Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–6248 Filed 3–13–00; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Customs Service

**[T.D. 00–15]**

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

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final interpretation.

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

**EFFECTIVE DATE:** June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Monika Brenner, Attorney, Special Classification and Marking Branch, Office of Regulations and Rulings (202–927–1254).

**SUPPLEMENTARY INFORMATION:**

#### Background

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) 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.

In *Midwood Industries Inc.* v. *United States*, 313 F. Supp. 951 (Cust. Ct. 1970), *appeal dismissed* 57 CCPA 141 (1970), the U.S. Customs Court considered whether an importer of steel forgings was the ultimate purchaser for purposes of the marking statute, 19 U.S.C. 1304. The court cited the principles set forth in *United States* v. *Gibson-Thomsen Co., Inc.*, 27 CCPA 267 (1940), in determining that the importer's manufacturing operations made it the ultimate purchaser, namely that the importer may be considered the ultimate purchaser for marking purposes if it subjects the article to further processing that results in the manufacture of a ''new article with a new name, character and use.'' *Midwood*, 313 F. Supp. at 956. However, the *Midwood* court also found it relevant to that finding that the imported forgings at issue were transformed from producers' goods to consumers' goods, stating:

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

It is Customs opinion that based on subsequent court decisions applying substantial transformation analysis, *Midwood* would be decided differently today. Accordingly, Customs proposed in a notice published in the **Federal Register** (63 FR 14751, March 26, 1998), to no longer rely on the distinction between producers' and consumers' goods.

#### Analysis of Comments

A total of 14 entities responded to the proposal (one untimely). Nine comments supported the proposal, three comments opposed the proposal, and two comments neither supported nor opposed the proposal.

*Comment:* Three commenters supporting and three commenters opposing the proposal provided detailed analyses of court decisions to support their respective positions. One commenter supporting the proposal states that recent court decisions, in particular *Superior Wire* v. *United States*, 669 F. Supp. 472 (CIT 1987), *aff'd*, 867 F.2d 1409 (Fed. Cir. 1989), did not use a producers' versus consumers' goods analysis. The court in *Superior Wire*, according to this commenter, made its decision based on an analysis of the effect on the metallurgical properties of wire rod, the fact that the wire rod specification is generally determined by reference to the end product for which the drawn wire will be used, the value added, and the amount of labor and capital investment. The commenter also claims that *Superior Wire* should control because the Federal Circuit rendered the decision.

Another commenter supporting the proposal points out that the court in *Superior Wire* noted that *Uniroyal* v. *United States*, 542 F. Supp. 1026 (CIT 1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), did not find the producers' to consumers' goods distinction as determinative whether a substantial transformation occurred.

A commenter opposing the proposal states that the court in *Superior Wire* did look at the shift from producers' to consumers' goods. Two of the commenters opposing the proposal state that *Midwood* was cited with approval in *Superior Wire*.

*Response:* Customs believes that both the lower court and appellate court decisions in *Superior Wire* support the proposed interpretation. In *Superior Wire*, the parties agreed that the U.S. Court of International Trade (CIT) should make its determination of whether wire was a product of Spain or Canada on the basis of the substantial transformation test. *Superior Wire*, 669 F. Supp. at 478. The CIT in *Superior Wire* noted that recent cases cite the test used in *Anheuser-Busch Brewing Ass'n* v. *United States*, 207 U.S. 556, 568 (1908), but apply it differently. *Id.* The court also noted that the courts have concentrated on a change in use or character, along with certain cross-checks, including value added, and the amount of processing. *Id.* However, in making its decision, the court decided to examine cases, in particular *Torrington Co.* v. *United States*, 596 F. Supp. 1083 (CIT 1984), *aff'd*, 764 F.2d 1563 (Fed. Cir. 1985), that involved the processing of metal objects without combination or assembly operations. *Id.* at 479. The court noted that *Torrington* cited *Midwood* with approval, but also noted that the ''producer to consumer goods distinction drawn in *Midwood*, * * * was found not determinative as to substantial transformation'' in *Uniroyal. Id.* The court then stated that ''there is no clear change from producers' to consumers' goods.'' *Id.* The *Superior Wire* court, however, did not analyze the facts of *Midwood*, although *Midwood* also was a case involving the processing of metal objects. In contrast to the decision in *Midwood*, this court found that ''wire rod and wire may be viewed as different stages of the same product.'' *Id.*

While the CIT in *Superior Wire* did state that there was a change in name, the court also found that there was no transformation from producers' to consumers' goods, no change from many uses to limited uses, no complicated processing, and that only a small percentage of value was added. The Federal Circuit held that the CIT's

conclusions were correct that the drawing of wire rod into wire was not the manufacture of a new and different product as required by *Anheuser-Busch. Superior Wire*, 867 F.2d at 1415. While the Federal Circuit in *Superior Wire* did acknowledge, without further comment, that the CIT cited other considerations, including no transformation from producers' to consumers' goods, it did not include this as a basis for its holding, and in its decision it only analyzed the changes in name, character and use.

