

# U.S. Customs and Border Protection



## NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN OFFICE WORKSTATIONS

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

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain office workstations. Based upon the facts presented, CBP has concluded in the final determination that the U.S. is the country of origin of the office workstations for purposes of U.S. government procurement.

**DATES:** The final determination was issued on April 11, 2011. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination on or before May 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Elif Eroglu, Valuation and Special Programs Branch: (202) 325-0277.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on April 11, 2011, pursuant to subpart B of part 177, Customs Regulations (19 C.F.R. part 177, subpart B), CBP issued a final determination concerning the country of origin of the Vivo and Ethospace office workstations which may be offered to the U.S. Government under an undesignated government procurement contract.

This final determination, Headquarters Ruling Letter (“HQ”) H134536, was issued at the request of Herman Miller, Inc. under procedures set forth at 19 C.F.R. part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511-18). In the final determination, CBP has concluded that, based upon the facts presented, the assembly of the Vivo and Ethospace office workstations in the U.S., from parts made in China, Mexico, and the U.S., constitutes a substantial transformation, such

that the U.S. is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 C.F.R. § 177.29), provides that notice of final determinations shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: April 11, 2011

SANDRA L. BELL  
*Executive Director*  
*Regulations and Rulings*  
*Office of International Trade*

Attachment

**HQ H134536****April 11, 2011****OT:RR:CTF:VS H134536 EE****CATEGORY: Marking**

LISA A. CROSBY  
SIDLEY AUSTIN, LLP  
1501 K STREET, NW  
WASHINGTON, D.C. 20005

**RE:** U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Office Workstations

DEAR Ms. CROSBY:

This is in response to your correspondence of November 15, 2010, supplemented by your letter of March 10, 2011, requesting a final determination on behalf of Herman Miller, Inc. (“Herman Miller”), pursuant to subpart B of part 177, U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 177.21 *et seq.*). Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the Vivo and Ethospace office workstations. We note that Herman Miller is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

**FACTS:**

Herman Miller is a U.S. supplier of furniture products and accessories for home, office, healthcare and learning environments. The merchandise at issue is Herman Miller’s Vivo and Ethospace office workstations. You state that Herman Miller engineered and designed the office workstations wholly within the U.S. The assembly and installation of the office workstations, from U.S. and imported components, occurs in the U.S.

You state that the Vivo and Ethospace office workstations both feature “frame-and-tile” construction, which consists of a sturdy steel frame on which a variety of components can be hung, including shelving, storage units, drawer units, work surfaces, lighting, decorative tiles/panels, etc. The open frame also has a large capacity to house wiring and cable, permitting a workstation to accommodate computers, printers and other office equipment.

You state that the Vivo and Ethospace office workstations can be assembled in a variety of configurations, depending on the needs and constraints of a given office space. Herman Miller offers 90-, 120-, and 135-degree connectors for its workstations which permit its customers to shape their office environment - enclosed, open, facing in, facing out, shared, private, etc. The height of a workstation can also vary from 30 to 118 inches, permitting different levels of privacy.

You state that Herman Miller’s sales representatives, which are often independent distributors, work directly with each customer to design a work-

station architecture best suited to the specific office space. Once a design decision has been made, Herman Miller receives from its sales representative a detailed order identifying each component that will be used in the custom workstation. Herman Miller operates on a make-to-order manufacturing schedule; therefore, when an order is received from a sales representative, Herman Miller orders from its supply chain the parts and components necessary to begin the manufacturing process. Herman Miller manufactures certain components as necessary and palletizes all of the components for shipment to a customer site in the U.S. At the customer site, the components are assembled together according to the custom design. Herman Miller does not permit its customers to purchase workstations for self-installation. Rather, trained furniture installers employed by Herman Miller's distributors/representatives install the workstations.

You state that depending on the specific configuration selected by a customer, a Vivo and Ethospace office workstation can be made up of hundreds of components, including metal frames, laminated work surfaces, painted or fabric tiles, cabinet doors, electrical accessories and other hardware. With respect to the two representative configurations identified for purposes of this ruling request, you state that the Vivo office workstation has approximately 40 components (excluding fasteners and brackets) and the Ethospace office workstation has approximately 14 components (excluding fasteners and brackets). All of the materials are of U.S., Chinese, or Mexican origin.

