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COUNTRY OF ORIGIN OF REFURBISHED GOODS IN INTERNATIONAL TRADE

Siddartha Bhatt[1]

ABSTRACT

This article provides a brief account of country-of-origin regulations and the tests deployed for identification of origin of goods in international trade. It also highlights the goals of the country-of-origin law and the stakeholders. In its core, the article examines the present practice of declaration of country of origin and the challenges posed by the modern-day reverse logistics developed for warranty services which result in refurbishment and remanufacturing of faulty goods and the resultant challenges of determination and declaration of country of origin in those cases. The article concludes with possible solutions for a refurbished or remanufactured article and how to declare the country of origin for such articles.

Key Words: Country of origin, Warranty services, Reverse logistics, international trade, Warranty services

INTRODUCTION AND BACKGROUND

Today, International Trade Laws have become extremely complicated and require the importer/ exporter to comply with at least a dozen set of regulations while conducting trade. Some of the key legislations include Customs Valuation Rules[2], HS Classification[3], Country of Origin[4], Forced Labour[5] etc. This article tries to give a brief introduction to the Country-of-Origin legislation and a specific trade area where the law is not yet developed to accommodate the changing trade environment.

1. Program Manager, Global Trade Compliance Europe, Middle East, Africa, and India at Western Digital® India
2. https://www.wto.org/english/thewto_e/acc_e/omn_e/wtaccomn24_leg_2.pdf
3. https://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx
4. https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm
5. https://www.cbp.gov/trade/forced-labor/UFLPA

Concept of Country of Origin is not new. It has a history of, at least, 250 years. The concept of country-of-origin dates to the silk trade and spice trade ages, prior to British rule in India. We have recorded history of import of wool from Afghanistan during 16th century and export of spices to Arab Countries during the same period.

Country of Origin, in layman terms, means "the country / geography where a goods/commodity is grown, extracted, harvested, manufactured or produced". A very popular definition of Country or Origin is "it is the economic nationality of goods". Till 1994, there was no harmony amongst the Country-of-Origin laws between the trading countries/blocks. Every country followed its own set of rules and regulations to suit their domestic and international trade requirements. Thanks to the World Trade Organization's (formerly GATT) efforts, which resulted in consolidation of all the prevailing set of rules and regulations on Country of Origin and making it a harmonized set of law. All the WTO member countries have accepted the model law and enacted their local regulations accordingly. The Country-of-Origin law, as we see it today, is completely harmonized among, at least 190 countries across the globe.

PURPOSE OF COUNTRY-OF-ORIGIN LAW

Before we dwell upon the core of the Country-of-Origin law, it is essential to understand who consumes the fruits of this law and what is the goal it achieves. Governments are the key stakeholders who obtain various information from the Country-of-Origin declaration in an international trade transaction. Typically, you may see the following declaration on goods:

What purpose do such declarations serve? They serve four important purposes:

a. **Trade Volumes:** They provide trade volume/ statistics between two countries. For instance, Indian Government understands the volume of automobiles imported from Japan in a year by their Country-of-Origin declaration. These commodities are categorized based on their HS Classification and then the country from where they are imported are categorized based on the declaration of their origin.

b. **Trade Embargo/Sanctions:** Declaration of Country of Origin provide grounds to Governments for imposition of trade sanctions or embargo. For instance, US has imposed trade ban on China regarding electronic goods. It means, specific electronic goods imported into US from China are either restricted or banned.

c. **Imposing Special Customs Duties:** Origin declaration also provide ground to Governments to impose special customs duties like Anti-Dumping Duty, Countervailing Duty, Safeguard Duty, etc.[6] Governments study the effect of import of a particular commodity at a particular price and the harm it can cause to the domestic manufacturers. Accordingly, Governments impose special deterrent customs duties like anti-dumping duty, countervailing duty etc.

d. **Consumer Protection:** Declaration of Country of Origin provide trust and assurance to the consumer regarding the country from where the goods are coming and there comes the quality assurance. For instance, I always prefer to buy French perfumes or Scotland Scotch or German Automobiles etc.