*Comment:* One supporting commenter states that in *SDI Tech., Inc.* v. *United States*, 977 F. Supp. 1235 (CIT 1997), the court observed that the *Midwood* test exempts from marking virtually any product that was imported in unfinished form and finished prior to sale. Another supporting commenter states that while consumer electronics products changed from producers' to consumers' goods in *SDI*, the court determined that they did not undergo a substantial transformation. Two opposing commenters state that the court in *SDI* did look at the shift from producers' to consumers' goods.

*Response:* While Customs agrees that the court in *SDI* did look at the shift from producers' to consumers' goods as this was specifically raised by the plaintiff, the court also stated, citing *Uniroyal*, that it ''has never held that the producer/consumer shift alone is dispositive.'' *SDI*, 977 F. Supp. at 1240. Furthermore, the court stated that by plaintiff's argument, ''virtually any unfinished product that is finished by a producer before it is sold to a consumer would have undergone substantial transformation.'' *Id.* While the court recognized that the producer/consumer shift has some evidentiary value, the court found that the chassis could be used by a consumer, and found that the essence of the chassis remained the same. Also of relevance, is the court's statement that while a change in essence is not always a necessary prerequisite to a change in character, a lack of a change in essence evidences a lack of a change in character. *Id.* This does not hold true for the producer/consumer shift since even if there may be a producer/consumer good shift, this is not necessarily indicative of a change in character. Ultimately, the court in *SDI* decided that there was no change in character and use and the subject goods did not undergo a substantial transformation.

*Comment:* One supporting commenter states that in *National Juice Products Ass'n* v. *United States*, 628 F. Supp. 978 (CIT 1986), the court did not reach the result that *Midwood* would have dictated and expressly stated that it was not obligated to follow the producers' good/consumers' good test. One opposing commenter states that it was dicta in *National Juice* to say that *Uniroyal* diminished the value of the producers' versus consumers' goods test, and that *National Hand Tool Corp.* v. *United States*, 16 CIT 308 (1992), stated that the determination of substantial transformation must be based on the totality of evidence.

*Response:* It is Customs opinion that in both *Uniroyal* and *National Juice*, the imported materials could clearly be characterized as producers' goods and the finished articles could clearly be considered consumers' goods had the court wished to adopt the reasoning used in *Midwood*. In *National Juice*, the court stated that the significance of the producers' goods to consumers' goods transformation in marking cases is diminished in light of its decision in *Uniroyal*. The court also stated that ''under recent precedents, the transition from producers' to consumers' goods is not determinative.'' *National Juice*, 628 F. Supp. at 989–990. Disregarding plaintiff's specific reliance on *Midwood*, the court in *National Juice* stated that the imported product was ''the very essence'' of the retail product and held that manufacturing juice concentrate was not substantially transformed when it was processed into retail orange juice. *Id.* at 991. We also note that in *National Hand Tool*, the court did not even mention *Midwood*.

*Comment:* One supporting and two opposing commenters state that *Uniroyal* distinguished the facts of *Midwood.* However, the supporting commenter states that the court could have applied the *Midwood* test and would have reached the opposite conclusion. The supporting commenter also points out that the only case that used *Midwood* was *Torrington,* which can be reconciled with the *Uniroyal* essence test, and that *Uniroyal* and its progeny establish that there cannot be a substantial transformation without changing the fundamental character, as exemplified in *National Juice* and *CPC Int'l, Inc.* v. *United States,* 971 F. Supp. 574 (CIT 1997), *appeal docketed,* No. 98–1069 (Fed. Cir. 1997).

*Response:* Customs agrees with the supporting commenter. In both *Midwood* and *Uniroyal,* the issue centered around the processes occurring after the articles were imported into the United States.

