff treatment under a particular U.S. rule-of-origin statute.

U.S. Customs' Pre-Importation Ruling Requests: What to Submit

Ruling requests must contain sufficient detailed information to enable CBP to determine both the proper tariff classification and the country of origin of the merchandise. Accordingly, ruling requests should include the following information:

- The name(s) of the port(s) in which the merchandise will enter (if known).
- A description of the transaction; for example, a prospective importation of (merchandise) from (country).
- A statement that to the best of the exporter's or importer's knowledge, there are no issues pending before the CBP or any court concerning the commodity for which a ruling is sought.
- A statement indicating whether classification advice has been previously sought from the CBP and, if so, from whom and the advice rendered.
- A complete and detailed written description of the goods. Send samples (if practical), sketches, diagrams or other illustrative material to supplement the written description.

- Cost breakdowns of component materials or parts and their respective quantities shown in percentages of the goods, if possible.
- A description of the principal use of the goods, as a class or kind of merchandise, in the United States.
- A detailed description of each of the manufacturing or production processes which the goods undergo and the country or countries in which they are performed.
- Any other information that may be pertinent or required for purposes of tariff classification.

Note: You may wish to first contact an import/export specialist. The specialist may be able to provide guidance on the proper country of origin or instruct you as to whether CBP already has issued a ruling on the same or similar issue.

Pre-importation rulings may be obtained by submitting a written request to:

Chief, Special Classification and Marking Branch
Office of Regulations and Rulings
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, N.W.,
Mint Annex
Washington, D.C. 20229

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■ The imports consist of all types of automotive parts and supplies, including OEM products such as this Lexus that was delivered from a car carrier ship at Toyota's Pier B terminal at Long Beach. (Photo Courtesy of the Port of Long Beach)

C. Country-of-Origin Marking Requirements for Imported Goods

As noted, U.S. law requires that every article of foreign origin (or its container) imported into the United States must be marked in a conspicuous place as legibly, indelibly and permanently as the merchandise (or container) will permit. The name of the country of origin must be printed in English. Acceptable markings include phrases such as "Made in 'X' (country)" or "Made in 'X' (country) from components of 'X' (country), 'Y' (country) and 'Z' (country)." It is not necessary to identify the countries where components are manufactured so long as the country of origin for the finished product is clearly marked. For assembled products, if the country markings of the components are visible to the ultimate purchaser and indicate a geographic location other than the country of origin, a country-of-origin marking must appear in close proximity to the other geographic location each time the marking appears. (CBP usually does not enforce strict application of the "close proximity rule;" rather, the country of origin is only necessary to be in close proximity to the name of the other geographic location when that name may mislead or deceive the ultimate purchaser as to the actual country of origin.)

■ U.S. Customs and Border Protection (CBP) officers may delay or even seize merchandise that is not properly marked. Officers Glen Neilson (left) and Edgardo Rivera are shown here inspecting packages that recently arrived from China. Note the Country of Origin marking on the side of the box.

In some instances a trade show exhibitor has only prototypes to show and none to sell. An article imported for use by the importer and not intended for sale in its imported form may be exempted from the marking rule. Please consult with your Customs broker on whether this exception applies to your product and how to fill out your Customs entry documents.

D. Exceptions to the Marking Requirements

Of course, there are exceptions to the marking requirements. To see general exceptions, visit <http://www.cbp.gov/nafta/docs/us/134.html#134.32>. Some exceptions include the following:

- Articles that cannot be marked prior to shipment to the United States without injury.
- Articles that cannot be marked prior to shipment to the United States except at prohibitive cost.
- Articles that were produced more than 20 years prior to importation into the United States.

CBP regulations contain a list of articles known as the "J" list, which contains items that are specifically exempted from marking requirements. For example, certain products are incapable of being marked, such as sponges and wiring. Other examples on the list include works of art, eggs, livestock, bamboo poles, feathers, rags, screws and Christmas trees. It's always best to check the "J" list to see which goods cannot be marked pursuant to CBP's regulations. To be certain, click on <http://www.cbp.gov/nafta/docs/us/134.html#134.33>.

E. Parts Imported and Sold to a Private Person as a Replacement or Aftermarket Part

In 1993, CBP ruled that various replacement automotive parts were exempt from individual country-of-origin marking, so long as the parts were individually wrapped in containers bearing the proper origin markings and part numbers, and reached the ultimate purchaser (aftermarket stores, mechanics, individuals, etc.) in those containers.

