

U.S. Customs and Border Protection



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING TONER CARTRIDGES AND IMAGE DRUMS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain toner cartridges and image drums to be offered to the United States Government under an undesignated government procurement contract. Based upon the facts presented, in the final determination CBP concluded that Japan is the country of origin of the subject toner cartridges and the United States is the country of origin of the subject image drums for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 9, 2009. 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 16, 2009.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0041).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 9, 2009, 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 toner cartridges and image drums to be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ W563548, was issued at the request of Oki Data Americas, Inc. 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).

The final determination concluded that, based upon the facts presented, the replacement in the United States of minor components of U.S. and foreign origin and the addition of Japanese-origin toner to a Chinese-origin toner cartridge do not substantially transform the toner cartridge into a product of the United States. Therefore, the last country in which the toner cartridge undergoes a substantial transformation is based on the essential character of the toner cartridge, which is the toner from Japan. Based upon the facts presented, the final determination also concluded that the disassembly in the United States of a Thai-origin image drum, the cleaning and reassembly of salvageable parts, and the replacement of a significant number of parts essential to the functionality of the image drum result in a substantial transformation of the components into a product of the United States.

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: November 9, 2009

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

Attachment

HQ W563548

November 9, 2009

MAR-2-05 RR:CTF:VS W563548 KSG

CATEGORY: Marking

MR. STEPHEN E. BECKER

*PILLSBURY WINTHROP SHAW PITTMAN LLP**2300 N STREET, N.W.**WASHINGTON, DC 20037-1122*

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, Customs and Border Protection Regulations (19 C.F.R. § 177); Final Determination; country of origin of remanufactured toner cartridges and image drums

DEAR MR. BECKER:

This is in response to your letter dated July 28, 2006, requesting a final determination on behalf of Oki Data Americas, Inc. (“Oki Data”), pursuant to subpart B of Part 177, Customs Regulations (19 C.F.R. § 177.21 *et seq.*). Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), U.S. Customs and Border Protection (“CBP”) issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign 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 remanufactured toner cartridges and image drums. We note that Oki Data 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. In issuing this final determination, we have given consideration to the arguments presented during a meeting at our offices on November 17, 2006, and your additional submissions dated September 12, 2006, September 28, 2006, November 17, 2006, and November 30, 2006, which include photographs of the articles at various stages of the processes performed.

FACTS:*I. Toner Cartridges*

You advise us that Oki Data will remanufacture C7300/7500 Series toner cartridges at its facility in Mount Laurel, New Jersey. You state that the spent toner cartridges were originally manufactured in China and that the toner cartridges were used in printers in the United States. You also indicate that the actual cartridges lack any notation of their origin.

You advise that the toner cartridge is comprised of 52 parts plus toner. The remanufactured cartridge will consist of 20 newly manufactured parts: 14 from the United States, 1 from the United Kingdom, and 5 from China. Such parts include, among others, the stopper film, the toner cap, the lever stopper, the left and right lockout plates, and, if damaged, the foam seal cap, and seal sponge. In addition, the remanufactured cartridges will be filled with new toner of Japanese origin, which you advise is the most valuable component of

the remanufactured cartridge. Thirty-two parts will be salvaged from the used cartridges and reused in the remanufactured toner cartridge.

When the depleted cartridges arrive at the facility in New Jersey, they are inspected for salvage. Acceptable cartridges will undergo the following key remanufacturing operations: (1) the exterior of the cartridge is vacuumed; (2) the seal tape, lever stopper, and remaining toner are removed; (3) the left side plate and spiral rod are removed and cleaned; (4) if necessary, the foam seal cap and seal sponge are replaced; (5) the cartridge interior is vacuumed and cleaned; (6) the stopper film is removed from the inner shutter and replaced with a new stopper film; (7) the inner shutter is reassembled; (8) the toner cap is removed; (9) the mixing bar and spiral rod are reinserted; (10) the left side plate is reassembled, and the technician verifies that the mixing bar and spiral rod engage with the mixing boss of the left side plate; (11) the partition film is reset; (12) seal tape is applied to the cartridge; (13) new toner is added to the cartridge; (14) a new toner cap and new lever stopper are installed; (15) the cartridge exterior is vacuumed and cleaned; (16) the cartridge is inspected for leakage; (17) a bar code is printed and applied to the cartridge; (18) the cartridge and light-emitting diode ("LED") lens cleaner are placed into a black poly bag, which is then heat sealed; (19) the bagged cartridge is placed in a box, and a duplicate bar code label is applied to the box; and (20) in some instances, four boxed cartridges are inserted into labeled four-pack boxes, which are placed on pallets.

