

## § 134.0

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AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1624.

SOURCE: T.D. 72-262, 37 FR 20318, Sept. 29, 1972, unless otherwise noted.

### § 134.0 Scope.

This part sets forth regulations implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). The consequences and procedures to be followed when articles are not legally marked are set forth in this part. The consequences and procedures to be followed when articles are falsely marked are set forth in § 11.13 of this chapter. Special marking and labeling requirements are covered elsewhere. Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

[T.D. 81-290, 46 FR 58070, Nov. 30, 1981, as amended by T.D. 89-1, 53 FR 51255, Dec. 21, 1988; T.D. 94-1, 58 FR 69471, Dec. 30, 1993]

### Subpart A—General Provisions

#### § 134.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Country*. “Country” means the political entity known as a nation. Colonies, possessions, or protectorates outside the boundaries of the mother country are considered separate countries.

(b) *Country of origin*. “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.

(c) *Foreign origin*. “Foreign origin” refers to a country of origin other than the United States, as defined in paragraph (e) of this section, or its possessions and territories.

(d) *Ultimate purchaser*. The “ultimate purchaser” is generally the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA country, the “ultimate purchaser” is the last person in the United States who purchases the good in the form in which it was imported. It is not feasible to state who will be the “ultimate purchaser” in every circumstance. The following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the “ultimate purchaser” if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article, or for a good of a NAFTA country, a process which results in one of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article’s country of origin.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the “ultimate purchaser.” With respect to a good of a NAFTA country, if the manufacturing process does not result in one

of the changes prescribed in the NAFTA Marking Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the "ultimate purchaser."

(4) If the imported article is distributed as a gift the recipient is the "ultimate purchaser", unless the good is a good of a NAFTA country. In that case, the purchaser of the gift is the ultimate purchaser.

(e) *United States*. "United States" includes all territories and possessions of the United States, except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(f) *Customs territory of the United States*. "Customs territory of the United States," as used in this chapter includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(g) *Good of a NAFTA country*. A "good of a NAFTA country" is an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

(h) *NAFTA*. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on August 13, 1992.

(i) *NAFTA country*. "NAFTA country" means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of the NAFTA.

(j) *NAFTA Marking Rules*. The "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.

(k) *Conspicuous*. "Conspicuous" means capable of being easily seen with normal handling of the article or container.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94-1, 58 FR 69471, Dec. 30, 1993; T.D. 95-68, 60 FR 46362, Sept. 6, 1995]

#### § 134.2 Additional duties.

Articles not marked as required by this part shall be subject to additional duties of 10 percent of the final appraised value unless exported or de-

stroyed under Customs supervision prior to liquidation of the entry, as provided in 19 U.S.C. 1304(f). The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 90-51, 55 FR 28190, July 10, 1990]

#### § 134.3 Delivery withheld until marked and redelivery ordered.

(a) Any imported article (or its container) held in Customs custody for inspection, examination, or appraisal shall not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(f), or adequate security for those duties (see § 134.53(a)(2)), are deposited.

(b) The port director may demand redelivery to Customs custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked. A demand for redelivery shall be made, as required under § 141.113(a) of this chapter, not later than 30 days after—

(1) The date of entry, in the case of merchandise examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(2) The date of examination, in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director.

(c) Nothing in this part shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

[T.D. 80-88, 45 FR 18921, Mar. 24, 1980, as amended by T.D. 90-51, 55 FR 28190, July 10, 1990]

#### § 134.4 Penalties for removal, defacement, or alteration of marking.

Any intentional removal, defacement, destruction, or alteration of a marking of the country of origin required by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and this