

CLIENT ALERT

Customs Proposes Major Change to Origin Rules

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Customs & Border Protection (CBP) has issued a proposed rule that, if implemented, will fundamentally change the way that importers must analyze and determine the country of origin of many imported goods. Under CBP's regulations, where an imported product is processed in or contains inputs from multiple countries, the country of origin is the last country in which a "substantial transformation" occurred. In most cases (other than for products imported subject to Free Trade Agreements like NAFTA that have their own origin regimes), the "substantial transformation" analysis is based on a case-by-case analysis of each product and manufacturing process. This structure allows importers to make the case -- on a product-by-product basis -- that a particular operation does (or does not) constitute a "substantial transformation." The proposed rule, however, would eliminate this ad hoc analysis in favor of a more objective "tariff shift" analysis. Under this structure, country of origin would be based on the tariff classification of the finished product and the extent to which the input materials and intermediate products "shift" from different tariff categories.

The "tariff shift" rules that CBP would apply were developed as part of the NAFTA negotiations, and they reflect the influence of large NAFTA stakeholders (including the automotive, textile, and steel sectors). As a result, in some instances and for some products, the result under the "tariff shift" approach to determining country of origin will be different from the result under CBP's traditional approach. For example, CBP has consistently ruled that "mere formulation" of a pesticide (i.e., the addition of carriers, solvents, and excipients to active ingredients) does not constitute a substantial transformation, and so the country of origin remains the country in which the active ingredient was manufactured even if the formulation takes place elsewhere. However, under the "tariff shift" approach, formulation often does result in the necessary "shift," and, as a result, the country of origin is the country of formulation even where the active ingredient was manufactured elsewhere.

If the proposed rule is implemented, all U.S. importers of products that feature multi-country processing will need to reconsider the origin of all such products in the context of the "tariff shift" approach and possibly adjust import declarations and country-of-origin marking accordingly.

Interested parties who wish to comment on the proposal must submit such comments on or before September 23, 2008. For more information, please contact [Barry Cohen](#), [Alex Schaefer](#), or Nicole Jenkins, and for a copy of the Notice of Proposed Rulemaking, go to <http://edocket.access.gpo.gov/2008/pdf/E8-17025.pdf>.

International Trade Group News

Crowell & Moring LLP is pleased to announce the addition of Daniel Cannistra as counsel in the firm's International Trade group. Dan's practice focuses on legislative, executive and regulatory representation of domestic and international clients on a broad spectrum of international trade matters. [Please click to view Dan's full biography.](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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