II. *Image Drums*

Oki Data will remanufacture the C7300/C7500 Series image drums at its facility in Mount Laurel, New Jersey. You state that the used image drums originally were manufactured in Thailand and that the image drums were used in printers in the United States. You also indicate that the actual image drums lack any notation of their origin.

You advise that the image drum is comprised of 110 component parts. Of this number, 56 parts will be newly manufactured in various countries: 12 in the United States, 1 in Canada, 5 in Japan, and 38 in Thailand. Several of the newly manufactured parts that will replace the worn parts of the used image drum are significant to the functionality of the product and include, among others, the organic photoreceptor drum ("OPC"), the developing roller, the charge roller, and the cleaning blade. All of these parts and the new lubricating toner powder originate in Japan. You state that the OPC drum is the most valuable component of the image drum. Fifty-four parts will be salvaged from the used image drums.

When the used image drums arrive at the New Jersey facility, their revision levels and previous remanufacturing statuses are verified. Acceptable image drums undergo the following key remanufacturing operations: (1) the top cover of the image drum is removed and cleaned; (2) the developer blade assembly is removed and the blade is discarded; (3) the left side plate is removed to expose the OPC drum, the cleaning blade, and the charge, developer, and sponge rollers; (4) the charge roller is removed and discarded; (5) the right side plate is removed; (6) the developer roller and gear are removed and discarded; (7) the toner powder is removed from the sponge roller assembly; (8) the OPC drum is removed and discarded; (9) the roller sponge assembly is removed, the mixing bar and plastic plates are saved, and the roller sponge, six gears, the sponge seals, felt sponges, and sub-sponge roller are discarded; (10) the cleaning blade assembly is removed and discarded;

(11) the spring spiral is removed from the frame base; (12) the disassembled parts are cleaned; (13) the left side plate is reassembled using a new gear belt, belt toner, spiral part, e-ring, and new gear idles and electrical contacts (certain revision levels will receive a new left side plate and frame base); (14) a new cleaning blade and cleaning gear are installed into the frame base; (15) a new roller sponge, new sponge seals and felt sponges, and the salvaged mixing bar and plastic plates are used to assemble a new roller sponge assembly, which is then attached to the frame base; (16) a new OPC drum, roller developer, and fuse assembly are installed into the frame base; (17) the right side plate is reattached to the frame base; (18) a new charge roller is installed in the right side plate assembly; (19) the left side plate assembly is attached to the frame base; (20) a new blade developer is installed into the frame base assembly; (21) new toner is added to the toner hopper of the blade developer; (22) the top cover is reattached to the frame base; (23) the image drum's print quality is tested; (24) the image drum is wrapped in two types of protective sheeting and a new toner cover is installed; (25) a serial number label and date code label are applied to the image drum; (26) the image drum is placed into a black bag and packed into a labeled box, along with the warranty sheet, ecology sheet, and shipping label; and (27) three single-pack boxes are placed into a labeled overpack box, which is loaded onto a pallet. Essentially, the spent image drum is almost completely disassembled, and the new parts mentioned above are used to construct a functioning image drum.

ISSUE:

What are the countries of origin of the remanufactured toner cartridges and image drums for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

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 on 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 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*, 6 Ct. Int'l

Trade 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported articles intact, a substantial transformation has not occurred. *Uniroyal Inc. v. United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). In *Uniroyal*, a country of origin marking case, the court considered whether the addition of outsoles in the United States to imported shoe uppers from Indonesia effected a substantial transformation of the uppers. In finding that the upper was the “very essence” of the completed shoe, the court held that a substantial transformation of the uppers did not occur, as the attachment of the outsoles to the uppers was a minor manufacturing or combining process that left the identity of the uppers intact. Hence, the uppers were required to be marked with Indonesia as their country of origin.

