

SUMMARY OF US CUSTOMS COUNTRY OF ORIGIN MARKING RULES FOR IMPORTED FRAMES

PREPARED AS GUIDANCE FOR EXHIBITORS OF IMPORTED FRAME PRODUCTS AT VISION EXPO OPTICAL SHOWS

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A. Marking Requirements

1. United States Customs laws require that all goods that are produced outside of the United States and shipped into the US must be legibly marked with information concerning the country where the item was produced.
2. The Marking must be legible, indelible and in a manner which indicated to the ultimate purchaser in the U.S. the English name of the country of origin. (Customs rules for frames require that the country of origin must be on the temple or the temple tip.)
3. The primary purpose of the statute is to provide the ultimate purchaser with information concerning the country of origin of the product to be used in making a decision whether to buy or not to buy the product.
4. Customs defines the ultimate purchase as the "last person in the U.S. who will receive the article in the same form in which it is imported."

B. Frame manufacturing procedures that determine the Country of Origin

1. It is easy to understand the marking rules in cases where a frame is wholly manufactured in one country, understanding that customs considers minor changes to a frame such as minor coloring, packing or polishing not enough to require or permit a change the country of origin.

Questions about the country of origin when a frame is shipped to another country for more work to be performed on it before it is shipped to the US are more complex. Customs says that in order for the country of origin to be changed a substantial amount of work has to be done in the second country.

2. Work on a product that requires or allows a change in the country of origin is defined as "substantial transformation" in the Customs Regulations. The courts have ruled that a "substantial transformation" occurs when an article emerges from a manufacturing process with a name, character, or use that differs from those of the original material subjected to the process.

There have been a number of Customs Rulings over the years defining what type of work has to be done on a frame to constitute "substantial transformation."

A summary of the these rulings is as follows:

- Multi-step processing in the manufacturing of a frame may constitute substantial transformation. One process, or several insignificant processes, will not constitute substantial transformation. Multi step processes such as soldering, drilling, bending, mitering and polishing of raw frame components are examples of the kinds of processing steps that are necessary for substantial transformation to occur.

- Customs will consider the amount of work performed in each country, as well as the value added, to determine the final country of origin. Labor costs are considered. But the fact that there is a great disparity in labor cost from one country to another is not enough to change the country of origin to the higher priced country if the amount of work done in the higher priced country is not substantial. For example, if it cost \$2 in country A to make the frame parts, and \$5 in country B to do the assembly, Customs would consider Country A to be the country of origin even though the labor cost in country B is higher.
- Mere assembly of frame components is not substantial transformation.
- Packaging and shipping of a frame manufactured in another country does not constitute substantial transformation.
- Merely stamping a frame that was manufactured in another country with the name of the non-manufacturing country as the country of origin does not constitute substantial transformation.
- Coloring of an imported frame will not constitute substantial transformation unless the coloring process involves more than mere dipping or dyeing. In order to meet the substantial transformation requirements for coloring a showing of multiple processes will be necessary. For example, a process that involved cleaning, plating, applying lacquer or coloring with syringes or spray guns, a three staged baking process, and subsequent assembly was determined to constitute substantial transformation.
- Insertion of lenses into ophthalmic frames does not constitute a substantial transformation. Customs consider the purchase of ophthalmic spectacles to be two separate transactions. In transaction 1 the customer selects the frames. In transaction 2 the customer selects the prescription lenses. (This differs from the purchase of sunglasses and readers that will be discussed below).
- Marking Methods.
Customs requires the words "Frame and name of country," (i.e. Frame China), or "Made in and name of country," (i.e. Made in China), to be placed in English in large enough type to be readable in permanent contrasting colors on the temple tip or the temple of the frame.

Note that many companies only put the name of the country on the temple tip. Technically this is not in compliance with Customs Rules and we have known of cases where shipments have been pulled because of failure to strictly follow the Rules, but this intrusion is pretty infrequent. The use of a sticker with COO is not in compliance, nor is lettering that is not legible or easy to rub off.

C. Rules re Plano sunglasses readers and Safety Frames

Customs has ruled that frames into which lenses are inserted and sold as a completed product, such as an over the counter readers, sunglass or safety eyewear, undergo substantial transformation when lenses are assembled into the frames. Customs says that with the lens insertion the frames lose their separate identity and are merged into a new article that is a pair of plano sunglasses, readers or safety eyewear. The ultimate purchaser is now considering the frames combined with the lenses as a completed product in making the buying decision.

1. When lenses are inserted into a plano sunglass, reader or safety eyeglass frame in country B into sunglasses that are made in country A, country B is the country of origin.
2. Note, when plano non-prescription sunglass, reader or safety eyewear lenses are inserted in the US into an imported frame no country of origin marking is required on the product as substantial transformation has occurred in the US. However the product may not be marked made "Made in USA" because Made in USA marking requirements are subject to rules promulgated by the Federal Trade Commission a discussion of which is beyond the scope of this memo.

D. Criminal Penalties

I am sure that most optical exhibitors who play fast and loose with the Customs marking rules do not clearly understand that by doing so they expose themselves to the ultimate government intrusion, that is criminal prosecution. There are several criminal statutes that apply to marking violations. Thus a person charged for such violations could violate one or more of these statutes in a single act of importing an improperly marked item. The most relevant criminal statutes are set forth below.

1. A person who causes goods to enter the United States that are not properly marked can be found guilty of presenting false statements or information to an officer of the U.S. Customs Service in violation of Title 18 Section 542 of the United States Code. Violations of this statute are punishable by imprisonment not to exceed two years, and fines for individuals of up to \$250,000, and for organizations fines of up to \$500,000.
2. Anyone who with intent to conceal the information given in a marking defaces, destroys, alters, covers obscures, or obliterates any country of origin marking required to be placed on an article by the customs rules is subject to:
 - Upon conviction for the first violation, a fine of not more than \$100,000, or imprisonment for no more than one year, or both.
 - Upon conviction for the second or any subsequent violations, a fine of not more than \$250,000, or imprisoned for no more than one year, or both.
3. Criminal penalties can be imposed on persons who intentionally cause goods with a false designation of origin to enter the United States under the provisions of Title 18 Section 545 of the United States Code. This statute can be applied to persons who knowingly import goods that are improperly marked and provides for fines and imprisonment of up to five years.