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Government & Global Trade Practice

CBP Proposes Significant Changes for Country of Origin Determinations

US Customs and Border Protection (CBP), part of the US Department of Homeland Security, published a "Notice of Proposed Rulemaking" on July 25, 2008, that would fundamentally change its method for determining an imported good's country of origin.

All merchandise imported into the United States is subject to a country of origin determination. The origin of an imported good determines, among other things, whether the good is admissible into the United States, its duty rate and its marking requirements.

Under current regulations, CBP uses two primary methods to determine the country of origin of imported goods that are processed in, or contain materials from, more than one country. One method employs case-by-case adjudication to determine whether goods have been "substantially transformed" in a particular country. This test has often been criticized as subjective and inherently unpredictable.

Under the other method, referred to as the "tariff shift" test, country of origin determinations are based on whether the processing of component articles or ingredients has resulted in a tariff shift. A tariff shift occurs when CBP determines that an imported good's components or raw materials are classified under one chapter, heading or subheading of the Harmonized Tariff Schedules of the United States (HTSUS) while the imported good itself is classified in another chapter, heading or subheading of the HTSUS. (All goods imported into the United States are assigned a particular tariff classification number under the HTSUS.) The theory is that a material change in tariff classification signifies that the country responsible for transforming the raw materials or ingredients into the finished imported good should be considered its country of origin. At present, the tariff shift test generally applies to imports from Canada and Mexico and to imported textile products. CBP is proposing to extend application of the tariff shift test to all country of origin determinations made under the customs laws of the United States, unless otherwise specified.

The intent of this proposed rule is to create more certainty and consistency in country of origin determinations. However, a number of companies could be significantly impacted by this rule change. Companies that import goods with constituent parts sourced from various countries, or that manufacture or process in more than one country, are most at risk. Such companies could see their duty rates change and their compliance procedures altered if tariff shift rules change their imported goods' country of origin.

Importers in the United States should analyze the proposed rule to determine what impact it would have on their operations.

CBP is seeking public comments on the proposed rule. Comments are due by September 23, 2008.

For additional information on CBP's proposed rule or Mayer Brown's Customs capabilities, please contact the author, Sydney Mintzer, at smintzer@mayerbrown.com or +1 202 263 3866.

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