



WIRE ROPE AND ASSEMBLIES

AN OVERVIEW OF COUNTRY OF ORIGIN MARKING REQUIREMENTS



AWRF FALL 2012 GENERAL
MEETING: WASHINGTON, DC

COUNTRY-OF-ORIGIN MARKING REQUIREMENT

19 U.S.C. §1304

19 C.F.R. §134.11

Unless excepted by law, every article of foreign origin or its container imported into the United States shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article, at the time of importation into the Customs territory of the United States.

- Permanent: Must be noted permanently on the article or its container, and must be designed to remain on the article or container until it reaches the “ultimate purchaser.”
- Legible: Marking must be in lettering which is clear and which can be read without strain.
- Conspicuous: Marking must appear on the article or its container in a place which is readily accessible, and where the marking can be found upon casual examination.



SUBSTANTIAL TRANSFORMATION: FROM ROD TO ASSEMBLIES

■ **Rod to Wire**

NO SUBSTANTIAL TRANSFORMATION:

Superior Wire v. United States (Fed. Court of Appeals, 1989)

No Tariff Classification Shift (Headings 7213-7215 → 7217)

■ **Wire to Strand**

YES SUBSTANTIAL TRANSFORMATION

No legal precedent, but new use, character and name

Tariff Classification Shift (Heading 7217 → 7312)

■ **Strand to Wire Rope**

NO SUBSTANTIAL TRANSFORMATION

Customs Ruling NY H82735 (regarding strand from Mexico) (2001)

No Tariff Classification Shift (Heading 7312 → 7312)

■ **Wire Rope to Assemblies**

NO SUBSTANTIAL TRANSFORMATION

Customs Ruling HQ 723135 (1983)

No Tariff Classification Shift (Heading 7312 → 7312)



SUBSTANTIAL TRANSFORMATION: COUNTRY-OF-ORIGIN MARKING REQUIREMENTS IN SPECIFIC SCENARIOS

- Rod purchased from Foreign Country X and manufactured into wire rope in the United States
COUNTRY OF ORIGIN: United States (No COO Marking Required)
- Wire purchased from Foreign Country X and manufactured into wire rope in the United States
COUNTRY OF ORIGIN: United States (No COO Marking Required)
- Strand purchased from Foreign Country X and closed in United States around domestically manufactured or imported core
COUNTRY OF ORIGIN: Foreign Country X (COO Marking Required)
- Fitting from Foreign Country X added to domestically manufactured wire rope
COUNTRY OF ORIGIN: United States (No COO Marking Required)
- Domestically-manufactured fitting added to wire rope imported from Foreign Country X
COUNTRY OF ORIGIN: Foreign Country X (COO Marking Required)



SUBSTANTIAL TRANSFORMATION:
COUNTRY- OF- ORIGIN REQUIREMENTS
IN SPECIFIC SCENARIOS

- ▣ ■ Wire purchased from Foreign Countries X, Y and Z and manufactured into wire rope in the United States
COUNTRY OF ORIGIN: United States (No COO Marking Required)

- Strands purchased from Foreign Country X and closed around domestically-manufactured core
COUNTRY OF ORIGIN: Foreign Country X (COO Marking Required)

- Strands manufactured in United States (from domestically manufactured or imported wire or both) and closed around core purchased from Foreign Country X
COUNTRY OF ORIGIN: United States (No COO Marking Required)

AND IN ALL CASES:
THE COUNTRY-OF-ORIGIN OF THE ASSEMBLY
IS THE SAME AS
THE COUNTRY-OF-ORIGIN OF THE WIRE ROPE

CERTIFICATE OF MARKING: REPACKAGED J-LIST ARTICLES

(Port of Entry) _____

I, _____, of _____, certify that if the articles covered by this entry (Entry No., dated _____) are repacked in a new container, while still in my possession, the new container, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container will permit, in such a manner as to indicate the country of origin of the articles to the ultimate purchaser in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR part 134. I further certify that if the articles are intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