In *Midwood,* the court only looked at the operations occurring after importation. Witnesses also testified that as imported, the forgings had no commercial use as they did not meet any specifications. The court then found that the processes were manufacturing processes ''irrespective of how performed, and albeit that these processes are representative of a successive stage of manufacture.'' *Midwood,* 313 F. Supp. at 957. The court found that the ''end result of the manufacturing processes'' was the transformation into ''different articles having a new name, character and use.'' *Id.* The court noted that the imported articles were '' 'forgings' of one kind or another,'' indicating a name change. However, as to providing an analysis of the change in use and character of the traditional substantial transformation test, there was none except for the court's statement that as producers' goods they are not used by the consumer and are not capable of use by the consumer in that state. Further, the court found that while the imported forgings are made as close to the dimensions of ultimate finished form as is possible, they still remain forgings unless and until converted by some manufacturer into consumers' goods. *Id.* Lastly, the court in *Midwood* stated that a country of origin marking for the benefit of the purchaser of flanges and fittings serves no purpose because the ASA specifications have their own marking requirements. *Id.* Accordingly, in effect the court concluded that because of ASA marking requirements no other markings were necessary. There was no mention of changes in character and use in terms of the actual physical characteristics or purpose of the imported and finished goods.

By contrast, the court in *Uniroyal* did not solely focus upon the attachment of the outsole to the imported upper, but also considered the processes that occurred in making the upper abroad. Furthermore, unlike *Midwood* where the court noted that the forgings' dimensions were close to their finished form, but nevertheless found a substantial transformation, the court in *Uniroyal* focused upon the imported upper's finished shape, form, and size in finding no change in either character or use when made into the finished shoe. The court in *Uniroyal* made this finding even though the upper was not marketable at retail as a complete shoe without the outsole.

In making distinctions with other court decisions, the court in *Uniroyal* could point to the fact that in *Gibson-Thomsen* the imported articles were materials that lost their identity when combined with other articles and were substantially transformed. In distinguishing *United States* v. *International Paint Co., Inc.*, 35 CCPA, C.A.D. 376 (1948), a case involving

drawback, the court in *Uniroyal* noted that the upper did not undergo any physical change whatever and did not change in use as the upper was intended to be attached to an outsole. In *International Paint,* however, the paint changed into an antifouling paint. In distinguishing *Grafton Spools Ltd.* v. *United States,* 45 Cust. Ct. 16, C.D. 2190 (1960), a case pertaining to the country of origin marking of ribbon spools, the court pointed to the fact that the ribbon, and not the spool, was what was important or the essence of the article. However in distinguishing *Midwood,* the court in *Uniroyal* had to emphasize *Midwood*'s analysis of the manufacturing processes, because the court in *Midwood* had not analyzed changes in the character and use of the forgings except to the extent that they changed from producers' to consumers' goods. Therefore, while Customs agrees that *Uniroyal* distinguished *Midwood,* as stated in *SDI,* ''while a change in essence is not always a necessary prerequisite to a change in character, a lack of a change in essence evidences a lack of a change in character.'' *SDI,* 977 F. Supp. at 1240.

*Comment:* Two supporting commenters state that in *CPC,* the plaintiff relied on *Midwood* that peanut slurry was a producer good, and pointed out that the court dismissed the *Midwood* test, stating that *National Juice* had rejected the transformation from a producers' goods to consumers' goods as a determinative criterion in marking cases.

*Response:* Customs agrees that as in *SDI,* the court in *CPC* rejected plaintiff's reliance on *Midwood.*

*Comment:* One supporting commenter states that in *Madison Galleries, Ltd.* v. *United States,* 688 F. Supp. 1544 (CIT 1988), *aff'd,* 870 F.2d 627 (Fed Cir. 1989), the court in dicta stated that the post-*Midwood* cases may have diminished the significance of a producers' good-consumers' good approach. An opposing commenter states that *Midwood* has been cited with approval in *Madison Galleries.*

*Response:* Customs does not believe that the court in *Madison Galleries* either approved or disapproved of the *Midwood* decision. In *Madison Galleries,* a case pertaining to the Generalized System of Preferences (GSP), the court did not have to find that the article was a ''product of'' a GSP country, as the GSP at that time did not have such a requirement. While *Madison Galleries* cited *Midwood,* it was in response to the defendant's argument that it is not logical for an article to receive duty-free treatment under the GSP when that article would not have to be marked as a product of that GSP country. The court in *Madison Galleries* responded that, as exemplified in *Midwood,* analysis of the marking requirements ''can include consideration of the nature of the intended, immediate recipient of a foreign article, *i.e.*, whether, for example that recipient is a producer or a consumer.'' *Madison Galleries,* 588 F. Supp. at 1547. Therefore, the court in *Madison Galleries* did not cite *Midwood* as support for the contention that the good was a ''product of'' the GSP country.

