

# U.S. Customs and Border Protection

## *General Notices*

### **NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING WALKERS**

**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 walkers which may be offered to the United States Government under a government procurement contract. Based upon the facts presented, in the final determination CBP concluded that Hong Kong is the country of origin of the walkers for purposes of U.S. Government procurement.

**DATE:** The final determination was issued on October 22, 2008. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within December 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Gerry O’Brien, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–572–8792).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on October 22, 2008, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain walkers which may be offered to the United States Government under a government procurement contract. This final determination, in HQ H033839, was issued at the request of Drive Medical Design and Manufacturing under procedures set forth at 19 CFR 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 concluded that, based upon the facts presented, certain articles will be substantially transformed in Hong Kong. Therefore, CBP found that Hong Kong is the country of origin of the finished articles for purposes of U.S. Government procurement.

Section 177.29, Customs Regulations (19 CFR § 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 CFR § 177.30), provides that any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: October 22, 2008

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ H033839**  
October 22, 2008  
MAR-2-05 OT:RR:CTF:VS H033839 GOB  
**CATEGORY:** Marking

BETH C. RING, ESQ.  
SANDLER, TRAVIS & ROSENBERG, P.A.  
551 Fifth Avenue  
New York, NY 10176

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

DEAR MS. RING:

This is in response to your letter of July 18, 2008, requesting a final determination on behalf of Drive Medical Design and Manufacturing (“Drive Medical”), pursuant to subpart B of Part 177, Customs and Border Protection (“CBP”) Regulations (19 CFR § 177.21 *et seq.*). You made a supplemental submission on September 29, 2008. 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 certain walkers. We note that Drive Medical is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

**FACTS:**

You describe the pertinent facts as follows. Drive Medical will assemble the walkers at a facility in Hong Kong. You state that the two “U” frame side

pieces will be manufactured in Hong Kong. All of the other parts will be manufactured in China. The parts consist of the following:

- two “U” frame side pieces
- two release pins
- two springs
- four brass pins
- four stainless steel wire springs
- four crossbars
- one “H” frame
- four silencer caps
- four rubber tips
- two composite plastic hand grips
- two plastic push buttons
- an assortment of steel screws and nuts

You describe the manufacturing process as follows:

- The side frame is fitted with a handle grip using high pressure air to seat the handle in the proper position, The handle grip is heated prior to this process for better malleability.
- The top cross brace is secured to the side frame using a stainless steel star nut applied with an air screwdriver with a predetermined torque setting. This process is carried out on both front and back of the side frame and on both the left and right side.
- The side frames are placed through the ends of the center “H” frame. During this process a silencer ring is placed on the bottom tubes of the “H” frame, and an internal spacer is wrapped on the inside of the top of the “H” frame to reduce “wobble.”
- A rivet with plastic guide is now mounted under the “H” frame directly to the side frame on both sides. These rivets hold the “H” frame in place.
- The lower side “U” frame support is now riveted to the side frame, front and back, on both sides of the walker.
- Release pins are dropped into both sides of the “H” frame to create the folding mechanism catch. A spring and “C” clamp are added to the release pin on both sides of the walker.
- A flat folding guide plate is riveted to both sides on top of the release pins. Two rivets are used to secure the plate. One rivet is used to secure the side frame. The other is used to secure the folding guide plate to the “H” frame.
- The rivet that holds the flat folding guide plate to the “H” frame is outfitted with a plastic guide washer by placing the guide washer over the rivet during installation. This process allows for smooth operation when opening and folding the walker. The rivet is calibrated in tension for smooth operation and to reduce “wobble.”
- A plastic release button is riveted to the flat folding guide that initiates the folding mechanism. Pushing the plastic release activates the release pin.
- The rivet that secures the plastic release pad is calibrated to ensure a positive “click” when securely opened and for easy functioning.

- Four brass buttons are inserted into the four legs of the side frames. The brass buttons are inserted into the leg of the walker. A wire spring is added to the button before insertion.
- Four anti-rattle bushings are pressed and hammered to the bottom of each side frame leg.
- A silencer cap and tip are pressed and hammered to each external adjustable height leg and assembled to the walker.
- A rubber tip is heated in this process to ensure a snug fit.
- The legs are attached to the walker to ensure the proper fit and are then removed for shipping.
- Operation stickers and manuals are added to the walker.
- The walker is individually bagged, boxed and shipped.

