

# Bureau of Customs and Border Protection

## *General Notices*

### **Required Advance Electronic Presentation of Cargo Information: Compliance Dates for Rail Carriers**

**AGENCY:** Customs and Border Protection, DHS.

**ACTION:** Announcement of compliance dates.

**SUMMARY:** This document informs rail carriers when they will be required to transmit advance electronic cargo information to Customs and Border Protection regarding cargo they are bringing into the United States, as mandated by section 343(a) of the Trade Act of 2002 and the implementing regulations. The dates when rail carriers will be required to comply vary depending on the port of entry at which the rail carrier will be arriving in the United States.

**DATES:** The implementation schedule set forth in the SUPPLEMENTARY INFORMATION discussion specifies three compliance dates, depending on the port of entry at which the rail-crossing is located.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning Inbound Rail Cargo: Juan Cancio-Bello, Field Operations, (202) 927-3459.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that Customs and Border Protection (CBP) promulgate regulations providing for the mandatory collection of electronic cargo information, by way of a CBP-approved electronic data interchange system, before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule intended to effectuate the provisions of the

Act. In particular, regarding inbound rail cargo, a new § 123.91 (19 CFR 123.91) was added to the CBP Regulations to implement the Act's provisions. Section 123.91 describes the general requirement that for inbound trains requiring a train sheet under § 123.6, that will have commercial cargo aboard, CBP must electronically receive from the rail carrier certain information concerning incoming cargo no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

Section 123.91(e) provides that rail carriers must commence the advance electronic transmission to CBP of the required cargo information, 90 days from the date that CBP publishes notice in the **Federal Register** informing affected carriers that the approved electronic data interchange system is in place and operational at the port of entry where the train will first arrive in the United States.

In this document, CBP is notifying rail carriers how CBP will be implementing the electronic data exchange and when the rail carriers will be required to begin transmitting advance cargo information regarding cargo arriving in the United States. Thirty-one ports of entry have been identified. The implementation schedule will be staggered in three phases.

As discussed above, § 123.91 requires CBP, 90 days prior to mandating advance electronic information at a port of entry, to publish notice in the **Federal Register** informing affected carriers that the electronic data interchange system is in place and operational. CBP's approved electronic data base is now in place and operational at the twenty-four rail-crossing ports of entry listed in the "Compliance Dates" section of this document, under the caption "First Implementation". The initial implementation of the electronic data interchange system will occur at these twenty-four ports. Rail carriers, which will first arrive in the United States at these ports, will be required, 90 days from the date of publication of this notice in the **Federal Register**, to comply with the advance electronic transmission requirements set forth in § 123.91, CBP Regulations.

The second implementation of the electronic data interchange system will occur at the four rail-crossing ports of entry listed in the "Compliance Dates" section of this document, under the caption "Second Implementation". Rail carriers, which will first arrive in the United States at these ports, will be required, 120 days from the date of publication of this notice in the **Federal Register**, to comply with the advance electronic transmission requirements set forth in § 123.91.

The third implementation of the electronic data interchange system will occur at the three rail-crossing ports of entry listed in the "Compliance Dates" section of this document, under the caption

“Third Implementation”. Rail carriers, which will first arrive in the United States at these ports, will be required, 150 days from the date of publication of this notice in the **Federal Register**, to comply with the advance electronic transmission requirements set forth in § 123.91.

The schedule for implementing the advance electronic transmission requirements at all thirty-one rail-crossing ports is summarized below. Consistent with the provision in § 123.91 that requires CBP to announce when ports are operational, CBP is announcing that the seven ports listed in the second and third phases of implementation will become operational 90 days prior to the date rail carriers are required to transmit advance electronic information to CBP at those ports.

### **Compliance Dates**

#### First Implementation

Effective July 12, 2004, rail carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following twenty-four ports of entry (corresponding port code and field office location in parenthesis):

- (1) Buffalo, NY (0901, Buffalo);
- (2) Detroit, MI (3801, Detroit);
- (3) Richford, VT (0203, Boston);
- (4) Ft. Covington / Trout River, NY (0715, Buffalo);
- (5) Norton, VT (0211, Boston);
- (6) Highgate Springs, VT (0212, Boston);
- (7) Champlain-Rouses Point, NY (0712, Buffalo);
- (8) Brownsville, TX (2301, Laredo);
- (9) Eagle Pass, TX (2303, Laredo);
- (10) Laredo, TX (2304, Laredo);
- (11) El Paso, TX (2402, El Paso);
- (12) Calexico, CA (2503, San Diego);
- (13) Nogales, AZ (2604, Tucson);
- (14) Blaine, WA (3004, Seattle/Tacoma);
- (15) Sumas, WA (3009, Seattle/Tacoma);
- (16) Eastport, ID (3302, Seattle/Tacoma);
- (17) Sweetgrass, MT (3310, Seattle/Tacoma);
- (18) Noyes, MN (3402, Seattle/Tacoma);
- (19) Portal, ND (3403, Seattle/Tacoma);
- (20) Frontier / Boundary, WA (3015, Seattle/Tacoma);
- (21) Laurier, WA (3016, Seattle/Tacoma);
- (22) International Falls, MN (3604, Chicago);
- (23) Port Huron, MI (3802, Detroit);
- (24) Sault Ste. Marie, MI (3803, Detroit).

### Second Implementation

Effective August 10, 2004, rail carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following four ports of entry:

- (25) Jackman, ME (0104, Boston);
- (26) Van Buren, ME (0108, Boston);
- (27) Vanceboro, ME (0105, Boston);
- (28) Calais, ME (0115, Boston).

### Third Implementation

Effective September 9, 2004, rail carriers must commence the advance electronic transmission to CBP of required cargo information for inbound cargo at the following three ports of entry:

- (29) Tecate, CA (2505, San Diego);
- (30) Otay Mesa, CA (2506, San Diego);
- (31) Presidio, TX (2403, El Paso).

DATED: April 6, 2004

ROBERT C. BONNER,  
*Commissioner,*  
*Customs and Border Protection.*

[Published in the Federal Register, April 12, 2004 (69 FR 19207)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.

*Washington, DC, April 14, 2004,*

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
*Acting Assistant Commissioner,  
Office of Regulations and Rulings.*

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19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTERS AND  
TREATMENT RELATING TO THE COUNTRY OF ORIGIN  
MARKING REQUIREMENTS FOR IMPORTED SAFETY  
EYEGGLASS FRAMES COMBINED WITH PRESCRIPTION  
LENSES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the country of origin marking requirements for imported safety eyeglass frames combined with prescription lenses in the United States.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") proposes to revoke four ruling letters and any treatment previously accorded by CBP to substantially identical transactions, concerning the country of origin marking requirements for imported safety eyeglass frames combined with prescription lenses in the United States. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before May 28, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington,

D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Edward Caldwell, Commercial Rulings Division (202) 572-8872.

SUPPLEMENTARY INFORMATION:

#### BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke four ruling letters relating to the country of origin marking requirements for imported safety eyeglass frames that are combined with prescription lenses in the United States. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letters ("HRLs") 557996, dated October 8, 1997; HRL 734733, dated November 25, 1992; HRL 734258, dated January 7, 1992; and HRL 729649, dated October 27, 1986 (see Attachments A through D), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice

memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise under the stated circumstances. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP's personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the relevant statutes. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In each of the aforementioned rulings, CBP held that imported safety eyeglass frames, combined with prescription lenses in the United States to render completed safety glasses for sale to employers, are excepted from bearing individual country of origin markings. Upon further review of the matter, CBP has determined that, pursuant to 19 U.S.C. § 1304, this "employer-provided" marking exception may not be applied to exempt such imported safety frames from bearing individual country of origin markings. In support of this determination, it is noted that: increasingly, the circumstances surrounding the selection of safety eyeglasses are becoming more similar to the circumstances under which ordinary prescriptive eyewear is routinely selected; the individual employee frequently retains at least some discretion in selecting the frames thereby rendering the employer-provided marking exception inapplicable; employees are often required by their employers to contribute financially toward the purchase price of the safety frames; and that, in many instances, it is often impracticable for an importer of safety frames to identify upon importation the precise portion of a shipment that is actually destined for use by employees in connection with employer-provided programs as opposed to the portion destined for sale to private individuals.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke four ruling letters and any other rulings not specifically identified to reflect the proper country of origin marking requirements applicable to imported safety eyeglass frames pursuant to the analysis set forth in proposed HRLs 562975, 562976, 562977, and 562978. (*See* Attachments E through H). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to

substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: April 13, 2004

MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 557996  
October 8, 1997  
MAR-2-05 RR:C:SM 557996 DEC  
CATEGORY: Marking

MR. ARTHUR L. HEROLD  
WEBSTER, CHAMBERLAIN & BEAN  
*Suite 1000*  
*1747 Pennsylvania Avenue, N.W.*  
*Washington, D.C. 20006*

MR. JAMES E. ANDERSON  
HOWE, ANDERSON & STEYER  
*Suite 1050*  
*1747 Pennsylvania Avenue, N.W.*  
*Washington, D.C. 20006*

RE: Domestic interested party petition; 19 U.S.C. 1516; 19 CFR 175.22(b); Country of origin of marking requirements for frames for safety glasses with prescription lenses, eyeglasses, substantial transformation, hangtags, stickers; HRL 734258; HRL 734733; HRL 730963; HRL 729649; HRL 729451; HRL 734304; HRL 732793; HRL 715640; HRL 723745; HRL 730840

DEAR MESSRS. HEROLD AND ANDERSON:

This document is in response to your domestic interested party petition challenging Headquarters Ruling Letter (HRL) 734258, dated January 7, 1992, concerning the country of origin marking requirements for prescription safety glasses.