CBP concluded that, in most cases, the part would remain in the container until



Wheel Industry Council encouraged the development of the exam, which was held for the first time in May—six months earlier than originally scheduled.

“We knew we might expand the program to include performance-based wheels and tires,” said McKoy. “Wheels and tires have become a visible and major portion of the accessory business.”

Jim Rogers of Executive Wholesale Tires agrees. He assisted in the development of the wheel and tire exam and believes that obtaining credentials is very important, particularly in the wheel and tire industry. “Tire installation is very critical. It’s the only thing standing between the car and the road,” he said.

The SEMA program was developed in cooperation with ASE, the National Institute for Automotive Service Excellence. All five SEMA exams were written by industry experts knowledgeable in a specific subject or skill area. The test-development workshops were facilitated by an ASE team. Participants included manufacturers and suppliers, restylers and accessory retailers as well as custom wheel and tire specialists, making the end result a true test of a professional’s practical knowledge.

To become certified, all candidates must possess at least two years of hands-on work experience. To become a SEMA-certified custom wheel and tire specialist, an individual must also pass the Z5 exam. However, to obtain Z1-Z4 credentials, candidates must not only pass at least one of the four exams, they also must achieve a passing score on the ASE A6 exam on electrical/electronic systems, considered an important component of the certification program.

Robert Wendler, owner of Barker Truck & Trailer Accessories, Barker, NY, was among the first to earn SEMA credentials and was named last year’s Certified Installer of the Year. Having started in the industry as a truck mechanic, Wendler has always been a true proponent for obtaining credentials.

“I am certified in other areas and always felt that [credentials] were helpful,” Wendler said, explaining why he decided to take SEMA’s exam. He is


especially proud of his SEMA credentials, because they were developed in conjunction with ASE. “The two organizations are the biggest in the field. They are the most well-respected. Put them together, and you can’t get much better than that.” Plus, Wendler continued, the program includes more than just a written test. Participants must also have practical knowledge and technical expertise.

“Certification puts us a notch above our competitors,” said Nardine. The shop owner encourages his entire staff to obtain SEMA credentials and pays for both their registration and test fees. Two staff members are already SEMA certified and several others are well on their way to achieving their credentials. “We’ve been in business for a long time,” said Nardine, “and now we have the certification which indicates our expertise.”

Both Wendler and Nardine plan to communicate in their advertising materials the fact that they employ certified installers at their shops. They also plan to display their certificates and hang banners in the shop.

Rogers has similar plans. As the shop owner, he has invested hundreds of dollars for his installers to become certified and to earn his own SEMA credentials as well. “It’s just another way of identifying the stores that have qualified technicians,” he said. “I really do think it’s necessary.”

Certified installers and specialists receive a certificate, a wallet card and sleeve insignia. Credentials are valid for five years. The program is open to all principals and employees of both SEMA-member and nonmember companies. However, SEMA members receive a substantial discount on the registration and test fees.

Exams are conducted twice a year at more than 700 locations throughout the United States as well as in Canada and elsewhere outside the United States. The next set of exams is set for Tuesday, Nov. 9, beginning at 7 p.m. Pre-registration, which is required, closes Wednesday, Sept. 22. For details on the program or to register, visit www.sema.org/certification or call 909/396-0289, ext. 158. 

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■ Another SEMA member, AEM, notes in its Country of Origin marking that its cam gear is assembled as well as made in the United States. Variations on manufacturing and assembly locations are common throughout the automotive aftermarket and must be considered improper labeling.

installation. Therefore, marking the country of origin of the imported auto part in a permanent, conspicuous and legible manner on the sealed container bearing the part satisfied the requirements of Section

304 of the Tariff Act. The only exception to this rule is automotive replacement glass. CBP has concluded that replacement glass does not undergo a substantial transformation by being installed on an auto-

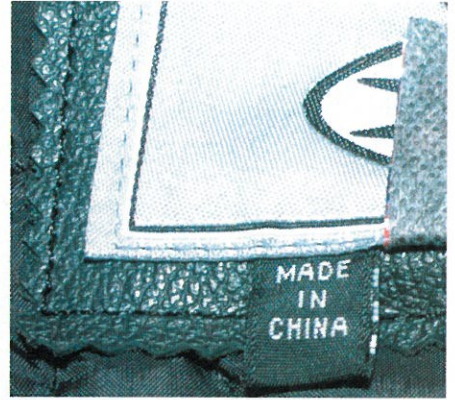
mobile. Therefore, the country of origin must be marked on the glass itself.