You further state as follows. The walker is manufactured to Drive Medical's specifications in order to impart characteristics of strength, durability, and flexibility. The design of the front cross frame was developed in the U.S. The calibration of the opening and closing mechanism is important to the operation of the walker in that it is essential that the user of the walker be able to open and close it with little effort. You state that the cost of the two "U" frame side pieces is approximately 52 percent of the total cost of the components and the cost of manufacturing in Hong Kong (including the cost of the two "U" frame side pieces) is 70 to 80 percent of the total cost of the walker.

**ISSUE:**

What is the country of origin of the subject walkers for the purpose of U.S. Government procurement?

**LAW AND ANALYSIS:**

Pursuant to Subpart B of Part 177, 19 CFR § 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 CFR § 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 Procurement Regulations. See 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Procurement 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 CFR § 25.403(c)(1). The Federal Procurement 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 CFR § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See*, C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983). In *Uniroyal*, the court determined that a substantial transformation did not occur when an imported upper, the essence of the finished article, was combined with a domestically produced outsole to form a shoe.

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.

You cite HQ H017620, dated February 5, 2008, where CBP held that certain imported components of a flashlight and replacement lens head subassembly were substantially transformed as a result of manufacturing operations in the U.S. In that ruling, CBP stated:

In support of this conclusion, we agree that the U.S.-origin LED imparts the essential character to both the replacement part and the finished product, as it generates the primary light of both products. We also recognize that Energizer has expended significant resources in connection with the design and development of the subject flashlight in the United States. Moreover, the U.S.-origin LED and the labor performed in the United States during the assembly and testing operations represent a majority of the costs associated with the production of both the replacement lens head subassembly and the finished flashlight.

After a consideration of the evidence of record, we find that the operations in Hong Kong, including the manufacture in Hong Kong of the two “U” side

frame pieces, will result in a substantial transformation of the components imported into Hong Kong. In making this finding, we note that all of the assembly operations will occur in Hong Kong and that the two “U” side frame pieces, which are manufactured in Hong Kong, are extremely vital parts of the walkers.

Based upon this finding, we determine that the country of origin of the walkers for the purpose of government procurement is Hong Kong.

**HOLDING:**

The operations to be performed in Hong Kong will result in a substantial transformation of the goods imported into Hong Kong from China. Therefore, the country of origin of the walkers for the purpose of government procurement is Hong Kong.

Notice of this final determination will be given in the *Federal Register*, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 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.

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

[Published in the Federal Register, October 31, 2008 (73 FR 64978)]

**Docket No. USCBP-2008-0101**

**Notice of Meeting of The Departmental Advisory Committee  
on Commercial Operations of Customs and Border  
Protection and Related Homeland Security Functions  
(COAC)**

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

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (“COAC”) will meet on November 20, 2008 in Washington, DC. The meeting will be open to the public.

**DATE:** COAC will meet Thursday, November 20 from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed its business. If you plan to attend, please contact Ms. Wanda Tate on or before Monday, November 17, 2008.

**ADDRESSES:** The meeting will be held at the Ronald Reagan Building in the Rotunda Ballroom, 1300 Pennsylvania Avenue, NW, Washington, DC. Written material and comments should reach the contact person listed below by November 17, 2008. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by November 17, 2008. Comments must be identified by USCBP-2008-0101 and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** [traderelations@dhs.gov](mailto:traderelations@dhs.gov). Include the docket number in the subject line of the message.
- **Fax:** 202-344-2064.
- **Mail:** Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW, Room 8.5C, Washington, DC 20229.

Instructions: All submissions received must include the words “Department of Homeland Security” and the docket number for this action. Comments received will be posted without alteration at [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

Docket: For access to the docket to read background documents or comments received by COAC, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW, Room 8.5C, Washington, DC 20229; [traderelations@dhs.gov](mailto:traderelations@dhs.gov); telephone 202-344-1440; facsimile 202-344-2064.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS and the Department of the Treasury.

The eighth meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

**Tentative Agenda**

1. Advance Trade Data (“10+2”).
2. C-TPAT (Customs-Trade Partnership Against Terrorism).
3. Intellectual Property Rights Enforcement.
4. Customs Bonds.
5. Import Safety Initiatives.
6. World Customs Organization Updates.
7. CBP Trade Strategy.
8. Agriculture Programs Update.

**Procedural**

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan Building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close-of-business Monday, November 17, 2008, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-2064.

**Information on Services for Individuals with Disabilities**

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Dated: November 3, 2008

KIMBERLY A. MARSHO,  
*Director,*  
*Office of Trade Relations,*  
*U.S. Customs and Border Protection.*

[Published in the Federal Register, November 5, 2008 (73 FR 65871)]