You submitted the costed bills of materials for the representative Vivo office workstation and the Ethospace office workstation. The Vivo workstation's components from China include: connectors, connection hardware, and surface cantilevers. The components from Mexico include: a power harness extender, power harnesses, and receptacles. Components originating in the U.S. include: frames, connector covers, top cap connectors, finished ends, tiles, work surfaces, open supports, sliding door storage units, utility task lights, v-pull freestanding pedestals, and v-pull freestanding lateral files. The Ethospace workstation's components from China are draw rods. The components from the U.S. include: tiles, frames, connectors, finished ends, work surfaces, a flipper door unit, a shelf, task lights, and a w-pull support pedestal. The installation times for the representative Vivo and Ethospace workstations are approximately seven and a half hours and seven hours, respectively. Of the total cost of production for the Vivo workstation, 83 percent is attributable to U.S. origin costs, including materials, labor, and overhead. Of the total cost of production for the Ethospace workstation, 98 percent is attributable to U.S. origin costs.

You state that Herman Miller self-manufactures many of the components used in its workstations at its Michigan facility. For example, with respect to the work surfaces used in its workstations, Herman Miller staff cut-to-size domestically-sourced raw particle board and then bond to each board a high pressure laminate top, a backer and edge bands. With respect to the frames, Herman Miller staff roll form rolled steel (coils) from a domestic source into rails and stiles, which are then welded together using a special fixture to form the frames for its workstations. Staff then apply an autophoretic coating to the frames (requiring five stages) and attach glides to the bottoms of the frames. Herman Miller staff also manufacture the tiles used in workstations, using U.S.-origin raw materials.

You state that the installation procedures for the Vivo and Ethospace office workstations are substantially similar. The first step in installing a work-

station is to mark the perimeter for the workstation based on its layout. This is done by laying strips of tape on the ground in the form of the layout for the walls. Next, electrical and non-electrical wall bases are laid along the tape lines. The electrical bases are then wired, which entails running wires along the bases and connecting the wires to a power source and the electrical outlets in the bases.

Once the bases are in place, the frames for the wall panels, windows and other features of the workstation are installed. The frames are fitted on top of the bases and secured with brackets and hand-driven screws. As the frames are inserted, the electrical wiring is run through the interior of the frame as needed to accommodate the location of the power source.

The wall panels, windows and other special tiles are then installed in the bases and frames. The bottom of a wall panel is inserted into the slot of a base and the slots of the surrounding frame. This step is repeated until all of the wall panels are joined to their corresponding bases and frames. In some cases, a half-sized wall panel is used so that a window or special tile may be installed above it. A window/tile is attached to a half-size wall panel and the corresponding frame using brackets, hand-driven screws and other fasteners. This step is repeated until all wall panels and windows/tiles are securely connected.

Next, the frame connectors of the workstation are assembled. The connectors are slid into the frames. They are then secured with hand-driven screws and other fasteners. This step is repeated until all of the frames are connected.

The tops of the wall panels are then finished. This involves fastening caps and top plates to the top of each wall panel to eliminate rough edges. These items are then secured with hand-driven screws and other fasteners.

With the structure of the office workstation thus in place, the work surface is installed next. Brackets are mounted on the relevant panels and secured with hand-driven screws and other fasteners. The work surface is then placed on the brackets, adjusted to ensure that it is level, and secured with hand-driven screws and other fasteners. Open supports are added to either side of the work surface to enhance stability. They are secured to the work surface with hand-driven screws and other fasteners.

Shelves, flipper units, and sliding door storage units are then added to the office workstation in a similar manner. Brackets are first fitted and secured into place with hand-driven screws and other fasteners. Then, the shelves, flipper units and storage units are placed onto the brackets, leveled, and secured with hand-driven screws and other fasteners.

The bookcase is installed next by sliding it beside the relevant wall panels and ensuring that it is level. The leg glides are adjusted as necessary. A drawer handle also is added to the bookcase and installed using hand-driven screws.

You provided a copy of the product datasheets for the Vivo and Ethospace office workstations as well as photos of the representative configurations for a Vivo office workstation and an Ethospace office workstation. Additionally, you provided a copy of the design materials, the list of patents applicable to the Vivo and Ethospace office workstations, a video which depicts the installation procedures for the Vivo and Ethospace office workstations, the overview of Herman Miller's installation certification program, the installation procedures, and a breakdown of the time typically required to install the representative Vivo and Ethospace workstations.

**ISSUES:**

- (1) What is the country of origin of the Vivo and Ethospace office workstations for the purpose of U.S. government procurement?
- (2) Whether Herman Miller is the ultimate purchaser of the imported components and whether only their outermost container needs to be marked.