III. Rules for U.S. Exports

For products being exported, most countries also require that the country of origin be labeled clearly on each package as well as the shipping container. The purpose not only is to inform consumers of a product's origin, but also to help another country administer and enforce its tariff laws and regulations. As with U.S. law, the country of origin usually is considered to be the nation where the product is produced wholly or where the last substantial transformation has taken place. Many countries also require labels written in the language of that country to which the products are exported, such as Spanish, German or Chinese.

As noted, the U.S. Census Bureau administers "Schedule B," the coding system for exported goods. To see the 10-digit export codes, click on <http://www.census.gov/foreign-trade/schedules/b/index.html>.

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■ The products within the shipping containers—in this case motorcycle jackets—must also be properly labeled for Country of Origin.

IV. Rules for NAFTA: U.S., Canada and Mexico

Under NAFTA, North American goods that are imported and exported between the U.S., Canada and Mexico receive preferential tariff treatment. This means that no duty is charged for most products. To receive such preferential treatment, the goods must have enough North American content to qualify as “originating” in one of the NAFTA countries and then be marked in accordance with NAFTA labeling rules. These rules provide that the country of origin of an imported product is the NAFTA country where the product is produced wholly or where the last substantial transformation occurred. Additionally, Canadian and Mexican goods imported into the U.S. are exempt from labeling if, after importation into the U.S., they undergo further processing that causes a tariff-classification change. NAFTA labeling rules require that U.S. exports to Canada or Mexico be marked as “Made in U.S.A.” Separately, NAFTA considers a product to be made in the U.S. if it has a minimum of 50% U.S. content.

Under NAFTA marking rules, a product of a NAFTA country may be marked in English, Spanish or French.

V. The American Automobile Labeling Act (AALA)

The AALA requires that all cars and light trucks manufactured after 1994 be labeled with the percentages of domestic (U.S. and Canada) and foreign content as well as the countries of origin of the engines and transmissions. Other individual parts of the automobile, however, do not need to be



■ SEMA-member Yella Terra is not only in full compliance with its Country of Origin markings on this package of rocker arms, but the company also proudly displays the Australian flag as part of its labeling.

marked since they have been substantially transformed by being assembled into an automobile. This law applies only to completed automobiles. Additionally, the vehicle manufacturers require that their suppliers provide similar content information so that they can prepare the AALA label.

For parts, U.S./Canadian (domestic) content is calculated using a 70% “roll up/roll down” formula. In other words, if a part contains 70% or more U.S./Canadian content, it is considered to be 100% U.S./Canadian. If the part contains less than 70% U.S./Canadian content, the part is considered to be 100% foreign.

VI. The “Made in U.S.A.” Label: When Can You Say This?

For some manufacturers and retailers, the “Made in U.S.A.” label still carries some cachet, especially in the domestic and certain international markets. The Federal Trade Commission (FTC) has issued a standard on “Made in U.S.A.” labeling requirements to provide protection to the consumer. Any product advertised as being “Made in U.S.A.” must be made from “all or virtually all” U.S. labor and material content. The FTC has the power to enforce laws that prohibit false or misleading claims.

Except for laws governing automobiles (the American Automobile Labeling Act) and apparel, there is no law that requires a product sold in the U.S. to be marked or labeled as “Made in U.S.A.” or have any other disclosure about the amount of U.S. content. If a product is labeled as to origin,

the FTC provides three basic options regarding the “all or virtually all” standard:

- 1) an unqualified “Made in U.S.A.” label;
- 2) a qualified label such as “Made in U.S.A. of foreign and domestic components;” or
- 3) a foreign country-of-origin marking.

The “all” is self-explanatory, but what does “virtually all” mean? The FTC requires that all significant parts and processing incorporated into the product

must be of U.S. origin. That is, the product should contain no, or very little, foreign content. There is no clear threshold or percentage at which a product suddenly becomes “virtually all” made in the United States. However, a product’s final assembly or processing must take place in the U.S. The FTC then will consider how much of the product’s total manufacturing costs can be assigned to U.S. parts and processing and how far removed any foreign content is from the finished product. The FTC also will consider consumers’

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expectations about the marking claim.

While a small amount of foreign content is permissible, the FTC determines the concept of "virtually all" on a case-by-case basis. Two examples may provide some guidance:

1) A shock-absorber manufacturer assembles his product in the United States. American companies supply the major components of the shock absorber, which is made of American raw materials. However, one minor component, a rubber O-ring, is imported. In this example, the

FTC likely would allow the shock-absorber manufacturer to claim that his product is "Made in U.S.A." because the O-ring makes up a negligible portion of the product's total manufacturing cost and is an insignificant part of the final product.