Penalties For Violation of Country-of-Origin Marking Violations: Administrative, Civil, Criminal

- **Improperly Marked Goods = Restricted Merchandise**
- **Notice to Mark or Redeliver:**

After goods released from Customs custody, notice to redeliver for marking, export or destruction under Customs supervision (at importer's expense)

Failure to properly mark or redeliver in response to Notice can result in demand for liquidated damages (full value of merchandise)
- **Special Marking Duties:**

For failure to mark prior to liquidation, assessment of special marking duty = 10 percent of value of merchandise
- **Failure to Comply With Repackers Certification Requirement**

Liquidated damages, 10 percent duty and \$1592 penalties:

 - Negligence: domestic value of merchandise / 2x lost duties
 - Gross negligence: domestic value of merchandise / 4x lost duties
 - Fraud: domestic value of merchandise
- **Negligent Obliteration of Mark**

"Any person who ... defaces, destroys, removes, alters, covers, obscures or obliterates any mark..."

Subject to \$1592 penalties
- **Intentional Obliteration of Mark**

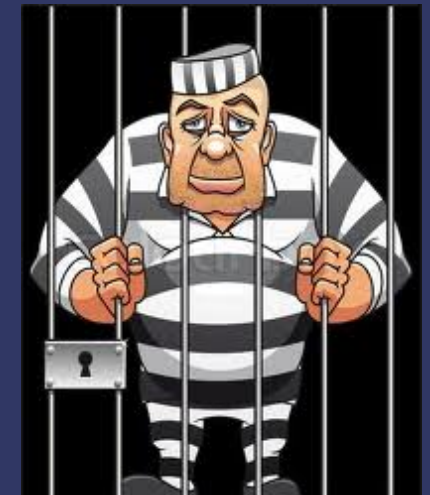
First offense: up to \$100,000 fine, imprisonment up to 1 year

Second offense: up to \$250,000 fine, imprisonment up to 1 year
- **False or Fraudulent Invoice, Declaration (U.S. Criminal Code, Title 18)**

Up to \$100,000 fine, imprisonment up to 2 years



AWRF FALL 2012 GENERAL MEETING: WASHINGTON, DC



MADE IN THE USA

- Different than “country-of-origin”
- Administered by Federal Trade Commission (FTC)
- Applies to all products advertised and sold in the U.S. market.
- A product advertised as Made In USA must be “**all or virtually all** made in the U.S. (no hard-and-fast rule, but generally interpreted as 98 percent or more, by value).
- Qualified Made In USA claims permitted
- A product that qualifies as Made In USA when sold in U.S. market may have different country-of-origin marking requirements when sold for export.
- Enforcement through FTC, Bureau of Consumer Protection, State or Federal Attorney General, private right of action under Lanham Act.



LANHAM ACT

15 U.S.C. §1125

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or **any false designation of origin**, false or misleading description of fact, or false or misleading representation of fact, which...

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or **geographic origin** of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is likely to be damaged by such act.

(b) Importation

Any goods marked or labeled in contravention of the provisions of this section shall not be imported into the United States or admitted to entry at any customhouse of the United States.

- Likely to cause confusion (even without actual harm): injunctive relief
- Actual harm (deceptive practice causes lost business): monetary damages

Recommendations

- 1) Follow the Law
 - 1) Make sure you understand legal requirements
 - 2) Ensure that foreign suppliers understand your obligations
 - 3) Ensure that downstream parties appreciate legal procedures
- 2) Don't Guess – Ask for Guidance
 - 1) Legal/consultant advice
 - 2) Request for ruling
- 3) Written Procedures





QUESTIONS?



Jeff Levin

Levin Trade Law, P.C.

jefflevin@levintradelaw.com

301-787-3531

AWRF FALL 2012 GENERAL
MEETING: WASHINGTON, DC