I. Disassembly and Remanufacturing Operations

CBP has examined disassembly and remanufacture of articles under a variety of circumstances. In some instances, CBP has found a substantial transformation to occur when articles are disassembled and used in the assembly of articles. In HRL 734213, dated February 20, 1992, CBP held that the disassembly of an imported computer monitor and the installation of a U.S. touchscreen constituted a substantial transformation of the monitor for marking purposes. In New York Ruling Letter (“NY”) 183759, dated June 28, 2002, CBP found that fuel tank assemblies disassembled from completed motor vehicles in Germany and imported into the United States were substantially transformed when the assemblies and the motor vehicle bodies were assembled into completed motor vehicles and sold in the United States. *See also* HRL 561322, dated May 11, 1999, (an aircraft fuselage, imported disassembled, was substantially transformed into a product of the United States when it was reassembled and combined with engines, avionics, and landing gear to make a completed aircraft). In NY G87305, dated March 12, 2001, CBP found that two laser printer cartridge models, originally manufactured in either China or Japan were to be marked as products of China as a result of remanufacturing operations performed in that country. CBP noted that these models were not simple toner cartridges, but models containing both development units and cleaning units. During the remanufacturing process, the cartridges were disassembled into over 30 individual parts or subassemblies, inspected, cleaned and reconditioned, and sorted by type into bins. The essential identity of the used cartridges was not maintained. Then, each cartridge received a new OPC drum, new toner, and a special foam part unique to the remanufacturing process, as well as other new components. In addition, a special seal assembly, a part also unique to the remanufacturing process, was added to some models. CBP found that significant value was added to the remanufactured laser printer cartridges and accounted for most of the cost of the finished cartridges.

In some instances, CBP has not found a substantial transformation when non-functioning articles were disassembled and returned to their functionality. In HRL 559740, dated October 3, 1996, CBP determined that failed power transformers shipped to Brazil for repair did not qualify for treatment under the GSP, as they did not undergo a substantial transformation. The repair operations consisted of the disassembly of the failed core/coil assembly,

the reuse of the core, if possible, the replacement and/or repair of parts, and the mounting of the repaired core assembly into the old tank shell. However, as the essential identity of the transformers was retained throughout the operations, CBP found that the transformers qualified for treatment under subheading 9802.00.50, HTSUS. *See also*, HRL 555313, dated June 19, 1990 (a substantial transformation did not occur when non-functional air conditioning compressors were exported to Mexico for disassembly, reconditioning, and reassembly with new parts into functional compressors; but, the repaired compressors were not eligible for subheading 9802.00.50, HTSUS, treatment as their component parts were separated without regard to maintaining the integrity of the original units); and HRL 557991, dated October 17, 1994, (used photocopier drum cartridges were eligible for subheading 9802.00.50, HTSUS, treatment, as replacing new corona wires, new photoreceptor drums, new cleaning blades, and new mylar sealing tape did not destroy the essential identity of the exported cartridges).

You also cite HRL 561412, dated January 31, 2000, which examined the NAFTA marking requirements for remanufactured toner cartridges, in support of your position that the toner cartridges and image drums are substantially transformed in the United States. In that case, spent toner cartridges were completely disassembled in Canada and no effort was made to preserve the essential identity of the spent cartridges. During the remanufacturing process, the photoreceptor drum was discarded in nearly 100 percent of all cases and other key components, which contributed to the functionality of the cartridges, such as magnetic rollers, corona wires, and cleaning blades, were discarded in almost every case. CBP only looked to the used toner cartridge as the “foreign material” that did not undergo the requisite tariff shift. Applying the hierarchy of the NAFTA Marking Rules, CBP found that the used toner cartridge was the material that imparted the essential character of the good, but because of the lack of reliable data as to the origin of the toner cartridge, the origin was determined under 19 CFR 102.11(d) as the last country in which the cartridges underwent production. We note that pursuant to 19 U.S.C. 1625(c)(1), HRL 561412 and HRL 560768 dated May 26, 1998 (another ruling concerning the origin of remanufactured cartridges), were revoked to allow consideration to not only the used cartridge as a “foreign material,” but to new parts incorporated into the remanufactured cartridge in determining the origin of the remanufactured cartridge. Accordingly, in H012926 dated March 31, 2009, CBP took into consideration the used cartridges and the new component parts in the remanufactured cartridges. As no one single material imported the essential character to the remanufactured cartridge, the origin was determined to be the last country in which the remanufactured cartridge underwent production, pursuant to 19 CFR 102.11(d)(3).

