

## BUREAU RULING — II

### Subpart A — ALCOHOL

27 CFR 5.36(e); 27 CFR 19.650

#### COUNTRY OF ORIGIN STATEMENTS ON DISTILLED SPIRITS LABELS

##### ATF Ruling 2001-2

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked to clarify the requirement to disclose the country of origin on labels of imported distilled spirits. Specifically, ATF has been asked how the requirement to disclose the country of origin applies to products that are comprised of spirits produced in more than one country, including mixtures of foreign and domestic spirits.

##### *Background*

###### *Country of Origin Regulations - Distilled Spirits*

ATF's distilled spirits labeling regulations in 27 CFR part 5 require that all distilled spirits products sold, shipped or otherwise introduced in interstate commerce must bear labels that contain certain mandatory information. Among other things, the mandatory label information at 27 CFR § 5.32(b)(2) requires that the "country of origin" for imported spirits be shown on the brand label or on a back label, in accordance with §5.36. The regulation at 27 CFR 5.36(e) states as follows:

(e) *Country of Origin.* On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form "Product of \_\_\_\_\_", the blank to be filled in with the name of the country of origin.

The same regulatory language is found at 27 CFR 19.650 and there is a requirement for a country of origin statement on bottles of spirits for domestic use that are exempt from label approval (27 CFR 19.642).

###### *Inquiries - Blending of Imported and Domestic Distilled Spirits*

Members of the public and industry have asked ATF about the blending of imported and domestic distilled spirits. They asked how section 5.36(e) applies, and if the use of imported distilled spirits in such products must be disclosed on the label. ATF determined that when the country of origin regulation in Part 5 was originally written, the agency did not contemplate that bottlers would blend imported and domestic spirits. As written, the regulations assume that imported spirits would be bottled using 100% imported spirits.

Section 5.36(e) as it exists in its current form was promulgated in 1959 by Treasury Decision 6410, 1959-2 C.B. 632. A Technical Memorandum issued at the time of the regulation's issuance indicates that § 5.36(e) was intended to apply to distilled spirits products bottled after importation in bulk. Prior to the issuance of Treasury Decision 6410, the country of origin of imported distilled spirits statement was required on labels only in the case of distilled spirits imported in bottles for the purpose of compliance with Customs regulations. Nothing in the rulemaking record directly discusses the situation where imported and domestic spirits are blended together.

### *Basis in Law*

All goods imported into the United States are subject to a determination as to their country of origin. The origin of merchandise imported into the customs territory of the United States (the fifty states, the District of Columbia and Puerto Rico) is important for several reasons. The origin can affect the rate of duty, entitlement for special programs, admissibility, quota, anti-dumping, or countervailing duties, procurement by government agencies and marking requirements.

The United States Customs Service has primary responsibility for the administration and enforcement of the rules of origin for imported merchandise. These rules of origin are based on several laws enforced by Customs including: Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), and certain other trade preference programs.

### *U.S. Customs Rules of Origin*

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), generally provides that every article of foreign origin imported into the United States shall be marked to indicate to the ultimate purchaser in the United States the country of origin of the article. Generally, the country of origin of a good is the country in which the good is wholly manufactured, produced or grown. Further work or material added to an article in another country must effect a "substantial transformation" to render such other country the country of origin. See 19 CFR 134.1, definition of country of origin. A product that is not substantially transformed must be marked with all countries where further work or material is added. There are two methods of determining substantial transformation for marking purposes.

The first method is used to determine the country of origin for products from all countries, except Canada and Mexico. It is based on a case-by-case approach employing the "substantial transformation" criterion when further work or material is added in another country. The substantial transformation criterion is based on whether the article undergoes a change in name, character, and use into a new or different article of commerce (i.e., the country of origin is the last country where the article is substantially transformed). Customs regulations that implement this method are found in 19 CFR Part 134.

The second method is based on Annex 311 of the North American Free Trade Agreement (NAFTA). Annex 311 of the agreement requires that the parties to the NAFTA (United States, Canada and Mexico) establish rules for determining the country

of origin of a good originating from a NAFTA country. In response to this requirement, U.S. Customs developed a set of country of origin rules for parties to NAFTA. This method codifies the substantial transformation criterion by imposing a tariff-shift approach under the Harmonized Tariff Schedule of the United States. Generally, under this approach, an article imported from Canada or Mexico under a certain tariff classification that is further processed in the United States and “shifts” to a different tariff classification may be substantially transformed into a product of the United States. An imported product of Canada or Mexico that is further processed in the United States and that does not “shift” tariff classification is not substantially transformed. Thus, this product is marked as originating from Canada or Mexico and the United States. Customs regulations that implement this method are found in 19 CFR Part 102, Rules of Origin. See also T.D. 96-48, 61 FR 28955, June 6, 1996, Customs regulations implementing both approaches.

In addition to its regulations, Customs also issues interpretive rulings relating to country of origin determinations. For example, in 1989 Customs issued a Headquarters Ruling Letter (732260) that dealt with the mixing of foreign whiskies.

#### *Decision to Issue a Ruling*

Based on the above, the United States Customs Service has primary responsibility for the administration and enforcement of the rules of origin for imported merchandise. Further, the rules administered and enforced by Customs are intended to encompass all articles imported into the United States. Therefore, we have concluded that ATF country of origin requirements under 5.36(e) for imported distilled spirits will be interpreted in a manner consistent with Customs’ rules of origin. Issuance of separate ATF regulations might lead to inconsistencies between Customs and ATF rules and result in confusion for the industries affected by those rules.

Accordingly, ATF is holding through this ruling that the requirement under 5.36(e) applies to all imported distilled spirits. For an imported distilled spirit that is wholly the product of a single country, the country of origin will be stated in substantially the following form, “Product of \_\_\_\_\_.” We hold “substantially the following form” to mean that the distilled spirits may, in the alternative, be labeled in conformity with Customs country of origin marking requirements. For a product composed of spirits produced in more than one country, including mixtures of foreign and domestic spirits, we hold “substantially the following form” to mean that the country of origin will be determined and marked in accordance with U.S. Customs’ regulations in 19 CFR.

Industry members may seek a ruling from Customs for a determination of the country of origin for their product by writing to:

Office of Regulations and Rulings  
U.S. Customs Service  
1300 Pennsylvania Ave., N.W.  
Washington, D.C. 20229

This ruling recognizes the primary role that Customs plays in country of origin determinations and interprets the 5.36(e) requirement in a manner consistent with Customs' requirements.

*Implementation of Ruling 2001-2*

ATF recognizes that immediate compliance with this ruling could cause severe hardship for proprietors who have a stockpile of previously approved labels which lack the required "country of origin" statements discussed in this ruling. In view of this fact, the effective date for compliance with this ruling is January 1, 2002.

**Held:** The requirement under 5.36(e) applies to all imported distilled spirits. For an imported distilled spirit that is wholly the product of a single country, the country of origin will be stated in substantially the following form, "Product of \_\_\_\_\_." We hold "substantially the following form" to mean that the distilled spirits may, in the alternative, be labeled in conformity with Customs country of origin marking requirements. For a product composed of spirits produced in more than one country, including mixtures of foreign and domestic spirits, we hold "substantially the following form" to mean that the country of origin will be determined and marked in accordance with U.S. Customs' regulations in 19 CFR.

Date signed: March 14, 2001