**LAW AND ANALYSIS:***Government Procurement*

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

*See also*, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as:

...an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 C.F.R. § 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item’s components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended

on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Carlson Furniture Industries v. United States*, 65 Cust. Ct. 474 (1970), the U.S. Customs Court ruled that U.S. operations on imported chair parts constituted a substantial transformation, resulting in the creation of a new article of commerce. After importation, the importer assembled, fitted, and glued the wooden parts together, inserted steel pins into the key joints, cut the legs to length and leveled them, and in some instances, upholstered the chairs and fitted the legs with glides and casters. The court determined that the importer had to perform additional work on the imported chair parts and add materials to create a functional article of commerce. The court found that the operations were substantial in nature, and more than the mere assembly of the parts together.

In Headquarters Ruling Letter (“HQ”) 561258, dated April 15, 1999, CBP determined that the assembly of numerous imported workstation components with the U.S.-origin work surface, the essential and largest component of the workstation, into finished workstations constituted a substantial transformation. CBP found that the imported components lost their identity as leg brackets, drawer units, panels, etc. when they were assembled together to form a workstation.

In the instant case, the Vivo office workstation has approximately 40 components and the Ethospace office workstation has approximately 14 components which are proposed to be assembled in the U.S. Regarding both types of workstations, we note that the major components such as the work surfaces, the frames, and the tiles are of U.S. origin. Regarding the Vivo workstation, the U.S.-sourced frames, connector covers, top cap connectors, finished ends, tiles, work surfaces, open supports, sliding door storage units, utility task lights, v-pull freestanding pedestals, and v-pull freestanding lateral files will be assembled with the imported components which will take approximately seven and a half hours. Regarding the Ethospace workstation, the U.S.-sourced tiles, frames, connectors, finished ends, work surfaces, flipper door unit, shelf, task lights, and w-pull support pedestal will be assembled with the imported components which will take approximately seven hours. Under the described assembly process, we find that the foreign components lose their individual identities and become an integral part of a new article, the Vivo or the Ethospace office workstation, possessing a new name, character and use. Based upon the information before us, we find that the imported components that are used to manufacture the Vivo and the Ethospace office workstations, when combined with the U.S. origin components, are substantially transformed as a result of the assembly operations performed in the U.S., and that the country of origin of the Vivo and the Ethospace office workstations for government procurement purposes is the U.S.

### *Marking*

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 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.” *States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940). Part 134, U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. §134) implement the country of origin marking requirements and exceptions of 19 U.S.C. §1304. Section 134.1(b), CBP Regulations (19 C.F.R. §134.1(b)), defines “country of origin” as:

[T]he 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 regulations]...

As previously noted, in HQ 561258, dated April 15, 1999, CBP considered the country of origin marking requirements for certain workstation office furniture. In that case, the importer manufactured office workstation furniture in the U.S. using various components that were manufactured by its subsidiary in Italy. The Italian components were combined with the work surfaces made in the U.S., shipped to the customer’s site, and assembled by the importer’s installers into finished workstations. Additionally, some of the Italian components were shipped to the importer and kept in stock to replace damaged or lost material. These replacement parts were kept in their original individual packing until they were required to be shipped to a customer. CBP determined that the assembly of the imported components with the U.S.-origin work surface into the finished workstations resulted in a substantial transformation and that provided the importer installed and assembled the components together, the importer would be the ultimate purchaser and it would be acceptable to only mark the outer shipping crate in which the foreign components were imported.

Similarly in this case, we find that Herman Miller is the ultimate purchaser since Herman Miller (or its distributor/representative) substantially transforms the imported components as a result of installation at the customer’s site. Accordingly, it is acceptable only to mark the outside shipping crate in which the goods are imported and transported to Herman Miller. With regard to the replacement parts, provided they are also installed by Herman Miller (or its distributor/representative), only the outer original individual packing needs to be marked. However, if the customer itself is supplied with the replacement parts and performs the installation, they must receive these replacement parts in properly marked packing.

**HOLDING:**

The imported components that are used to manufacture the Vivo and Ethospace office workstations are substantially transformed as a result of the assembly operations performed in the U.S. Therefore, we find that the country of origin of the Vivo and Ethospace office workstations for government procurement purposes is the U.S. Provided Herman Miller installs and



assembles the components together, Herman Miller is the ultimate purchaser and it will be acceptable to only mark the outer shipping crate in which the foreign components are imported.

Notice of this final determination will be given in the *Federal Register*, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the *Federal Register* notice referenced above, seek judicial review of this final determination before the Court of International Trade.

*Sincerely,*

SANDRA L. BELL

*Executive Director*

*Regulations and Rulings*

*Office of International Trade*

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