6. https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

MARKING OF COUNTRY OF ORIGIN

Country of Origin marking is a huge set of regulation which again varies from country to country, based on the local legislation. However, toughest, and most complex set of regulations can be witnessed in US. I have explained the US Law here as it covers all the complexities of regulations of other countries. 19 CFR 134 deals with the regulations governing declaration of country of origin in US.

Fundamentally, Country of Origin is declared on four documents in an international trade scenario, namely:

a. Commercial Shipping Invoice

b. Packing List

c. Bill of Entry (Entry declaration) / Shipping Bill (Bill of Export/Export declaration)

d. Product Packaging / Product itself

Declarations on first three documents are part of Customs Laws of any country whereas the last declaration is part of local laws governing consumer protection. In India, such declaration of country of origin on the product packaging / product itself is governed under the Legal Metrology (Packaged Commodities) Rules, 2011.

Though the laws and regulations governing Country of Origin is so well developed and established worldwide, surprisingly, there is no defined set of expressions to declare the country of origin of goods. You can see any of the below examples on the product labels.

a. Country of Origin Malaysia

b. Made in USA

c. Product of China

d. Manufactured in France

e. Made in China with parts from Thailand

f. Made in Italy with parts from worldwide

All the above declarations are considered as valid by Customs Authorities by local Governments.

Complications add up when a package contains more than one article which are manufactured in different counties. 19 CFR 134.14 deals with these situations. For instance, you buy a laptop wherein the laptop is manufactured in China and the power cord is manufactured in Malaysia. In such case how to declare the country of origin? The US Law 19 CFR 134.14 read with Subpart C clearly suggests that in those cases, every product should contain the respective country of origin declaration. Meaning, the declaration of country of origin on the product itself, should mention the country where that product is manufactured. In the above example, the laptop should say Made in China and the power cord should say Made in Malaysia. Whereas the documents can contain the declaration of one country of origin which gives the essential character to the entire set of goods. In the above example, since laptop gives the essential character to the entire set of goods, the country-of-origin declaration on the documents can be Made in China. Relevant portion of 19 CFR 134.14 is provided hereunder for ready reference:

> *§ 134.14 Articles usually combined. (a) Articles combined before delivery to purchaser. When an imported article is of a kind which is usually combined with another article after importation but before delivery to an ultimate purchaser and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation. (b) Example. Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as ''Label made (or printed) in (name of country)'' or words of similar meaning. See*

subpart C of this part for marking of bottles, drums, or other containers.

THE CORE OF COUNTRY-OF-ORIGIN LAW

Today, the law on Country of Origin across the globe defines the Country of Origin as "a country where the goods attain substantial transformation or a country where the goods get transformed with a new name, character and use from its raw materials"[7]. The law gets complicated hereafter. It defines various rules which are considered as tests which can confer the Country of Origin, namely, substantial transformation test, change in tariff classification test, ad valorem test, manufacturing or processing criteria test, de-minimis rule, minimal operations rule etc. I will not complicate the article by explaining the nuances of each of those tests. On a general note, it is necessary to count the value addition attained at every country where an article gets manufactured. The country where an article attains major / substantial transformation, is normally considered as the origin country. However, there are cases where this general rule has exceptions.[8]

The above rule can be explained with simple examples:

Example 1: If an engine is manufactured in Germany, value of which is USD 1900, and the engine is manufactured with bearings from Japan which is worth USD 150. In this case, the substantial value addition and transformation both happen at Germany and hence the Country of Origin of the engine is Germany.

Example 2: A wafer is manufactured in Japan, and it is converted into memory chip at China. Memory Chip is embedded into PCB and made into USB Drive in Malaysia. Since the substantial transformation of wafer to chip to PCB to USB drive happens at Malaysia (as a distinct product with new name, use and character) and hence the Country of Origin of USB Drive is Malaysia.