FACTS:

Under current practice, imported safety glass frames are excepted from country of origin marking requirements if an employer purchases the completed prescription safety glasses despite the fact that the wearer of the safety glasses may have some choice in selecting the frames or contributes, in part, to the purchase price. Customs has ruled that the insertion of the prescription lenses into the frames in the United States to make safety glasses substantially

**transforms the frames into a new article of commerce. You have requested through your petition that Customs adopt the position that imported prescription safety glass frames should be required to be marked with their country of origin regardless of whether an employee may have some choice of frames or contributes to the purchase price. A Notice of Receipt of Domestic Interested Party Petition; Solicitation of Comments was published in the Federal Register pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), on July 11, 1995 (60 FR 35792).**

**Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516) and Part 175, Customs Regulations (19 CFR Part 175), a domestic interested party may challenge certain decisions made by Customs regarding imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced or wholesaled by the domestic interested party. Your clients, The Industrial Safety Equipment Association (ISEA) and the Optical Industry Association (OIA) (trade associations who represent their members who are domestic manufacturers of safety glasses and qualify as domestic interested parties within the meaning of 19 U.S.C. 1516(a)(2)), filed a domestic interested parties' petition challenging HRL 734258, dated January 7, 1992, concerning the country of origin marking requirements of frames for safety glasses with prescriptive lenses. The Court of International Trade has recognized the rights of domestic parties to file a 19 U.S.C. 1516 petition to challenge a Customs Service country of origin determination. *Norcal/Crosetti Foods, Inc. v. U.S. Customs Service*, 15 Ct. Int'l Trade 60, 758 F. Supp. 729 (1991).**

**HRL 734258 was issued to counsel for the Hudson Optical Corporation (Hudson Optical), a manufacturer and importer of safety eyewear. In that case, the safety frames were sold by Hudson to independent optical laboratories, which produced lenses for particular individuals in the U.S. with vision impairments. The importer proposed to mark the safety frames by affixing a hangtag or an adhesive sticker to the safety frames with the name of the country of origin printed thereon. This method of marking would inform the optical laboratory of the country of origin of the safety frames. The optical laboratories would remove the hangtag/sticker when they installed the prescription safety lenses. While the manufacturer of the safety frames produced a variety of frames, the employer of the safety glass wearer provided a very limited selection of safety frames from which the employees could select. In limited circumstances, employers would set a cap for the amount that they would spend on the safety glass frames. The employees could elect to supplement this amount with their own funds to acquire a particular style of safety frames. Based on these facts, Customs concluded that the optical laboratories that insert the safety lenses into the safety frames are the ultimate purchasers of the eyeglass safety frames and that the use of the hangtags or stickers to mark the safety frames which the laboratories remove when the lenses are attached is acceptable, provided the marking of the hangtags or stickers is conspicuous, legible, and permanent.**

In HRL 734733, dated November 25, 1992, Customs ruled on a modified factual pattern which involved the marking of prescription safety glasses that were imported as unassembled parts. In HRL 734733, Customs held that the affixing of a sticker to a resealable plastic bag indicating the country of origin is an acceptable method of marking frames for prescription safety lenses where an optical laboratory is the ultimate purchaser of the frames and parts.

**ISSUE:**

What are the country of origin marking requirements for prescription safety glasses and their frames as described above?

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin shall be marked in a conspicuous place with the English name of the country of origin. The country of origin marking requirements and exceptions of 19 U.S.C. 1304 are implemented by Part 134, Customs Regulations (19 CFR Part 134).

The instant petition requests that Customs reconsider and reject the position stated in HRL 734258, and essentially adopt the position that prescription safety frames are no different from ordinary prescription eyeglass frames, provided the employee exercises some degree of choice in selecting safety frames. Accordingly, you seek to have Customs treat an employee's selection of prescription safety spectacle frames as a purchasing decision which is separate from the subsequent process of inserting the safety prescription lenses into the safety frames. Should Customs adopt your position, safety glass frames would be required to be marked with their country of origin at the time of receipt by the employee who uses the safety frames in the workplace.

In response to the solicitation of comments published in the Federal Register, eight comments were submitted. Three comments were submitted in support of the position stated in HRL 734258. All of the commenters in support of upholding HRL 734258 focused on one or more of the following arguments: (1) the purchase of the frames and lenses are not two purchasing decisions, (2) the employers limit the employees' choice, and (3) the lenses and frames are purchased as a single unit. Another commenter noted that the combination of the lenses and frames results in a substantial transformation and suggests that legislative relief may be the proper route for the petitioners because they are effectively requesting that the employees be deemed the ultimate purchasers of the safety frames.

Four comments were submitted in support of the petition challenging HRL 734258. These comments all argued that the employees are the ultimate purchasers because they have some choice in selecting their prescription safety frames whether they contribute to the purchase price or not. Even in situations where the employee does not pay for the safety eyewear and the employee is given a choice, the commenters contend that the employee is the ultimate purchaser.

In HRL 730963, dated April 21, 1988, Customs stated that personal prescriptive eyewear consists of frames and lenses, neither of which

lose their separate identity when they are combined. When an individual selects prescription eyewear, the frames are a separate and subjective purchasing decision. In addition, the wearer is the ultimate purchaser of the frames and is entitled to all relevant product information including the country of origin information. Notwithstanding the possibility that the ultimate purchaser cannot buy just the frames alone, but can only purchase the completed frame and lenses combination, the country of origin information must be available during the purchasing decision. While the acquisition of eyeglasses usually involves the tendering of payment once the completed glasses are delivered, Customs considers this a formality following an earlier commitment to the selected frames. Customers acquiring eyewear make a decision to purchase frames and lenses after which the laboratory provides the service of inserting the lenses into the frames.

In reaching the conclusion set forth in HRL 734258, Customs relied on HRL 729649, dated October 27, 1986, which was a ruling in response to a request to reconsider HRL 729451, dated May 27, 1986. In HRL 729451, Customs determined that the consumer is the ultimate purchaser of prescription eyeglass frames rather than the lab that places the lenses into the frames. In that ruling, Customs noted:

[o]nly after the initial decision is made on the frame is it sent to the lab for the addition of the particular lens. The decision to purchase a particular frame is made separate and apart from the processing involved in the addition of the prescription lens. In view of these circumstances, we find that the consumer is the ultimate purchaser of the frames and is entitled to be informed of its country of origin.

Customs reconsidered HRL 729451 due to the addition of material facts that had been omitted from the ruling request upon which HRL 729451 was based. The omitted fact was that the importer was a manufacturer of safety spectacle frames, which unlike ordinary prescription spectacle frames, consist of special frames and lenses that are manufactured to meet certain safety guidelines. In addition, the employee was given a few choices of safety frames, but it was the employer who determined the type of safety glasses that were required for its employees. The Occupational Safety and Health Act of 1970, and regulations promulgated thereunder, required that these employers provide safety eyewear for their employees.

As a result of these additional facts, Customs ruled in HRL 729649 that the purchaser of the prescription safety glasses was not making two purchasing decisions (safety frames and lenses). Rather, Customs concluded that the employer was actually purchasing one item (safety glasses). Customs also concluded that the optical laboratory was the ultimate purchaser of the safety frames because the assembly of the safety frames and lenses by the optical laboratory substantially transformed the safety frames and lenses into a new and different article of commerce (safety glasses).