*Comment:* One supporting commenter states that in *Ferrostaal Metals Corp.* v. *United States,* 664 F. Supp. 535 (CIT 1987), where the result was consistent with the producers' good/consumers' good test, the court, while citing *Midwood,* did not rely on *Midwood,* but stated that the change was indicative of a substantial transformation. One opposing commenter states that *Ferrostaal* specifically rejected the essence test, and two opposing commenters state that *Midwood* was cited with approval in the *Ferrostaal* case.

*Response:* Customs does not believe that *Ferrostaal* supports the producers' goods versus consumers' goods test for determining substantial transformation. The court in *Ferrostaal* noted that while Uniroyal referred to an essence test, the test to be applied was whether the ''imported article underwent a 'substantial transformation' which results in an article having a name, character or use differing from that of the imported article.'' *Ferrostaal,* 664 F. Supp. at 538, *citing Uniroyal,* 542 F. Supp. at 1029–30. Therefore, the court in *Ferrostaal* specifically rejected defendant's argument that an ''essence'' test displaced the change in name, character, and use test. *Id.*

Customs, by this notice, is not suggesting that the essence test replace the substantial transformation test. To the contrary, Customs adheres to the position stated in *CPC, supra,* that the essence test is ''embraced by and aids in applying the traditional change of name, character or use test.'' *CPC,* 971 F. Supp. at 583. As Customs noted in the notice of proposed interpretation, the court in *Ferrostaal* also cited *Midwood* for its conclusion that a transition from producers' goods to consumers' goods was indicative of a change in use. *Id.* at 541. However, the court extensively considered the changes in character as result of the annealing and galvanizing processes as evidence of a substantial transformation. *Id.* at 539.

*Comment:* One supporting commenter states that *Midwood* is legally unnecessary as courts have completely disregarded the producers' versus consumers' goods test or given it little to no weight. As support, the commenter cites *Zuniga* v. *United States,* 996 F.2d 1203 (Fed. Cir. 1993), where a casting slip was not substantially transformed by minor processes; *Aztec Milling Co.* v. *United States,* 890 F.2d 1150 (Fed. Cir. 1989), where dry corn flour was not substantially transformed and intermediate products did not lose identifying characteristics of constituent material; *United States* v. *Murray,* 621 F.2d 1163 (1st Cir. 1980), *cert denied,* 449 U.S. 837 (1980), where glue blend was not substantially transformed because it did not undergo a fundamental change; and *Grafton Spools, Ltd.* v. *United States,* 45 Cust. Ct. 16 (1960), where imported empty spools were not substantially transformed when wound with thread.

*Response:* Customs agrees that the courts generally have disregarded or given little weight to the producers' versus consumers' goods test.

*Comment:* One commenter states that Customs incorrectly cited *Gibson Thomsen, supra,* as support for the position that the substantial transformation test requires a change in name, character, ''and'' use, as opposed to a change in name, character ''or'' use.

*Response:* Customs disagrees. The Court of Customs and Patent Appeals in *Gibson-Thomsen* cited the criteria, ''a new name, character, *and* use'', five times in its decision. 27 CCPA 267, 270, 271, 272, 273 (1940) (emphasis added).

*Comment:* The proposal violates the Congressional request not to undertake changes to the country of origin rules while the World Trade Organization (WTO) continues to develop international harmonized country of origin rules.

*Response:* In the letter dated September 30, 1996, referred to in the comment, members of the Senate and the House of Representatives requested that any changes in policy with regard to country of origin marking requirements be deferred. The letter particularly requested deferring any changes in policy with regard to the country of origin marking requirements of metal forgings for hand tools. In fact, Customs has not made any policy changes with regard to hand tools, and also has not finalized its proposed regulations governing rules of origin for non-preferential trade even though the original deadline for completing the WTO process has passed. Moreover, in a September 30th letter, the Chairmen of the Senate Finance Committee and the Committee on Ways and Means

expressly recognized that such deferment in no way would affect the right of private parties to contest existing Treasury rulings. The subject notice of proposed interpretation was specifically initiated as a result of a private party's request to make the NAFTA and non-NAFTA rules for the country of origin marking of fittings and flanges uniform.