However, when goods are moved across countries in an international trade transaction, two types of Country-of-Origin declarations/claims are made to Customs.

a. Preferential Country of Origin and

b. Non-Preferential Country of Origin

Preferential country of origin is a set of regulations which confer the concessional or zero customs duty benefit between two or more countries (trading groups) who enter into an International Trade Agreement or Preferential Trade Agreement. Few examples of such preferential trade agreements are SAARC Agreement, NAFTA Agreement, MERCOSUR Agreements, Indo-Japan Agreement, ASEAN Agreement etc. In a preferential trade agreement two or several countries agree to reduce customs duties on the goods they trade, subject to the condition that the goods are originating in the member countries. Governments announce specific trade bodies are identified to issue such preferential certificates of origin.

Non-preferential country of origin is simply declaration of the country where goods are manufactured, for statistical purposes and purposes defined above. Normally, every country has specified their own list of manufacturing activities to confer the non-preferential country of origin status for goods manufactured in that country. They also have published a list of activities

7. § 134.1 Definitions - (b) Country of origin. ''Country of origin'' means 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 to render such other country the ''country of origin'' within the meaning of this part.

8. § 19 CFR 102.11 General Rules - The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by §102.21. (a) The country of origin of a good is the country in which: (1) The good is wholly obtained or produced; (2) The good is produced exclusively from domestic materials; or (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in §102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

which do not confer the origin status which include simple packing, mixing, wrapping, sorting, bottling etc.[9]

THE PROBLEM ANALYSIS

What is explained above is a glimpse of the existing boundaries of Country-of-Origin regulations. It is to be noted that the present set of regulations apply to the goods that are manufactured afresh and sold in international trade.

Present day international trade and logistics is so well arrived that you can get a gadget to your home from US, China, Japan or anywhere from the world. As a consumer, when you buy an article, obviously you want the manufacturer/seller to ensure that the goods you buy are covered with warranty in case of any failure. Let us assume a scenario where you buy a laptop with one year warranty. If the laptop fails within one year from the date of purchase, you will call the warranty service provider to get your article replaced and he does so.

Manufacturers/sellers have setup an elaborate "Reverse Logistics Return Material Movement" (popularly known as RMA in trade community) chain for movement of goods under warranty claims. When a product is booked for warranty complaint, the manufacturer / seller arranges to collect the product from customer or customer drops the product at an identified location. Then the product is carried to specialized repair centres. These repair centres could be set up by the manufacturer himself or the entire repair/replacement set up could have been outsourced to a third party. They will repair the product/replace the faulty component and return the repaired/refurbished goods to the consumer. If the goods are damaged beyond repair, then the manufacturer / seller will replace the faulty goods with a fresh one.

Have you ever wondered what they will do with your faulty laptop? Let me explain it to you. On arrival of the faulty laptop, repair centre will strip the laptop. The company will try to salvage all the working parts in the laptop and discard/repair the failed or bad parts. If the salvaged parts are working in good condition, all those harvested or salvaged parts are again used to provide warranty services to other customers like you who encounter failure in their laptops. If the laptop requires replacement of parts, that is also done in repair centres. This setup is so well established and works like a well-oiled machine that the repair/salvage/harvest rate in electronics industry, today, is around 70%. That means, out of faulty electronic goods, 70% of parts are harvested and repaired and re-used in further warranty services. Completely faulty (beyond repair) parts / goods percentage is around 30.

Now comes the problem. When you have purchased the laptop for the first time, assume the country of origin of that laptop is "Made in USA". That laptop has stopped functioning and you claim the warranty. You get a replacement laptop under warranty, which is a repaired/harvested/salvaged laptop (obviously from other failed laptops). This warranty replacement has come to you from a "Repair hub" of the US manufacturer, and the Repair Hub is set up in China. Since the repair/refurbishment is undertaken in China, what is the country of origin of the repaired laptop? Is it USA or China?

