

Dated: March 8, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00-6246 Filed 3-13-00; 8:45 am]

**BILLING CODE 4810-31-P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Information Collected in Support of Small Producer's Wine Tax Credit.

**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie D. Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927-8320.

**SUPPLEMENTARY INFORMATION:** *Title:* Information Collected in Support of Small Producer's Wine Tax Credit.

*OMB Number:* 1512-0540.

*Recordkeeping Requirement ID Number:* ATF REC 5120/11.

*Abstract:* ATF is responsible for the collection of the excise tax on wine. Certain small wine producers are eligible for a credit which may be taken to reduce the tax they pay on wines they remove from their own premises. The record retention period for all wine premises records is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 280.

*Estimated Time Per Respondent:* None.

*Estimated Total Annual Burden Hours:* 1.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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**DATES:** Written comments should be received on or before May 15, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Robert Ruhf, Revenue Division, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927-8188.

**SUPPLEMENTARY INFORMATION:** *Title:* 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements.

*OMB Number:* 1512-0554.

*Form Number:* ATF F 5000.28T.

*Abstract:* A floor stocks tax has been imposed on cigarettes. All persons who hold for sale any cigarettes on January 1, 2000, must take an inventory. Each person will be required to make either a record of the physical inventory or a book or record inventory supported by the appropriate source records.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 400,000.

*Estimated Time Per Respondent:* 3 hours (small establishment) and 12 hours (large establishment, 2 people inventorying) and 30 minutes to complete ATF F 5000.28T.

*Estimated Total Annual Burden Hours:* 1,532,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

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## 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