*Comment:* Two opposing commenters state that Customs lacks authority to limit *Midwood* and that 19 U.S.C. 1625(d) and 19 CFR 177.10(d) does not give Customs authority to disregard a court decision without first seeking appellate review, citing *Nestle Refrigerated Food Co.* v. *United States,* 18 CIT 661 (1994), *Orlando Food Corp.* v. *United States,* Slip Op. 97–19 (CIT 1997), and *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission,* 390 U.S. 261, 272 (1968). They state that in *Orlando Food,* the CIT criticized Customs for limiting the application of a CIT decision after publication in the **Federal Register**. In *Orlando Food,* the court stated that Customs application of the section 1625(d) process circumvented judicial process. These commenters also cite *CPC Int'l, Inc.* v. *United States,* 933 F. Supp. 1093, 1101–02, 1104 (CIT 1996), *appeal pending,* where the court stated that Custom may not encroach on the judicial function by abrogating binding case law.

*Response:* Customs disagrees. Congress specifically codified 19 CFR 177.10 as part of Title VI, Customs Modernization, of the North American Free Trade Agreement implementation Act, Pub. L. 103–182, 103d Congress, 107 Stat. 2057 (1993), by adding 19 U.S.C. 1625(d) which states that ''a decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.'' The legislative history, House Report No. 103–361(I), reflects that Congress specifically recognizes that section 623 of H.R. 3450 (which became section 623 of Pub. L. 103–182 amending 19 U.S.C. 1625) requires only that ''a decision that limits the application of a court decision * * * be published for notice and comment in the Customs Bulletin.'' In this instance, Customs not only published the notice of proposed interpretation in the Customs Bulletin, but also in the **Federal Register** soliciting comments. Congress explained that the reason for the change was to provide ''assurances of transparency concerning Customs rulings and policy directives through publication in the Customs Bulletin or other easily accessible sources.'' House Report at 2674.

The CIT reference in *Orlando Food* that Customs application of 19 U.S.C. 1625(d) circumvents the judicial process is dicta. However, it is Customs opinion that considering all of the industry and trading pattern changes with which it has been faced and challenged within the last 28 years since the *Midwood* decision, Customs action under this notice is justified. Customs has acted in direct response to a private party's inquiry and in the absence of Customs action pursuant to 19 U.S.C. 1625(d), the country of origin marking requirements for fittings and flanges would remain unchanged and not uniform.

*Comment:* Seven commenters state that the Midwood decision has caused artificial distinctions within the pipe fitting industry, confusion, or does not accurately indicate the origin to consumers, which is the purpose of the marking statute, citing *Globemaster Inc.* v. *United States,* 340 F. Supp. 974, 976 (Cust. Ct. 1972), as support. One supporting commenter states that it is a GATT violation if the proposal is not adopted since the NAFTA Marking Rules are different. One opposing commenter states that it is unclear why Customs wants to eliminate the producers' versus consumers' good test.

*Response:* In response to the opposing commenter, the comments in support of the proposal illustrate why Customs has responded to the private party's request to address the situation concerning the marking of fittings and flanges. As one commenter puts it: ''this whole issue has been a thorn of incredible proportion in the side of industry in general and the pipe fitting industry in particular.'' Because Customs believes that the issue presented in *Midwood* would be decided differently today, and because the NAFTA Marking Rules and *Midwood* decision render different results, it is Customs position that this action is necessary in order to provide equitable treatment to all importers of pipe fittings and flanges.

*Comment:* Three commenters supporting the proposal request that it be applied immediately or as expeditiously as possible. One commenter states that any marking required by the change can be accomplished through inexpensive means, in a short time frame, and without substantial economic loss. The commenter states that any further delay will continue to cause economic injury to certain industry members who have suffered lost sales and price suppression because of unmarked foreign flanges. One commenter opposing the proposal states that Customs in the past has delayed the effective date of a rule change for 12 months. The commenter states that if Customs adopts the proposal, it would represent a drastic change to the rules under which fitting and flange producers operate. This commenter states that if the proposal is adopted, marking pipe fittings and flanges would entail far more than printing new labels; it would also require the purchase and installation of new machinery.