2) An alternator manufacturer assembles his product in a U.S. plant. Most of the major components are made in his plant from U.S. raw materials. The armature, however, is imported and comprises 30% of the total manufacturing cost of the alternator. The FTC most likely would

deem a "Made in U.S.A." claim to be deceptive because the armature is made abroad, comprises a significant percentage of the total manufacturing cost, and is an integral part of the final product.

How does one meet the "all or virtually all" standard for U.S. labor and material content? The FTC requires that a manufacturer or marketer have a reasonable basis to support a claim at the time it is made. This would include inquiring of the supplier as to the percentage of U.S. content in the component. Raw materials are neither automatically included nor excluded in the evaluation of a "Made in U.S.A." claim. The determination is based on the value of the material to the final product and its significance to that product. For example, imported steel is used to make one part of a larger component, such as the floppy-drive frame to be installed in a computer. The fact that the floppy-drive frame is made of imported steel should not preclude a "Made in U.S.A." claim on the overall computer since the value of the steel to the ultimate product is low. Further, consumers more likely would be interested in the country of origin for the floppy drive itself and other major computer components, not the floppy-drive frame. Conversely, if a manufacturer is making steel fasteners from imported steel, an unqualified "Made in U.S.A." claim on the fasteners would be deceptive since the steel has significant value and is only one step removed from the finished product.

The "Made in U.S.A." standard applies to similar phrases like "American made" or "U.S.A." It also includes implied claims where the advertising or labels use U.S. symbols (such as an American flag or a map of the U.S.) leading the consumer to believe, perhaps erroneously, that the product is made in the U.S.A.

When a manufacturer cannot make an unqualified claim, they may make a qualified one, such as "Made in U.S.A. of U.S. and imported parts" or "60% U.S. content." The FTC applies the same criteria—the value and significance of the U.S. content and labor—when determining if a qualified claim is appropriate. For example, if an exhaust system is assembled in the U.S., but all of its parts are imported except for the brackets, then a "Made in

U.S.A. of U.S. and Imported Parts” claim would be deceptive. However, the product could be marketed as “Made in U.S.A. from Imported Parts” or “Assembled in U.S.A.” When making qualified claims, manufacturers should be careful in using certain words such as “produced,” “created” or “manufactured” to ensure that they are being used correctly. Moreover, the word “assembled” must be associated with a substantial construction process, not a simple “glue-together” operation.

The FTC does not pre-approve “Made in U.S.A.” claims, and it does not review determination requests on whether or not a “Made in U.S.A.” claim can be made. For more information on the FTC’s “Made in U.S.A.” standard, go to <http://www.ftc.gov/os/statutes/usajump.htm>.

VII. Conflicts in Labeling Law

As we’ve seen, there are different labeling standards for imported and exported goods. An imported product may be marked “Made in Italy” so long as it was substantially transformed in Italy, even

though the product does not contain wholly Italian parts. Under the FTC’s rules, however, an identical product that is substantially transformed and marketed in the U.S. cannot be marked “Made in U.S.A.” unless the labor and content are all or virtually all of U.S. origin. In yet another twist, if that same U.S. product is exported, it may (and in some cases must) be marked “Made in U.S.A.” To meet these conflicting requirements, some companies maintain special packaging and re-labeling facilities for domestic and international markets.


The U.S. is aware of these conflicting standards, and has been working to create a uniform labeling regimen with other nations through the World Trade Organization. So far, no consensus has been reached on the proper labeling format for goods.

VIII. Conclusion

To comply with U.S. law, it is vitally important that you correctly label the origin of your goods. Take care to know the markets to which you are exporting and

the countries from which you are importing. If in doubt, contact U.S. Customs and Border Protection, which can assist with country-of-origin labeling questions. When touting your goods as “Made in U.S.A.,” be sure that the goods are made all or virtually all with U.S. labor and material content.

In the end, as with any business endeavor, you should practice due diligence. SEMA recommends that you consult with a qualified attorney who is well versed in international trade compliance and country-of-origin labeling issues. Your business runs on a tight schedule. Asking questions now can help avoid problems and delays later.

The information contained in this article is accurate as of time of publication. For more information, please contact Conrad Wong by telephone at 202/783-6007, ext. 39, or by e-mail at conradw@sema.org. 

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