Those commenters in support of maintaining the position articulated in HRL 734258 contend that the purchase of prescription

safety glasses is actually one purchase rather than two separate purchases as in the context of non-safety prescription glasses. Customs has ruled in numerous cases that where an employer provides a particular item at the employer's full expense for use exclusively at work by its employees, the employee is not the ultimate purchaser of the item so provided. In these cases, the imported merchandise has been found to be excepted from individual country of origin marking if the containers in which it reaches the ultimate purchasers (i.e. employers or a U.S.-manufacturer which substantially transforms the imported article) are properly marked. See HRL 734304, dated January 28, 1992 (disposable industrial work coveralls distributed free of charge to employees at an industrial plant for use on the job are excepted from individual marking); and HRL 732793, dated December 20, 1989 (employers are the ultimate purchasers of industrial work gloves distributed free of charge to employees for use at work; such gloves are excepted from individual marking); HRL 715640, dated June 16, 1981 (hospitals are the ultimate purchasers of imported disposable paper shoe covers, head covers, drape sheets, gowns, towels and other similar products, none of which have to be individually marked to indicate country of origin); HRL 723745, dated February 6, 1984 (hospitals are the ultimate purchasers of imported surgical masks; such items do not have to be individually marked); and HRL 730840, dated January 12, 1988 (hospitals are the ultimate purchasers of imported surgical gloves; such gloves are excepted from individual marking).

At issue in this petition is whether a different result follows when the employee contributes his/her own funds towards the purchase price. Commenters in favor of the position articulated in HRL 734258 noted that the insertion of lenses into frames results in a substantial transformation of the imported safety frames. We agree. Customs has consistently held that optical laboratories that insert the prescription lenses into the safety frames are substantially transforming the safety frames. See HRL 729649, dated October 27, 1986.

The further critical inquiry is whether the employer is providing a service through which an employee will obtain required prescription safety glasses or whether the safety frames are purchased independently by the employer before being substantially transformed by the optical laboratories. If the employees obtain the safety frames as part of such an employer-provided service for required safety glasses, they will not be deemed to be the ultimate purchasers of the safety frames whether or not the employer covers all or part of the expense. Since the employer is arranging for the service to be provided to their employees by the optical laboratory and since the optical laboratory substantially transforms the safety frames by inserting the prescription lenses into the safety frames, pursuant to the long-established principle of *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1940), in such instances, it is the optical laboratory that is the ultimate purchaser of the safety frames for purposes of 19 U.S.C. 1304. See 19 CFR 134.35. Since these were the circumstances presented in HRL 734258, we af-

firm our decision that the optical laboratories were the ultimate purchasers of the imported frames in that case.

**HOLDING:**

In the context of an employer-provided arrangement with an optical laboratory, the employer is purchasing a service (the furnishing of prescription safety glasses either at no cost or a discounted cost to its employees). Since in such circumstances the optical laboratory which substantially transforms the imported safety frames is the ultimate purchaser, only the outermost container in which the imported safety frames reach the optical laboratory must be properly marked with their country of origin. Accordingly, the petition is denied and HRL 734258 is affirmed. Alternatively, the frames may be individually marked by hang tags or stickers as provided for in HRL 734258.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 734733  
November 25, 1992  
MAR-2-05 CO:R:C:V 734733 RC  
CATEGORY: MARKING

MS. MARGARET R. POLITO  
COUDERT BROTHERS  
200 Park Avenue  
New York, New York 10166

RE: Country of Origin Marking Requirements for Safety-Eyewear  
Frames and Parts; Stickers; Container Marking; HQ 734258.

DEAR MS. POLITO:

This is in response to your inquiry of July 17, 1992, requesting a ruling on the country of origin marking requirements for imported frames and parts of prescription safety glasses. The following facts are a modification of those you presented in HQ 734258 (dated January 7, 1992). Also, incorporated herein are the facts presented in your correspondence of November 4, 1992.

**FACTS:**

Your client, Hudson Optical Corporation (Hudson Optical), is in the business of manufacturing and importing safety eyewear. The articles imported into the U.S. comprise completed safety glasses (non-prescription use) and safety frames (prescription use). Some of the frames are imported unassembled, as fronts and temples. The frames are further processed in the U.S. by inserting domestically-manufactured prescription lenses therein. The imported articles

are packaged in resealable clear plastic bags. These bags, as demonstrated by the submitted samples, bear the country of origin marking, "Made in Korea", on printed stickers affixed thereto. The finished products, being safety glasses, are manufactured to comply with specific insurance and federal requirements. In order to comply with such requirements, all the frames must bear the designation "Z-87" which identifies these articles specifically as safety eyewear. We assume that the facts here are the same as in your prior ruling request in that the frames and safety lenses are selected and bought by employers for employees. This ruling is based upon your representation that the glasses, frames, and parts imported by Hudson Optical are exclusively of the safety type described above, and applies only to such articles.

**ISSUE:**

Whether marking the plastic bags of safety eyewear instead of the articles themselves satisfies the country of origin marking requirements.

**LAW AND ANALYSIS:**

According to section 134.32(d), Customs Regulations (19 CFR 134.32(d)), an article is excepted from marking if the marking of the article's container will reasonably indicate the origin of such article. Customs must be satisfied that in all foreseeable circumstances the article will reach the ultimate purchaser in a properly marked container.

In HQ 734258 (January 7, 1992) issued to your client, we ruled that if employers purchase safety glasses for their employees, the optical laboratories that insert the prescription lenses into the frames are the ultimate purchasers of the frames. There, we authorized the use of hangtags and stickers, provided the marking is conspicuous, legible, and permanent as indicated in 19 CFR 134.41 and 19 CFR 134.44.

It is our opinion that marking the frames and parts by placing a sticker on the resealable plastic bag which contains it will be sufficient marking. However, this ruling applies only to those circumstances as described in HQ 734258 and here, where the optical laboratory is the ultimate purchaser. Pursuant to section 134.26, Customs Regulations (19 CFR 134.26), the importer must certify that if the articles are repacked or manipulated, the new container shall be marked to indicate the country of origin or if the article will be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. It is our opinion that Hudson Optical as the importer is obligated to follow the procedures set forth under 19 CFR 134.26.

**HOLDING:**

The eyeglass frames for prescription safety lenses and parts may be marked with their country of origin by means of stickers affixed to resealable plastic bags. This approval extends only to the circumstances set forth in HQ 734258 and here, where an optical labora-

tory is the ultimate purchaser of the imported frames and parts. Additionally, Hudson Optical must file a repacking certificate with the district director.

JOHN DURANT,  
*Director.*

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 734258  
January 7, 1992  
MAR-2-05 CO:R:C:V 734258 RSD  
CATEGORY: MARKING

MARGARET POLITO, Esq.  
COUDERT BROTHERS  
200 Park Avenue  
New York, New York 10166

RE: Country of origin of marking requirements for frames for safety glasses with prescription lenses, eyeglasses, substantial transformation, hangtags, stickers; 19 C.F.R. § 134.41, 19 C.F.R. § 134.44; HQ 729649

DEAR Ms. POLITO:

This is in response to your letter of July 11, 1991, on behalf of your client, Hudson Optical Corporation, requesting a ruling on the country of origin marking requirements for eyeglass frames used in making safety glasses with prescription lenses. We have also received your additional submissions of October 18, 1991, November 1, 1991, and November 5, 1991.

FACTS:

Hudson Optical Corporation (Hudson) imports safety glasses frames. The frames are sold by Hudson only to independent optical laboratories, who produce prescription lenses for individuals who require safety glasses for their employment. After the prescription lenses are produced to the specifications of a particular individual, the optical laboratories insert them into the frames. The completed safety glasses are purchased by employers for the use of their employees. Although Hudson imports 12 different styles of prescription safety glass frames, you indicate that typically employers restrict the type of frames that employees may choose, due to the nature of the work performed by the employees. In addition, insurance concerns and governmental safety standards require that certain employers only purchase industrial plano safety frames for their employees. In limited circumstances employers set a cap for the amount that they will spend on the safety glasses, and the employees may elect to supplement this amount with his or her own money in order that they receive a particular style of safety glasses.

Hudson has an agreement with the optical laboratories whereby the laboratories are precluded from reselling the frames other than as part of prescription safety glasses, without Hudson's authorization. You state that the justification for this agreement is to ensure that only safety lenses are inserted into the frames in order that the finished product meets all applicable safety standards.

Hudson proposes to indicate the country of origin of these safety glasses frames by affixing a hangtag or an adhesive sticker to the frames. The hangtag/sticker would state the origin of the frames in order to apprise the laboratories of the country of origin of the frames. During the insertion of the prescription lenses, the laboratories would remove the hangtag/sticker from the frames.

**ISSUES:**

Who is the ultimate purchaser of the eyeglass frames used to make the safety glasses?

Can the frames be marked to indicate their country origin by use of hangtags or stickers that will be removed by the laboratories while inserting the prescription lenses?