Sometimes, the repair/harvesting work is so intense and complex that it requires 80% of repair work on the product, making the entire process of repair akin to the fresh manufacturing process. The present set of Country-of-Origin rules address only the fresh goods and not the repaired/refurbished/re-manufactured goods. Entire "refurbishment/repair/remaking/re-engineering" process itself is not recognized in the Country-of-Origin Rules or Rules of Origin.

Industry has been facing challenges while clearing the imported goods which are refurbished/re-engineered. This specifically happens due to

9. https://www.wto.org/english/tratop_e/roi_e/roi_e.htm

confusing declarations on the import documents. For instance, a laptop carries the Country of Origin marking as USA because originally it was manufactured in the USA. However, the shipping invoice, packing list and other documents declare that the goods are refurbished/remade, and the origin of shipment is from China. Customs authorities start asking questions like whether the goods are manufactured in USA or China? If USA, then why it is coming from China? If the goods are refurbished or remade in China, why country of origin is not China? etc., to quote few examples.

Another example is a car imported from Japan to India. The car engine fails, and the failed engine is exported to a repair hub in Philippines. The engine is re-worked and completely overhauled in Philippines and again imported into India for replacement. While importing second time, the country-of-origin declaration shows a Japan while the shipment and all the documents show Philippines. Customs authorities are obviously suspicious of this transaction.

Since the law is not well arrived in this area, today Customs authorities are allowing import clearance of these goods. However, this practice can prove costly to countries at some point of time. If the customs start holding the clearance of these goods, then all those repairable goods will not be exported for repair, and they will get stuck in the country where they have become defunct. This can also lead to increase in the e-waste problem / junk pile up in any given country and affect the environment seriously. Also, the Governments will not be able to assess the accurate trade volumes and country of origin vis-à-vis goods, which can leave the countries vulnerable to situations like dumping of goods repaired goods or spurious goods.

POSSIBLE SOLUTIONS AND THEIR PROS AND CONS

There are few possible solutions which can be proposed so solve the country of origin of repaired/ refurbished goods. However, these solutions require deeper investigation into the challenges they can pose on the larger canvas of international trade and customs regulations of individual countries.

Solution 1: First solution is to have a dedicated procedure for international movement of repaired / refurbished goods. WTO SAFE Framework[10] needs to accommodate a dedicated route of procedures and regulations which give exception for international movement of goods which are returned to customer after repair/refurbishment. In this method, the importing party needs to declare the original country of origin of goods and declare the country of repair and refurbishment. By adopting this method, the national Customs authorities will not have confusion about different country of origin and a different country where the goods are repaired/ refurbished. This solution does call for change in the existing Rules of Origin, however, requires only cursory changes in the international shipping practices and modifications in the declarations in the shipping documentation.

Solution 2: In this solution, WTO's Agreement on Rules of Origin[11] can adopt a new set of Articles wherein specific set of rules can be framed to accommodate a fresh set of "Certificate of Repair/ Refurbishment". To implement this solution, WTO has to thoroughly amend the existing Rules of Origin framework to accommodate a new chapter on repaired/refurbished/re-engineered goods and define elaborate set of rules, regulations and documentation requirements. When goods are originally imported, either a Preferential or Non-Preferential Certificate of Origin would have

10. https://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/safe_package.aspx

    WTO ensures that the Countries adopt Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework) that would act as a deterrent to international terrorism, to secure revenue collections and to promote trade facilitation worldwide.

11. https://www.wto.org/english/docs_e/legal_e/22-roo_e.htm

been submitted to the importing country customs authorities. However, post repair/refurbishment, the repair centres can obtain a fresh set of "Certificate of Repair/Refurbishment" from the notified agency and export the goods to the consumer. At the time of import, the local Customs Authorities are sure about the Country of Repair/Refurbishment by virtue of "Certificate of Repair/Refurbishment".

However, this solution can have one specific problem, that is, since the Customs Authorities will know only the country of repair/refurbishment, they will not be able to execute the trade embargo between countries, provided the original goods are originating in a sanctioned country. If the WTO Agreement on Rules of Origin addresses this issue, then this can be a potential solution.