*Response:* Customs understands the concerns of both opposing and supporting parties. However, the fact remains that the rules for the country of origin marking for importations from NAFTA and non-NAFTA countries are not uniform. The change in treatment proposed by Customs will place all importers of pipe fittings and flanges on an equal footing. Customs notes that when the NAFTA Marking Rules were adopted, importations from NAFTA countries that were previously not subject to marking became subject to a marking requirement and those importers were able to make these changes in far less than a one-year period. Because the current country of origin marking requirement for pipe fittings and flanges is based on administrative treatment, rather than a specific ruling, Customs will require that all pipe fittings and flanges produced in the United States from imported forgings be marked with the country of origin of the imported forging. As specified in 19 CFR 177.10, Customs will make the change effective 90 days after publication of this notice in the **Federal Register**, except in the case of a ruling subject to the procedure specified in 19 U.S.C. 1625.

**Conclusion**

In *Superior Wire* v. *United States, supra,* while the Federal Circuit acknowledged the lower court's reference to the producers' to consumers' goods shift, the Federal Circuit only analyzed the changes in name, character and use. The Federal Circuit also relied on *Uniroyal, supra,* where that distinction was not found to be determinative as to substantial transformation. The lower court in *Superior Wire* also did not analyze the facts of *Midwood, supra,* although it was a metal objects case. The court in *Ferrostaal, supra,* did not advocate the dilution of the traditional substantial transformation test in not finding the producers' to consumers' goods distinction to be particularly determinative. In *SDI, National Juice, Uniroyal,* and *CPC, supra,* the *Midwood* argument was rejected and the courts

examined the ''essence'' of the articles at issue. The court in *National Hand Tool, Aztec Milling, Murray,* and *Zuniga, supra,* did not even mention the *Midwood* decision. The only cases that really did not outright reject or diminish the application of the producers' to consumers' good shift are *Torrington* and *Madison Galleries, supra,* but the citation to *Midwood in Madison Galleries* does not even stand for the position that the article became a ''product of'' the GSP country.

Customs has provided notice in the Customs Bulletin (and **Federal Register**) as required by 19 U.S.C. 1625(d) of its intention not to rely on the producers' to consumers' good test. The opposing commenters have not cited a single decision (not even the favorable *Torrington* decision) where a court decided the substantial transformation test solely based on the producers' to consumers' good transition.

Furthermore, since the transition from producers' to consumers' good is not necessarily indicative of a substantial transformation, unlike a change in ''essence'', the purpose of the producers' to consumers' goods analysis does not aid in the determination of whether an article underwent a substantial transformation. Therefore, Customs will no longer rely on the distinction between producers' goods and consumers' goods in making country of origin determinations.

Inasmuch as the question of whether a good has been substantially transformed is based on specific facts, parties who have received rulings based on the producers' goods-consumers' goods analysis articulated in *Midwood* can continue to rely on those rulings unless and until Customs modifies or revokes them pursuant to 19 U.S.C. 1625, or they are specifically overruled by a court.

Approved: February 11, 2000.

**Raymond W. Kelly,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–6115 Filed 3–13–00; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Art Advisory Panel of the Commissioner of Internal Revenue; Availability of Report of 1999 Closed Meetings

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of availability of report on closed meetings of the Art Advisory Panel.

**SUMMARY:** The report is now available.

Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act; and 5 U.S.C. section 552b, the Government in the Sunshine Act: A report summarizing the closed meeting activities of the Art Advisory Panel during 1999, has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management and is now available for public inspection at: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW, Washington, DC 20224.

Requests for copies should be addressed to: Director, Disclosure Operations Division, Attn: FOI Reading Room, Box 388, Benjamin Franklin Station, Washington, DC 20224. Telephone (202) 622–5164 (Not a toll free telephone number).

The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, C:AP:AS, Internal Revenue Service/Appeals, 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694–1861 (Not a toll free telephone number).

**Charles Rossotti,**

*Commissioner of Internal Revenue.*

[FR Doc. 00–6259 Filed 3–13–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Art Advisory Panel—Notice of Closed Meeting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of closed meeting of Art Advisory Panel.

**SUMMARY:** Closed meeting of the Art Advisory Panel will be held in Washington, DC.

**DATES:** The meeting will be held April 12 and 13, 2000.

**ADDRESSES:** The closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2000 in Room 4600E beginning at 9:30 am, Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Karen Carolan, C:AP:AS 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694–1861, (not a toll free number).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on April 12 and 13, 2000 in Room 4600E beginning at 9:30 am, Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Bob Wenzel,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 00–6262 Filed 3–13–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, So. Fla District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the So. Fla Citizen Advocacy Panel will be held in Sunrise, Florida.

**DATES:** The meeting will be held Friday, March 24, 2000 and Saturday, March 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy Ferree at 1–888–912–1227, or 954–423–7973.