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co.* 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).

Part 134, Customs Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character or use differing from that of the constituent article will be considered substantially transformed and that the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article

is excepted from marking and only the outermost container is required to be marked (see section 134.35, Customs Regulations).

In HQ 729649, October 27, 1986, Customs found that imported eyeglass frames used in the manufacture of safety glasses were excepted from individual marking under this provision based on the determination that the U.S. manufacturer was the ultimate purchaser of the frames. Customs determined that the assembly of frame parts, temples and fronts, to form a finished frame, and the insertion of the lenses into the frames to make a pair of prescription safety glasses resulted in a substantial transformation. It was noted that safety eyewear was unlike ordinary prescription eyewear in which the consumer makes two separate purchasing decisions, one for the frames and one for the lenses. With regard to safety glasses, the industrial employer is actually purchasing one complete item, safety spectacles, and the assembly of the frame components and adding the lenses substantially transforms the finished frames. Without the safety lenses, the spectacles lack an essential component thereof. We also noted that although the employee will be given a few choices of frames, it is the employer who determines the type of safety spectacles that it requires for its employees.

The same analysis used in HQ 729649 applies to this case. Although the wearer may have some choice in choosing the frames, it is very limited and is controlled largely by the employer, who must follow standards dictated by insurers or government safety agencies. The employer is not making two separate purchasing decisions but is buying one article, the safety glasses. Accordingly, for the reasons set forth in HQ 729649, we find that inserting the prescription lenses into the frames to make safety glasses substantially transforms the frames into a new article of commerce. In accordance with 19 C.F.R. § 134.35, the optical laboratories who buy the frames from Hudson and insert the prescription lenses into them are the ultimate purchaser of the frames. Consequently, the frames must be marked in accordance with 19 U.S.C. § 1304 to inform the optical laboratories, the ultimate purchasers of the frames, of their country of origin.

Hudson's proposed method of marking the frames by use of hangtags and stickers is acceptable provided that the stickers or hangtags are sufficiently permanent that they will remain on the frames until they reach the ultimate purchaser. See 19 C.F.R. § 134.44. In accordance with 19 C.F.R. § 134.41, the country of origin marking indicated on the hangtags or stickers must also be conspicuous and legible. Without seeing a sample of the country of origin marking, we are unable to rule on whether the proposed marking of the frames would satisfy the requirements of the marking law.

**HOLDING:**

Provided the safety glasses frames imported by Hudson are used only in the manner set forth above, the optical laboratories who produce safety glasses are the ultimate purchasers of the frames. The imported frames may be marked to indicate their country of origin by hangtags or stickers, as long as the hangtags or stickers meet the requirements of being conspicuous, legible, and permanent indicated in 19 C.F.R. § 134.41 and 19 C.F.R. § 134.44, and the district di-

**rector at the port of entry is satisfied that such hangtags or stickers will remain on the frames until they reach the optical laboratories.**

**JOHN DURANT,  
Director,  
Commercial Rulings Division.**

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
October 27, 1986  
MAR-3 CO: R:E:E  
729649 LR

EDWARD J. DOYLE, ESQ.  
BARNES, RICHARDSON & COLBURN  
1819 H Street, NW.  
Washington, D.C. 20006

DEAR MR. DOYLE:

This is in response to your letter dated June 23, 1986, requesting reconsideration of Ruling No. 729451, dated May 27, 1986, concerning the country of origin marking requirements of temples and fronts imported by your client for use in the manufacture of prescription eyeglasses. In that ruling, your client's request for an exception from marking was denied because it was determined that neither the assembly of finished temples with finished fronts to form a frame nor the insertion of the lenses resulted in a substantial transformation of the imported temples and fronts. Thus, it was determined that the consumer purchasing the frame, not your client, is the ultimate purchaser. The decision states in pertinent part:

We believe that the consumer purchasing prescription eyeglasses is in effect purchasing two separate items, the frames and the prescription lens. The consumer generally makes a decision to purchase a particular frame from a display counter after trying it on for fit and styling. Only after the initial decision is made on the frame is it sent to the lab for the addition of the prescription lens. The decision to purchase a particular frame is made separate and apart from the processing involved in the addition of the prescription lens. In view of these circumstances, we find that the consumer is the ultimate purchaser of the frames and is entitled to be informed of its country of origin.

You request reconsideration of the above ruling due to additional material facts which were previously omitted from the ruling request. We are now advised that your client manufactures prescription safety glasses rather than ordinary prescription glasses. The safety glasses, which consist of special frames and lenses, are made in accordance with the standards established by the American National Standard Institute (ANSI). Since the safety glasses require special frames and lenses, the ANSI standards state that combinations of frames and lenses not meeting this standard are definitely not in compliance. Your client sells the safety glasses to industrial employers

who operate automobile factories, steel mills, metal foundries, coal mines, etc., for use by their employees. These employers are required by law under the provisions of the Occupational Safety and Health Act of 1970 (OSHA), and regulations promulgated thereunder, to provide their employees with safety eyewear which meets the ANSI standards. Although the employees will be given a few choices of frames, it is the employer who determines the type of safety spectacles that are required for its employees. The employer then furnishes your client with the employee's prescription and the safety glasses are made. Based on these additional facts, it is your contention that your client substantially transforms the imported temples and fronts into a new article of commerce and must be considered to be the ultimate purchaser of the imported articles.

We agree. Section 134.35, Customs Regulations, provides that a manufacturer in the U.S. who converts or combines an imported article into a different article will be considered the "ultimate purchaser" of the imported article. In view of the new facts presented, we no longer can state that the purchaser of the safety spectacles is purchasing two separate items (the frames and the lenses). The industrial employer is actually purchasing one complete item (safety spectacles) which are manufactured by your client from imported and domestic components. Therefore, we find by assembling the frame components and adding the lenses, your client substantially transforms the imported fronts and temples from an unfinished frame into a new and different article of commerce, namely, safety spectacles that meet ANSI standards. Without the safety lenses, the spectacles lack an essential component thereof. In fact, without the lenses, they cannot be considered to be safety spectacles that meet the ANSI standard. We also note that the lenses account for approximately 80% of the total cost per pair.

Accordingly, we find that the imported components are excepted from individual marking pursuant to section 134.35, Customs Regulations. In accordance with that section, the outermost containers of the imported fronts and temples must be marked to indicate the country of origin. This supersedes Ruling No. 729451.

STEVEN I. PINTER,  
*Chief, Entry, Licensing and  
Restricted Merchandise Branch.*

## [ATTACHMENT E]

**HQ 562975**

MAR-2-05 RR:CR:SM 562975 EAC

CATEGORY: Marking

ARTHUR L. HEROLD, ESQ.  
WEBSTER, CHAMBERLAIN & BEAN  
Suite 1000  
1747 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

RE: Domestic Interested Party Petition; country of origin marking requirements for imported safety eyeglass frames used with prescription lenses; ultimate purchaser; substantial transformation

DEAR MR. HEROLD:

In response to your Domestic Interested Party Petition, U.S. Customs and Border Protection ("CBP") issued Headquarters Ruling Letter ("HRL") 557996 dated October 8, 1997, to your law firm. In HRL 557996, CBP discussed the country of origin marking requirements applicable to imported safety eyeglass frames that are combined with prescription lenses within the United States to form completed safety eyeglasses for sale to employers. Upon further review of the matter, CBP has determined that the country of origin marking requirements set forth for the imported frames in that ruling are incorrect. Accordingly, this ruling letter sets forth the proper standard to be applied in such cases.

HRL 557996 is hereby revoked for the reasons set forth below.

**FACTS:**

In the aforementioned Domestic Interested Party Petition submitted pursuant to 19 U.S.C. § 1516, you note that imported safety eyeglass frames are exempted from individual country of origin markings when U.S. optical laboratories insert prescription lenses into the imported frames and sell the assembled safety glasses to employers who thereafter provide the safety glasses to their employees under employer-provided programs. This exception is also applied in cases where the employee retains some choice in selecting the frames or contributes, in part, to the purchase price.

You recommend that CBP adopt the position that imported safety eyeglass frames, intended to be combined with prescription lenses by optical laboratories within the United States, must be individually marked with their country of origin regardless of whether the assembled safety glasses are sold to employers or to individual purchasers. The above-referenced petition sought to encourage CBP to adopt this position.

A Notice of Receipt of Domestic Interested Party Petition; Solicitation of Comments was published in the Federal Register pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), on July 11, 1995 (60 FR 35795). Upon consideration of the arguments presented in the petition as well as the public comments received thereto, your petition was denied in HRL 557996.

