FinCEN in conformity with the requirements of paragraph 3.c. of TO 102–13.

4. Nothing in this Directive shall be construed to:

a. Apply to the Office of Inspector General, the Community Development Financial Institutions Fund, or the Treasury Asset Forfeiture Fund; or

b. Change organizational or reporting relationships of DO or FinCEN.

5. *Authority.* TO 102–13, ''Delegation of Authority Concerning Budget Matters,'' dated January 19, 1993.

6. *Cancellation.* Treasury Directive 12–04, ''Delegation of Authority for Budget Execution in the Departmental Offices,'' dated September 28, 1995, is superseded.

7. *Expiration Date.* This Directive expires three years after date of issuance unless superseded or cancelled prior to that date.

8. *Office of Primary Interest.* Office of Financial and Budget Execution, Office of the Deputy Chief Financial Officer, Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 98–7926 Filed 3–25–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

Application of Producers' Good Versus Consumers' Good Test in Determining Country of Origin Marking

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of proposed interpretation; solicitation of comments.

SUMMARY: This notice advises the public that Customs does not intend to rely on the distinction between producers' goods and consumers' goods in making country of origin marking determinations. It is Customs' opinion that the consumer-good-versus-producer-good distinction is not determinative that a substantial transformation, as it is traditionally defined, has occurred as demonstrated in a number of recent court decisions. As this proposal may affect certain importer practices, Customs is soliciting comments.

DATES: Comments must be received on or before May 26, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1675).

SUPPLEMENTARY INFORMATION:

Background

In *Midwood Industries, Inc.* v. *United States,* 313 F. Supp. 951 (Cust. Ct. 1970), the U.S. Customs Court considered whether an importer of steel forgings was the ultimate purchaser for purposes of the marking statute, 19 U.S.C. 1304. The court cited the principles set forth in *United States* v. *Gibson-Thomsen Co., Inc.,* 27 CCPA 267 (1940), in determining that the importer's manufacturing operations made it the ultimate purchaser, namely that the importer may be considered the ultimate purchaser for marking purposes if it subjects the article to further processing that results in the manufacture of a new article with a new name, character and use. However, the *Midwood* court also found it relevant to that finding that the imported forgings at issue were transformed from producers' goods to consumers' goods, stating:

> While it may be true * * * that the imported forgings are made as close to the dimensions of ultimate finished form as is possible, they, nevertheless, remain forgings unless and until converted by some manufacturer into consumers' good, i.e., flanges and fittings. And as producers' goods the forgings are a material of further manufacture, having, as such, a special value and appeal only for manufacturers of flanges and fittings. But, as consumers' goods and flanges and fittings produced from these forgings are end use products, having, as such, a special value and appeal for industrial users and for distributors of industrial products. *Midwood* at 957.

It is Customs' opinion that based on subsequent court decisions applying substantial transformation analysis, *Midwood* would be decided differently today. In *National Juice Products Ass'n.* v. *United States.,* 628 F. Supp. 978 (CIT 1986), for example, the court stated that the significance of the producers' goods to consumers' goods transformation in marking cases is diminished in light of its decision in *Uniroyal, Inc.* v. *United States,* 542 F. Supp. 1026 (CIT 1983). In *Uniroyal,* the court held that despite a change in name from an ''upper'' to a ''shoe,'' there was no substantial transformation because the attachment of an outsole to an upper was a minor manufacturing or combining process that left the identity of the upper intact and was the very ''essence'' of the finished shoe. Utilizing the analysis it had articulated in *Uniroyal,* the court in *National Juice Products* found that the addition of water, orange essences, and oils to concentrate does not change the fundamental character of the product, which is still essentially the product of the juice of oranges. The court stated: ''Under recent precedents, the transition from producers' to consumers' goods is not determinative.'' 628 F. Supp. at 989–990. In both *Uniroyal* and *National Juice Products,* however, it was clear that imported materials could have been characterized as ''producers' goods,'' had the court wished to adopt the reasoning used in *Midwood.*

In *Superior Wire* v. *United States,* 669 F. Supp. 472 (CIT 1987), *aff'd,* 867 F.2d 1409 (Fed. Cir. 1989), the lower court found no substantial transformation because while there was a name change from wire rod to wire, there was no character or use change when wire rod was drawn into wire. While the lower court referred to *Torrington* v. *United States,* 764 F.2d 1563 (Fed. Cir. 1985), and *Midwood* and their use of the producers' versus consumers' goods distinction, it also relied on *Uniroyal,* where that distinction was not found to be determinative as to substantial transformation. Accordingly, the court in *Superior Wire* looked to many factors, such as a value added, change in tariff classification, amount of labor required, or capital investment, in determining whether a substantial transformation had occurred and did not endorse the use of the producers' good-consumers' goods analysis of *Midwood.*

Additionally, while the court in *Ferrostaal Metals Corp.* v. *United States,* 664 F. Supp. 535, 541 (CIT 1987), referred to *Midwood's* producers' goods versus consumers' goods distinction as evidence that a change in utility of a product is indicative of a substantial transformation, it did not find that distinction to be particularly determinative. Rather, as it had in *Superior Wire,* the court looked at the ''totality of the evidence'' to hold that hot-dipped galvanized steel sheet was substantially transformed into a ''new and different article of commerce,'' full hard cold-rolled steel sheet. *Id.* At 541.

Finally, in one of the most recent cases, *National Hand Tool Corp.* v. *United States,* 16 CIT 308 (1992), the court did not mention the producers' goods-consumers' goods analysis in its application of the substantial

transformation test. As in the *National Juice Products* and *Uniroyal* decisions, it was clear that the imported articles at issue, hand tool forgings, could have been characterized as ''producers' goods,'' had the court wished to engage in the *Midwood* analysis.

Accordingly, in interpreting the numerous relevant decisions of the Federal Circuit and Court of International Trade, it is Customs' opinion that it is not bound to follow the producer's good versus consumer's good reasoning set forth in *Midwood*. Therefore, Customs does not intend to use producer's good-consumer's good analysis in making country of origin marking determinations under the substantial transformation test. If additional cross-checks are needed in order to make a country of origin marking determination, Customs intends to rely on the ''essence'' test of *Uniroyal* which has been given more weight as exemplified by numerous recent decisions of the Court of International Trade and Federal Circuit.

If this proposal is adopted, parties may seek clarification regarding the continued viability of any ruling that they believe was based on the producers' goods-consumers' goods analysis articulated in *Midwood*.

Comments

Before making a final decision on this proposed position, consideration will be given to any written comments timely submitted to Customs. Mindful of Judge Restani's remarks in *National Juice Products* regarding the propriety of seeking comments from interested parties concerning the effective date of policy changes which have a significant impact on an entire industry, Customs also seeks comments from interested parties as to the impact this proposed interpretation may have on importers and how much time is reasonably needed to comply. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), section 1.4, Treasury Department Regulations (31 CFR 1.4), and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: October 1, 1997.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

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