You also claim that in light of the recent new free trade agreements concerning recovered and remanufactured goods, that the toner cartridges and image drums should be considered to be substantially transformed in the U.S.

II. Toner Cartridges

In the instant case, parts from the toner cartridge are removed and inspected, and salvageable parts are cleaned for reassembly. The toner appears to be the only significant component replaced during the remanufacturing

operation. Other components having a mechanical function such as the shutters, mixing gear, mixing bar, and spiral attachment are not replaced. These operations are not as significant as the operations described in NY G87305, where the cartridges were completely disassembled, salvageable parts were sorted into bins, cleaned and reconditioned, major components of the cartridges, including the OPC drum and toner were replaced, and other new components, unique to the remanufactured product, were added. Moreover, the operations are not as extensive as the repair operations described in HRL 557991, where the replacement of the photoreceptor drum, cleaning blade, corona wire, and mylar sealing tape did not destroy the identity of the article and was deemed to be not so extensive as to create a new or different article.

In contrast to the operations performed on the imported fuselage in HRL 561322, the subject cartridges essentially are in their finished form at the beginning of the remanufacturing process. To restore their functionality, the toner is recharged, minor components are replaced, salvageable parts are cleaned, and the restored cartridge is tested. These operations are significantly less substantial than the operations described in HRL 561322, where the imported fuselage was an empty shell that needed several essential components added to it before it could function as an aircraft.

As such, the described remanufacturing operations do not substantially transform the used toner cartridge into a product of the United States. In considering the last country in which the toner cartridge underwent a substantial transformation, we believe that the new, imported toner imparts the essential character of the remanufactured toner cartridge. You also state that the toner, by far, is the most valuable component of the remanufactured cartridge. Therefore, we find that the remanufactured toner cartridge is a product of Japan for purposes of U.S. Government procurement.

III. Image Drums

In contrast to the remanufacturing of the subject toner cartridges, the remanufacturing operations for the image drums involve the assembly of numerous new parts that are essential to the functionality of the image drum. The image drums require the replacement of the OPC drum, charge roller, roller sponge, developer roller, cleaning blade, developer blade, fuse, electrical contacts, and gears, as well as many other parts. The toner also must be replenished. It appears that most of the components that contribute to the functionality of the image drum will be removed from the used image drum at the remanufacturing facility in New Jersey and replaced with new parts. In essence, the housing of the image drum and other minor components are being reused in the remanufacture of the image drum, but the majority of the parts that impart the functionality of the image drum are new components. This scenario is similar to the imported fuselage, or empty aircraft shell, described in HRL 561322, *supra*, where the addition of an interior, two engines, avionics, and landing gear was necessary to transform the product into a functioning aircraft. Moreover, in the instant case, depending upon the revision level of the used image drum, the remanufacturing process also may require the replacement of the frame base and side plates.

These operations appear to be significantly more extensive than the operations described in NY G87305, *supra*, where CBP found that used cartridges receiving new OPC drums, new toner, special parts unique to the remanufacturing process, and other new components were substantially transformed

into products of China. Moreover, they involve the replacement of many more parts that are essential to the functionality of the image drum than the repair operations described in HRL 557991, *supra*.

Thus, based on the facts provided, we believe that the disassembly of the used toner cartridge, the cleaning and reassembly of salvageable parts, and the replacement of a significant number of parts essential to the functionality of the drum are sufficient to substantially transform the non-functioning used image drum into a product of the United States. We also note that the remanufacturing operations for the image drum are complex, require technical skill, and add significant value to the image drums.

HOLDING:

Based upon the specific facts of this case, we find that the toner cartridges are not substantially transformed as a result of the described remanufacturing operations performed in the United States. The country of origin of the remanufactured toner cartridges for purposes of U.S. Government procurement is Japan.

We find that the image drums are substantially transformed into products of the United States when they undergo the described remanufacturing operations in the United States. Therefore, the country of origin of the remanufactured image drums is the United States.

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. 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,
Office of Regulations and Rulings,
Office of International Trade.

[Published in the Federal Register, November 16, 2009 (74 FR 58970)]