**ISSUE:**

Whether imported safety eyeglass frames, combined with prescription lenses by optical laboratories within the United States for sale to employers, are required to be individually marked with their country of origin pursuant to 19 CFR 134.45.

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." United States v. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35(a).

As applied to "ordinary" personal prescriptive eyewear, we have determined that the consumer is the ultimate purchaser of prescriptive eyeglass frames, rather than the lab that places the lenses into the frames, because the decision to purchase a particular frame is made separate and apart from the processing involved in the addition of the prescription lenses. Therefore, under these circumstances, the frames must be individually marked with their country of origin. See, for example, HRL 730963 dated April 21, 1988.

However, we have also recognized that where an employer provides a particular item at the employer's expense for use exclusively at work by employees (gloves, aprons, etc.), the employee is not necessarily the ultimate purchaser of the item provided. Rather, we have determined that the imported merchandise may be exempted from bearing individual country of origin markings if the containers in which the items reach the ultimate purchaser (either the employer or the U.S. manufacturer that substantially transforms the items) are properly marked. See, for example, HRL 734304 dated January 28, 1992.

This "employer-provided" marking exemption has been applied in situations where safety eyeglass frames are combined with prescription lenses within the United States for sale to employers, who in turn distribute the safety glasses to their employees. It has been our opinion that, contrasted with the purchase of ordinary prescriptive eyewear, where, as described above, the consumer makes two separate purchasing decisions, the employer in the employer-provided context only makes one purchasing decision: to

purchase completed safety glasses. Consequently, it has been our belief that the employee's discretion in choosing safety frames in such situations has traditionally been limited and controlled by the employer, who is obligated to comply with safety standards imposed by insurers and government agencies. See, for example, HRL 729649 dated October 27, 1986, and HRL 734258 dated January 7, 1992. Under such circumstances, therefore, we have held that the ultimate purchaser of the imported safety eyeglass frames is the optical laboratory that inserts the prescription lenses into the frames.

In HRL 557996, as indicated above, we denied your petition, which challenged the general marking rule pertaining to imported safety eyeglass frames combined with prescription lenses within the United States for sale to employers, holding that:

In the context of an employer-provided arrangement with an optical laboratory, the employer is purchasing a service (the furnishing of prescription safety glasses either at no cost or a discounted cost to its employees). Since in such circumstances the optical laboratory which substantially transforms the imported safety frames is the ultimate purchaser, only the outermost container in which the imported safety frames reaches the optical laboratory must be properly marked with their country of origin.

However, for the reasons set forth below, we have determined that imported safety eyeglass frames, combined with prescription lenses within the United States, must be individually marked with their country of origin regardless of whether the assembled safety glasses are ordered by employers for their employees or by employees and other individuals directly. Our determination that the employer-provided marking exemption may not be applied in such situations is based, in large part, on our experience in this matter derived from researching various importer and manufacturer web sites, consideration of a number of previous submissions to CBP from importers as well as domestic producers in connection with this matter, and examining actual safety eyeglass frame samples.

Increasingly, we find that the circumstances surrounding the selection of safety eyeglasses are becoming more similar to the circumstances under which ordinary prescriptive eyewear is routinely selected. For example, in regard to the previous assumption that the employer selects frames for its employees from a limited selection, it is our understanding that employees in many trades today are often afforded the opportunity to select their own frames from a wide assortment of possible frames. We believe that the expansion of employee choice has been driven, in part, by the evolution of safety eyeglass frames from frames of generally uniform appearance that were thick and, in some cases, bulky, to frames that often appear identical to frames used with ordinary prescriptive eyewear. In this regard, we note that our analysis of various manufacturer web sites and of actual safety frame samples reveals that such safety frames are often visually indistinguishable from ordinary prescriptive frames.

Even in cases where frame selection may be limited in scope by the employer, the employee's subjective taste preferences remain relevant as he or she frequently retains at least *some* discretion in choosing the style of frames he or she prefers. We believe that the employee choice inherent in many of these transactions distinguishes the case presently under consider-

ation from past cases where we have applied the employer-provided marking exception to other products. Specifically, we note that in such past cases, employee choice in selecting the style of the items received was largely non-existent, that in many cases the items were disposable, and that the exempted items were often provided to employees from dispenser cartons. See, for example, HRL 734304 (disposable industrial coveralls distributed to employees at an industrial plant excepted from bearing individual country of origin markings under the employer-provided exception); HRL 732793 dated December 20, 1989 (industrial work gloves distributed to employees excepted from bearing individual country of origin markings as the employer is considered to be the ultimate purchaser of the gloves under the employer-provided exception); HRL730840 dated January 12, 1988 (hospitals and healthcare agencies that purchase cases of surgical gloves for distribution to their employees are considered to be the ultimate purchasers of the gloves); HRL 723745 dated February 6, 1984 (imported surgical masks packaged in dispenser cartons and purchased by hospital for use by their employees are not required to be individually marked with their country of origin); and HRL 715640 dated June 16, 1981 (imported disposable paper shoe covers, head covers, drape sheets, gowns, towels and other similar products which are packaged in polyethylene bags or dispenser cartons for sale to hospitals for use by their employees are not required to be individually marked with their country of origin).

In addition to the expanded discretion offered to most employees in choosing his or her safety eyeglass frames, CBP also understands that employees increasingly are required by employers to contribute toward the purchase of safety frames, especially in situations in which the employee opts for more expensive frames. This is another factor distinguishing employer-provided safety eyeglass programs from employer-provided arrangements involving other products.

Moreover, we have considered the issue of distribution of the safety frames after importation into the United States. Specifically, we note that individual shipments of imported safety frames increasingly are destined not only to customers in connection with an employer-provided arrangement with an optical lab but also to retail establishments that sell the frames directly to persons who wish to purchase safety eyeglasses for their own personal use. In order to determine whether the employer-provided exemption may be applied in such situations (under existing CBP rulings relating to safety eyeglasses), the importer is often placed in the difficult position of having to identify which frames within the shipment will be sold in connection with employer-provided programs and which frames will be sold to retail outlets for subsequent sale to individuals. This determination is critical because, as explained above, frames sold to an employer for distribution under an employer-provided program are not required to bear individual country of origin markings. However, an identical set of frames in the same shipment, undergoing identical processing within the United States, but sold to a retail outlet for subsequent sale to a private individual, is required to be individually marked with the frame's country of origin. It is our understanding that it often is impracticable for an importer of safety frames to identify upon importation the precise portion of a shipment that is destined for use by employees in connection with employer-provided programs as opposed to the portion destined for sale to private individuals.

Therefore, in consideration of the foregoing, we find that the employer-provided marking exception may not be applied to exempt safety eyeglass frames, imported to be combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, imported safety eyeglass frames combined with prescriptive lenses within the United States must be individually marked so as to indicate the country of origin of the frames.

**HOLDING:**

We find that the employer-provided marking exception may not be applied to exempt imported safety eyeglass frames, combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, HRL 557996 dated October 8, 1997, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 562976**  
MAR-2-05 RR:CR:SM 562976 EAC  
CATEGORY: Marking

MS. MARGARET R. POLITO, ESQ.  
COUDERT BROTHERS  
200 Park Avenue  
New York, New York 10166

RE: Country of origin marking requirements for imported safety eyeglass frames used with prescription lenses; ultimate purchaser; substantial transformation

DEAR MS. POLITO:

In response to the inquiry of July 17, 1992, in which you requested a ruling on the country of origin marking requirements for imported safety eyeglass frames that are combined with prescription lenses within the United States, U.S. Customs and Border Protection ("CBP") issued Headquarters Ruling Letter ("HRL") 734733 dated November 25, 1992, to your law firm of behalf of Hudson Optical Corporation ("Hudson Optical"). Upon further review of the matter, CBP has determined that the country of origin marking requirements set forth in that ruling are incorrect. Accordingly, this ruling letter sets forth the proper standard to be applied in such cases.

HRL 734733 is hereby revoked for the reasons set forth below.

**FACTS:**

We initially note that the following facts were offered as a variation of those which were initially considered by our office in HRL 734258 dated January 7, 1992. It is stated that Hudson Optical is an importer and manufacturer of safety eyewear. Hudson Optical may import either assembled

safety frames or unassembled safety frames. The components of the unassembled safety frames are identified as “fronts” and “temples” and are assembled to completion within the United States. U.S.-origin lenses are inserted into the assembled safety frames in all cases. The imported articles (assembled and unassembled components) are packaged in resealable clear plastic bags upon entry into the United States. These bags, as demonstrated by submitted samples, bear the country of origin marking, “Made in Korea”, on printed stickers affixed thereto.

