

July 2008

U.S. Customs and Border Protection Proposes Uniform Rules Governing Country of Origin Determinations

On Friday, July 25, 2008, U.S. Customs and Border Protection (“CBP”) published a notice of proposed rulemaking that revises the rules used to determine the country of origin of imported merchandise. All merchandise imported into the United States is subject to a country of origin determination. Under most circumstances, CBP is the agency responsible for determining the country of origin of imported merchandise, and CBP’s notice would change the method by which it makes such determinations.

For customs purposes, all imported products must have a single country of origin. For products that consist of materials from more than one country, or that undergo processing operations in more than one country, the country of origin is the country in which the product last underwent a “substantial transformation” prior to entry into the United States. For nearly a century, both CBP and courts have interpreted “substantial transformation” to mean the creation of a new or unique article of commerce having a distinctive name, character or use. This analysis, which applies to labeling and preferential trade systems, such as the Generalized System of Preferences (“GSP”) or the Caribbean Basin Trade Partnership Act (“CBTPA”), has been applied in a case-by-case basis, which CBP argues has led to subjective or inconsistent results.

More recently, CBP has applied an alternative method of determining whether a product has undergone a substantial transformation. Known as the “tariff shift” rules, CBP looks for specific changes in the tariff classification of a product before and after processing or combination with other materials. These rules are codified in Part 102 of CBP’s regulations (the “Part 102 Rules”). Currently, the Part 102 Rules are used to determine the country of origin for all goods imported from Canada and Mexico under NAFTA, for nearly all imports of apparel or textile products, and for imports of products under certain free-trade agreements.

CBP is now proposing that the Part 102 Rules apply to all country of origin determinations made under the customs laws of the United States, with only a few exceptions as mandated in certain trade agreements. CBP supports this proposal by claiming that a tariff shift test will be more transparent to importers, can be objectively applied, and will result in more predictable country of origin determinations.

CBP is soliciting comments from interested parties on whether it should adopt the Part 102 Rules for all country of origin determinations described above. Parties must submit comments by September 23, 2008.

We Can Help

If you have any questions about how CBP-proposed rulemaking could affect your business, or if you would like assistance in submitting a response to CBP within the notice and comment period, please contact one of the Katten Muchin Rosenman LLP Customs and International Trade attorneys or professionals listed below.

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