Solution 3: Third solution is a very straight method wherein the WTO's Agreement on Rules of Origin[12] adopts a different set of markings / declarations to the entire repaired / refurbished goods. Basically, the repair/refurbishment companies shall mark the repaired / refurbished goods with specific marking, for instance, "Repaired at Chia" or "Refurbished at Malaysia" etc., wherein firstly, the products themselves make it amply clear that they are repaired/refurbished goods. Secondly, customs authorities will not get confused whether the products are fresh goods or refurbished/ repaired goods. Accordingly, the documents can contain the declaration to the effect that the goods are repaired/refurbished in a specific country.

This solution can also have the problem as above, that is, since the Customs Authorities will know only the country of repair/refurbishment, they will not be able to execute the trade embargo between countries, if the original goods are originating in a sanctioned country. If the WTO Agreement on Rules of Origin addresses this issue, then this can also be a potential solution.

CONCLUSIONS

As discussed above, this problem can have multiple solutions. Each solution has its own advantage and disadvantages as discussed above. In this section, I am concluding on the most suitable solution, which in my view would be easy to implement and less complicated in terms of implementation and documentation.

By weighing all the solutions, I prefer the hybrid of Solution 1 and Solution 3 as the most comprehensive solution. Let us elaborate on the Solution 1. Solution 1 is to have a dedicated procedure for international movement of repaired / refurbished goods. WTO SAFE Framework needs to accommodate a dedicated route of procedures and regulations which provide an exception for international movement of goods which are returned to customer after repair/refurbishment.

In this method, the importing party needs to declare the original country of origin of goods and declare the country of repair and refurbishment. By adopting this method, the national Customs authorities will not have confusion about different country of origin and a different country where the goods are repaired/refurbished. This solution does call for any change in the existing Rules of Origin, however, requires only cursory changes in the international shipping practices and modifications in the declarations in the shipping documentation.

Solution 3 being WTO's Agreement on Rules of Origin to adopt a different set of markings / declarations to the entire repaired / refurbished goods. In this solution, the repair/refurbishment companies shall mark the repaired / refurbished goods with specific marking. For example, marking the repaired product with "Repaired at Chia" or "Refurbished at Malaysia" etc., wherein firstly, the products themselves make it amply clear that they are repaired/refurbished goods. Secondly, customs authorities will not get confused whether the products are fresh goods or refurbished/repaired

12. *Ibid.*,

goods. Accordingly, the documents can contain the declaration to the effect that the goods are repaired/refurbished in a specific country.

This hybrid solution gives complete visibility to the Customs Authorities of respective countries regarding the country of origin of original goods as well as the country of repair / refurbishment. In any case, with the present set of rules and regulations, the trading community is facing challenges like queries from customs authorities regarding correctness of declaration of country of origin, delay in clearance time or turn around time, documentary support for repair/refurbishment activity, delay in completion of projects due to delay in customs clearance process etc. Adopting the proposed solution can bring clarity to in the documentation, clarity in marking the products as which is the original country of origin and which is the refurbished/repaired country and also can give clear visibility to the Customs Authorities regarding the different countries involved in evolution of the product as well as refurbishment/repair of the product.

International Trade Community shall approach the Trade Bodies and Governments (in India we have FICCI[13], CII[14], FCBA[15] etc) and represent these issues. It is also important to represent these issues to CBIC[16] which has a permanent representation in WTO and WCO[17] annual meetings. These representatives can discuss the problem and possible solution before the WTO during their annual meeting and propose the suggestions for implementation.

13. FICCI – Federation of Indian Chambers of Commerce and Industry
14. CII – Confederation of Indian Industry
15. FCBA – Federation of Customs Brokers' Association in India (FCBA INDIA)
16. CBIC – Central Board of Indirect Taxes and Customs
17. WCO – World Customs Organization