The finished safety eyeglasses comply with specific insurance and federal requirements. Pursuant to the federal requirements, all such frames must bear the designation “Z-87” which identifies the articles as safety eyewear. For purposes of this ruling, we assume that the finished safety eyeglasses are selected and purchased by employers for use by their employees.

Based upon the foregoing, we held in HRL 734733 that the imported “eyeglass frames for prescription safety lenses and parts may be marked with their country of origin by means of stickers affixed to resealable plastic bags.”

**ISSUE:**

Whether assembled and unassembled safety eyeglass frames imported by Hudson Optical, that are combined with prescription lenses within the United States for sale to employers, are required to be individually marked with their country of origin pursuant to 19 CFR 134.45.

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. “The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” United States v. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines “country of origin” as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of the marking laws and regulations. The case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35(a).

As applied to “ordinary” personal prescriptive eyewear, we have determined that the consumer is the ultimate purchaser of prescriptive eyeglass frames, rather than the lab that places the lenses into the frames, because the decision to purchase a particular frame is made separate and apart from the processing involved in the addition of the prescription lenses. Therefore, under these circumstances, the frames must be individually marked with their country of origin. See, for example, HRL 730963 dated April 21, 1988.

However, we have also recognized that where an employer provides a particular item at the employer’s expense for use exclusively at work by employees (gloves, aprons, etc.), the employee is not necessarily the ultimate purchaser of the item provided. Rather, we have determined that the imported merchandise may be exempted from bearing individual country of origin markings if the containers in which the items reach the ultimate purchaser (either the employer or the U.S. manufacturer that substantially transforms the items) are properly marked. See, for example, HRL 734304 dated January 28, 1992.

This “employer-provided” marking exemption has been applied in situations where safety eyeglass frames are combined with prescription lenses within the United States for sale to employers, who in turn distribute the safety glasses to their employees. It has been our opinion that, contrasted with the purchase of ordinary prescriptive eyewear, where, as described above, the consumer makes two separate purchasing decisions, the employer in the employer-provided context only makes one purchasing decision: to purchase completed safety glasses. Consequently, it has been our belief that the employee’s discretion in choosing safety frames in such situations has traditionally been limited and controlled by the employer, who is obligated to comply with safety standards imposed by insurers and government agencies. See, for example, HRL 729649 dated October 27, 1986, and HRL 734258. Under such circumstances, therefore, we have held that the ultimate purchaser of the imported safety eyeglass frames is the optical laboratory that inserts the prescription lenses into the frames.

Consistent with the foregoing, we held in HRL 734733 that the imported safety eyeglass frames (assembled or unassembled) could be marked with their country of origin by means of stickers affixed to resealable plastic bags. However, for the reasons set forth below, we have determined that imported safety eyeglass frames, combined with prescription lenses within the United States, must be individually marked with their country of origin regardless of whether the assembled safety glasses are ordered by employers for their employees or by employees and other individuals directly. As such, placing stickers upon the plastic bags in which the assembled or unassembled frames are imported, as opposed to individually marking the frames for sale to the employer or employee, will not satisfy the applicable marking requirements. Our determination that the employer-provided marking exemption may not be applied in such situations is based, in large part, on our experience in this matter derived from researching various importer and manufacturer web sites, consideration of a number of previous submissions to CBP from importers as well as domestic producers in connection with this matter, and examining actual safety eyeglass frame samples.

Increasingly, we find that the circumstances surrounding the selection of safety eyeglasses are becoming more similar to the circumstances under which ordinary prescriptive eyewear is routinely selected. For example, in regard to the previous assumption that the employer selects frames for its

employees from a limited selection, it is our understanding that employees in many trades today are often afforded the opportunity to select their own frames from a wide assortment of possible frames. We believe that the expansion of employee choice has been driven, in part, by the evolution of safety eyeglass frames from frames of generally uniform appearance that were thick and, in some cases, bulky, to frames that often appear identical to frames used with ordinary prescriptive eyewear. In this regard, we note that our analysis of various manufacturer web sites and of actual safety frame samples reveals that such safety frames are often visually indistinguishable from ordinary prescriptive frames.

Even in cases where frame selection may be limited in scope by the employer, the employee's subjective taste preferences remain relevant as he or she frequently retains at least *some* discretion in choosing the style of frames he or she prefers. We believe that the employee choice inherent in many of these transactions distinguishes the case presently under consideration from past cases where we have applied the employer-provided marking exception to other products. Specifically, we note that in such past cases, employee choice in selecting the style of the items received was largely non-existent, that in many cases the items were disposable, and that the exempted items were often provided to employees from dispenser cartons. See, for example, HRL 734304 (disposable industrial coveralls distributed to employees at an industrial plant excepted from bearing individual country of origin markings under the employer-provided exception); HRL 732793 dated December 20, 1989 (industrial work gloves distributed to employees excepted from bearing individual country of origin markings as the employer is considered to be the ultimate purchaser of the gloves under the employer-provided exception); HRL730840 dated January 12, 1988 (hospitals and healthcare agencies that purchase cases of surgical gloves for distribution to their employees are considered to be the ultimate purchasers of the gloves); HRL 723745 dated February 6, 1984 (imported surgical masks packaged in dispenser cartons and purchased by hospital for use by their employees are not required to be individually marked with their country of origin); and HRL 715640 dated June 16, 1981 (imported disposable paper shoe covers, head covers, drape sheets, gowns, towels and other similar products packaged in polyethylene bags or dispenser cartons for sale to hospitals for use by their employees are not required to be individually marked with their country of origin).

In addition to the expanded discretion offered to most employees in choosing his or her safety eyeglass frames, CBP also understands that employees increasingly are required by employers to contribute toward the purchase of safety frames, especially in situations in which the employee opts for more expensive frames. This is another factor distinguishing employer-provided safety eyeglass programs from employer-provided arrangements involving other products.

Moreover, we have considered the issue of distribution of the safety frames after importation into the United States. Specifically, we note that individual shipments of imported safety frames increasingly are destined not only to customers in connection with an employer-provided arrangement with an optical lab but also to retail establishments that sell the frames directly to persons who wish to purchase safety eyeglasses for their own personal use. In order to determine whether the employer-provided exemption may be applied in such situations (under existing CBP rulings relating to

safety eyeglasses), the importer is often placed in the difficult position of having to identify which frames within the shipment will be sold in connection with employer-provided programs and which frames will be sold to retail outlets for subsequent sale to individuals. This determination is critical because, as explained above, frames sold to an employer for distribution under an employer-provided program are not required to bear individual country of origin markings. However, an identical set of frames in the same shipment, undergoing identical processing within the United States, but sold to a retail outlet for subsequent sale to a private individual, is required to be individually marked with the frame's country of origin. It is our understanding that it often is impracticable for an importer of safety frames to identify upon importation the precise portion of a shipment that is destined for use by employees in connection with employer-provided programs as opposed to the portion destined for sale to private individuals.

Therefore, in consideration of the foregoing, we find that the employer-provided marking exception may not be applied to exempt safety eyeglass frames (assembled or unassembled in regard to the facts of this case), imported to be combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, imported safety eyeglass frames combined with prescriptive lenses within the United States must be individually marked so as to indicate to the employer or individual purchaser the country of origin of the frames.

**HOLDING:**

We find that the employer-provided marking exception may not be applied to exempt imported safety eyeglass frames (assembled or unassembled in regard to the facts of this case), combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, HRL 734733 dated November 25, 1992, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

## [ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 562977**

MAR-2-05 RR:CR:SM 562977 EAC

CATEGORY: Marking

MS. MARGARET POLITO, ESQ.  
COUDERT BROTHERS  
200 Park Avenue  
New York, New York 10166

RE: Country of origin marking requirements for imported safety eyeglass frames used with prescription lenses; ultimate purchaser; substantial transformation

DEAR MS. POLITO:

In response to your letter of July 11, 1991, in which you requested a ruling pertaining to the country of origin marking requirements for imported safety eyeglass frames that are combined with prescription lenses within the United States, U.S. Customs and Border Protection ("CBP") issued Headquarters Ruling Letter ("HRL") 734258 dated January 7, 1992, to your law firm on behalf of Hudson Optical Corporation ("Hudson Optical"). Upon further review of the matter, CBP has determined that the country of origin marking requirements set forth in that ruling are incorrect. Accordingly, this ruling letter sets forth the proper standard to be applied in such cases.

HRL 734258 is hereby revoked for the reasons set forth below.

**FACTS:**

It is stated that Hudson Optical imports twelve styles of prescription safety eyeglass frames which are sold to independent optical laboratories located within the United States. The independent optical laboratories produce prescription lenses and insert the prescription lenses into the safety frames to render completed safety eyeglasses. The prescription safety eyeglasses are thereafter sold by the laboratories to various employers for use by their employees.

It is our understanding that, in consideration of pragmatic safety concerns, governmental safety regulations, and insurance policy requirements, the employer often determines which style of safety frames will be purchased. With respect to providing payment for the finished safety eyeglasses, we have been advised that, in addition to cases where the employer purchases the safety glasses outright for their employees, there are situations where the employer may subsidize only a portion of the purchase price of the safety glasses. In such cases, the employee is required to cover the difference between the monetary amount the employer provides and the actual purchase price.

Hudson Optical has an agreement with the independent optical laboratories whereby, unless Hudson Optical expressly authorizes otherwise, the laboratories are precluded from reselling the frames other than as part of completed prescription safety glasses. It is stated that these agreements guarantee that only safety lenses are inserted into the frames, thereby ensuring that the finished products satisfy all applicable safety standards.

Hudson proposes to indicate the country of origin of the imported safety eyeglass frames by affixing either a hangtag or an adhesive sticker to the frames. The hangtags or stickers would set forth the origin of the frames in order to apprise the laboratories of the country of origin of the frames. We have been advised that the laboratories will remove such handtags or stickers during the assembly process.

Based upon the foregoing, we held in HRL 734258 that, since the optical laboratories were considered to be the ultimate purchasers of the imported frames, such frames could be marked to indicate their origin with handtags and stickers that were removed during the assembly process.

**ISSUE:**

Whether imported safety eyeglass frames, combined with prescription lenses by optical laboratories within the United States for sale to employers, must be individually marked to indicate their country of origin.

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." United States v. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35(a).

As applied to "ordinary" personal prescriptive eyewear, we have determined that the consumer is the ultimate purchaser of prescriptive eyeglass frames, rather than the lab that places the lenses into the frames, because the decision to purchase a particular frame is made separate and apart from the processing involved in the addition of the prescription lenses. Therefore, under these circumstances, the frames must be individually marked with their country of origin. See, for example, HRL 730963 dated April 21, 1988.

However, we have also recognized that where an employer provides a particular item at the employer's expense for use exclusively at work by employees (gloves, aprons, etc.), the employee is not necessarily the ultimate purchaser of the item provided. Rather, we have determined that the imported merchandise may be exempted from bearing individual country of origin markings if the containers in which the items reach the ultimate purchaser (either the employer or the U.S. manufacturer that substantially transforms the items) are properly marked. See, for example, HRL 734304 dated January 28, 1992.

This "employer-provided" marking exemption has been applied in situations where safety eyeglass frames are combined with prescription lenses within the United States for sale to employers, who in turn distribute the safety glasses to their employees. It has been our opinion that, contrasted with the purchase of ordinary prescriptive eyewear, where, as described above, the consumer makes two separate purchasing decisions, the employer in the employer-provided context only makes one purchasing decision: to purchase completed safety glasses. Consequently, it has been our belief that the employee's discretion in choosing safety frames in such situations has traditionally been limited and controlled by the employer, who is obligated to comply with safety standards imposed by insurers and government agencies. See, for example, HRL 729649 dated October 27, 1986. Under such circumstances, therefore, we have held that the ultimate purchaser of the imported safety eyeglass frames is the optical laboratory that inserts the prescription lenses into the frames.

Consistent with the foregoing, we held in HRL 734258 that the imported safety eyeglass frames could be marked to indicate their country of origin with handtags or stickers that were removed by the optical laboratories during the assembly process. However, for the reasons set forth below, we have determined that imported safety eyeglass frames, combined with prescription lenses within the United States, must be individually marked with their country of origin regardless of whether the assembled safety glasses are ordered by employers for their employees or by employees and other individuals directly. Our determination that the employer-provided marking exemption may not be applied in such situations is based, in large part, on our experience in this matter derived from researching various importer and manufacturer web sites, consideration of a number of previous submissions to CBP from importers as well as domestic producers in connection with this matter, and examining actual safety eyeglass frame samples.

Increasingly, we find that the circumstances surrounding the selection of safety eyeglasses are becoming more similar to the circumstances under which ordinary prescriptive eyewear is routinely selected. For example, in regard to the previous assumption that the employer selects frames for its employees from a limited selection, it is our understanding that employees in many trades today are often afforded the opportunity to select their own frames from a wide assortment of possible frames. We believe that the expansion of employee choice has been driven, in part, by the evolution of safety eyeglass frames from frames of generally uniform appearance that were thick and, in some cases, bulky, to frames that often appear identical to frames used with ordinary prescriptive eyewear. In this regard, we note that our analysis of various manufacturer web sites and of actual safety frame samples reveals that such safety frames are often visually indistinguishable from ordinary prescriptive frames.

Even in cases where frame selection may be limited in scope by the employer, the employee's subjective taste preferences remain relevant as he or she frequently retains at least *some* discretion in choosing the style of frames he or she prefers. We believe that the employee choice inherent in many of these transactions distinguishes the case presently under consideration from past cases where we have applied the employer-provided marking exception to other products. Specifically, we note that in such past cases, employee choice in selecting the style of the items received was largely non-existent, that in many cases the items were disposable, and that the exempted items were often provided to employees from dispenser cartons. See, for example, HRL 734304 (disposable industrial coveralls distributed to employees at an industrial plant excepted from bearing individual country of origin markings under the employer-provided exception); HRL 732793 dated December 20, 1989 (industrial work gloves distributed to employees excepted from bearing individual country of origin markings as the employer is considered to be the ultimate purchaser of the gloves under the employer-provided exception); HRL730840 dated January 12, 1988 (hospitals and healthcare agencies that purchase cases of surgical gloves for distribution to their employees are considered to be the ultimate purchasers of the gloves); HRL 723745 dated February 6, 1984 (imported surgical masks packaged in dispenser cartons and purchased by hospital for use by their employees are not required to be individually marked with their country of origin); and HRL 715640 dated June 16, 1981 (imported disposable paper shoe covers, head covers, drape sheets, gowns, towels and other similar products packaged in polyethylene bags or dispenser cartons for sale to hospitals for use by their employees are not required to be individually marked with their country of origin).

In addition to the expanded discretion offered to most employees in choosing his or her safety eyeglass frames, CBP also understands that employees increasingly are required by employers to contribute toward the purchase of safety frames, especially in situations in which the employee opts for more expensive frames. This is another factor distinguishing employer-provided safety eyeglass programs from employer-provided arrangements involving other products.

Moreover, we have considered the issue of distribution of the safety frames after importation into the United States. Specifically, we note that individual shipments of imported safety frames increasingly are destined not only to customers in connection with an employer-provided arrangement with an optical lab but also to retail establishments that sell the frames directly to persons who wish to purchase safety eyeglasses for their own personal use. In order to determine whether the employer-provided exemption may be applied in such situations (under existing CBP rulings relating to safety eyeglasses), the importer is often placed in the difficult position of having to identify which frames within the shipment will be sold in connection with employer-provided programs and which frames will be sold to retail outlets for subsequent sale to individuals. This determination is critical because, as explained above, frames sold to an employer for distribution under an employer-provided program are not required to bear individual country of origin markings. However, an identical set of frames in the same shipment, undergoing identical processing within the United States, but sold to a retail outlet for subsequent sale to a private individual, is required to be individually marked with the frame's country of origin. It is our understand-

ing that it often is impracticable for an importer of safety frames to identify upon importation the precise portion of a shipment that is destined for use by employees in connection with employer-provided programs as opposed to the portion destined for sale to private individuals.

Therefore, in consideration of the foregoing, we find that the employer-provided marking exception may not be applied to exempt safety eyeglass frames, imported to be combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, imported safety eyeglass frames combined with prescriptive lenses within the United States must be individually marked so as to indicate to the employer or individual purchaser the country of origin of the frames.

**HOLDING:**

We find that the employer-provided marking exception may not be applied to exempt imported safety eyeglass frames, combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, HRL 734258 dated January 7, 1992, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 562978**  
MAR-2-05 RR:CR:SM 562978 EAC  
CATEGORY: Marking

BARNES, RICHARDSON & COLBURN  
*1819 H Street, N.W.*  
*Washington, D.C. 20006*

RE: Country of origin marking requirements for imported safety eyeglass frames used with prescription lenses; temples and fronts; ultimate purchaser; substantial transformation

DEAR SIR OR MADAM:

In response to a letter of October 27, 1986, from Mr. Edward J. Doyle of your firm, requesting reconsideration of Headquarters Ruling Letter ("HRL") 729451 dated May 27, 1986 (pertaining to the country of origin marking requirements of temples and fronts imported for use in the manufacture of prescription eyeglasses), U.S. Customs and Border Protection ("CBP") issued HRL 729649 dated October 27, 1986, to your firm on behalf of your client. Upon further review of the matter, CBP has determined that the country of origin marking requirements set forth in HRL 729649 are incorrect. Accordingly, this ruling letter sets forth the proper standard to be applied in such cases.

HRL 729649 is hereby revoked for the reasons set forth below.

**FACTS:**

It is stated that your client imports safety eyeglass “temples” and “fronts” for use in the manufacture of prescription safety eyeglasses. The assembled safety eyeglasses comply with the safety standards promulgated by the American National Standard Institute (“ANSI”) for such items. You client sells the assembled prescription safety eyeglasses to employers for use by their employees at various places of employment such as in automobile factories, steel mills, metal foundries, and coal mines. It is our understanding that the employee is occasionally given limited discretion in selecting the frames for such safety glasses but the employer ultimately determines which frames may be worn at work. After selecting the frames, the employer provides your client with the prescriptive lens requirements for their employees. Thereafter, your client produces finished safety eyeglasses which incorporate the selected frames with lenses that satisfy the recommended prescriptive requirements.

Based upon the foregoing, we found in HRL 729649 that your client, by assembling safety frame components and adding prescription lenses, substantially transforms the imported fronts and temples into a new and different article of commerce. As such, we held that the imported temples and fronts were excepted from bearing individual country of origin markings upon sale to the employer or employee.

**ISSUE:**

Whether imported safety eyeglass frame components, assembled and combined with prescription lenses by optical laboratories within the United States for sale to employers, must be individually marked to indicate their country of origin.

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. “The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” United States v. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines “country of origin” as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of the marking laws and regulations. The case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98) (1940), provides that an article used in manufacture which results in an article having a name, character, or use differing from that of the constituent article will be considered

substantially transformed and, as a result, the manufacturer or processor will be considered the ultimate purchaser of the constituent materials. In such circumstances, the imported article is excepted from marking and only the outermost container is required to be marked. See, 19 CFR 134.35(a).

As applied to “ordinary” personal prescriptive eyewear, we have determined that the consumer is the ultimate purchaser of prescriptive eyeglass frames, rather than the lab that places the lenses into the frames, because the decision to purchase a particular frame is made separate and apart from the processing involved in the addition of the prescription lenses. Therefore, under these circumstances, the frames must be individually marked with their country of origin. See, for example, HRL 730963 dated April 21, 1988.

However, we have also recognized that where an employer provides a particular item at the employer’s expense for use exclusively at work by employees (gloves, aprons, etc.), the employee is not necessarily the ultimate purchaser of the item provided. Rather, we have determined that the imported merchandise may be exempted from bearing individual country of origin markings if the containers in which the items reach the ultimate purchaser (either the employer or the U.S. manufacturer that substantially transforms the items) are properly marked. See, for example, HRL 734304 dated January 28, 1992.

This “employer-provided” marking exemption has been applied in situations where safety eyeglass frames are combined with prescription lenses within the United States for sale to employers, who in turn distribute the safety glasses to their employees. It has been our opinion that, contrasted with the purchase of ordinary prescriptive eyewear, where, as described above, the consumer makes two separate purchasing decisions, the employer in the employer-provided context only makes one purchasing decision: to purchase completed safety glasses. Consequently, it has been our belief that the employee’s discretion in choosing safety frames in such situations has traditionally been limited and controlled by the employer, who is obligated to comply with safety standards imposed by insurers and government agencies. See, for example, HRL 734258 dated January 7, 1992. Under such circumstances, therefore, we have held that the ultimate purchaser of the imported safety eyeglass frames is the optical laboratory that inserts the prescription lenses into the frames.

Consistent with the foregoing, we held in HRL 729649 that, by assembling imported temples and fronts to form safety frames and adding prescription lenses within the United States, your client substantially transformed the imported components into new and different articles of commerce. Therefore, it was our belief that the imported temples and fronts should be excepted from bearing individual country of origin markings upon sale to the employer or employee. However, for the reasons set forth below, we have determined that imported safety eyeglass frames (assembled or, under the circumstances of this case, unassembled), combined with prescription lenses within the United States, must be individually marked with their country of origin regardless of whether the assembled safety glasses are ordered by employers for their employees or by employees and other individuals directly. Our determination that the employer-provided marking exemption may not be applied in such situations is based, in large part, on our experience in this matter derived from researching various importer and manufacturer web sites, consideration of a number of previous submissions to CBP

from importers as well as domestic producers in connection with this matter, and examining actual safety eyeglass frame samples.

Increasingly, we find that the circumstances surrounding the selection of safety eyeglasses are becoming more similar to the circumstances under which ordinary prescriptive eyewear is routinely selected. For example, in regard to the previous assumption that the employer selects frames for its employees from a limited selection, it is our understanding that employees in many trades today are often afforded the opportunity to select their own frames from a wide assortment of possible frames. We believe that the expansion of employee choice has been driven, in part, by the evolution of safety eyeglass frames from frames of generally uniform appearance that were thick and, in some cases, bulky, to frames that often appear identical to frames used with ordinary prescriptive eyewear. In this regard, we note that our analysis of various manufacturer web sites and of actual safety frame samples reveals that such safety frames are often visually indistinguishable from ordinary prescriptive frames.

Even in cases where frame selection may be limited in scope by the employer, the employee's subjective taste preferences remain relevant as he or she frequently retains at least *some* discretion in choosing the style of frames he or she prefers. We believe that the employee choice inherent in many of these transactions distinguishes the case presently under consideration from past cases where we have applied the employer-provided marking exception to other products. Specifically, we note that in such past cases, employee choice in selecting the style of the items received was largely non-existent, that in many cases the items were disposable, and that the exempted items were often provided to employees from dispenser cartons. See, for example, HRL 734304 (disposable industrial coveralls distributed to employees at an industrial plant excepted from bearing individual country of origin markings under the employer-provided exception); HRL 732793 dated December 20, 1989 (industrial work gloves distributed to employees excepted from bearing individual country of origin markings as the employer is considered to be the ultimate purchaser of the gloves under the employer-provided exception); HRL730840 dated January 12, 1988 (hospitals and healthcare agencies that purchase cases of surgical gloves for distribution to their employees are considered to be the ultimate purchasers of the gloves); HRL 723745 dated February 6, 1984 (imported surgical masks packaged in dispenser cartons and purchased by hospital for use by their employees are not required to be individually marked with their country of origin); and HRL 715640 dated June 16, 1981 (imported disposable paper shoe covers, head covers, drape sheets, gowns, towels and other similar products packaged in polyethylene bags or dispenser cartons for sale to hospitals for use by their employees are not required to be individually marked with their country of origin).

In addition to the expanded discretion offered to most employees in choosing his or her safety eyeglass frames, CBP also understands that employees increasingly are required by employers to contribute toward the purchase of safety frames, especially in situations in which the employee opts for more expensive frames. This is another factor distinguishing employer-provided safety eyeglass programs from employer-provided arrangements involving other products.

Moreover, we have considered the issue of distribution of the safety frames after importation into the United States. Specifically, we note that

individual shipments of imported safety frames increasingly are destined not only to customers in connection with an employer-provided arrangement with an optical lab but also to retail establishments that sell the frames directly to persons who wish to purchase safety eyeglasses for their own personal use. In order to determine whether the employer-provided exemption may be applied in such situations (under existing CBP rulings relating to safety eyeglasses), the importer is often placed in the difficult position of having to identify which frames within the shipment will be sold in connection with employer-provided programs and which frames will be sold to retail outlets for subsequent sale to individuals. This determination is critical because, as explained above, frames sold to an employer for distribution under an employer-provided program are not required to bear individual country of origin markings. However, an identical set of frames in the same shipment, undergoing identical processing within the United States, but sold to a retail outlet for subsequent sale to a private individual, is required to be individually marked with the frame's country of origin. It is our understanding that it often is impracticable for an importer of safety frames to identify upon importation the precise portion of a shipment that is destined for use by employees in connection with employer-provided programs as opposed to the portion destined for sale to private individuals.

Therefore, in consideration of the foregoing, we find that the employer-provided marking exception may not be applied to exempt safety eyeglass frames (assembled or, under the circumstances of this case, unassembled), imported to be combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, imported safety eyeglass frames combined with prescriptive lenses within the United States must be individually marked so as to indicate to the employer or individual purchaser the country of origin of the frames.

**HOLDING:**

Based upon the information before us, we find that the employer-provided marking exception may not be applied to exempt imported safety eyeglass frame temples and fronts, assembled and combined with prescription lenses within the United States, from bearing individual country of origin markings. Accordingly, HRL 729649 dated October 27, 1986, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

