

U.S. Customs and Border Protection



General Notice

DATES AND DRAFT AGENDA OF THE FORTY-EIGHTH SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION

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

ACTION: Publication of the dates and draft agenda for the forty-eighth session of the Harmonized System Committee of the World Customs Organization.

SUMMARY: This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

DATES: July 27, 2011

FOR FURTHER INFORMATION CONTACT: Joan A. Jackson, Staff Assistant, Tariff Classification and Marking Branch, U.S. Customs and Border Protection (202-325-0010), or David Beck, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

SUPPLEMENTARY INFORMATION:

Background

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System (“Harmonized System Convention”). The Harmonized Commodity Description and Coding System (“Harmonized System”), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC’s responsibilities include issuing clas-

sification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the forty-eighth and it will be held from September 20, 2011 to September 29, 2011.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

IEVA K. O’ROURKE

Chief

Tariff Classification and Marking Branch

Attachment



WORLD CUSTOMS ORGANIZATION
 ORGANISATION MONDIALE DES DOUANES
 Established in 1952 as the Customs Co-operation Council
 créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM
 COMMITTEE
 -
 48th Session
 -

NC1651E1c
 O. Eng.

Brussels, 27 July 2011.

**DRAFT AGENDA FOR THE 48TH SESSION
 OF THE HARMONIZED SYSTEM COMMITTEE**

From : Tuesday, 20 September 2011 (11:00 a.m.)

To : Thursday, 29 September 2011

N.B. : Monday, 19 September 2011 (10.00 a.m.) : Presessional Working Party (to examine the questions under Agenda Item V)

I. ADOPTION OF THE AGENDA

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| 1. Draft Agenda | NC1651E1c |
| 2. Draft Timetable | NC165281a |

II. REPORT BY THE SECRETARIAT

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| 1. Position regarding Contracting Parties to the HS Convention and related matters | NC1653E1a |
| 2. Report on the last meetings of the Policy Commission (65 th Session) and the Council (117 th /118 th Sessions) | NC1654E1a |
| 3. Approval of decisions taken by the Harmonized System Committee at its 47 th Session | NG0176E1
NC1650E1 |
| 4. Capacity building activities of the Nomenclature and Classification Sub-Directorate | NC1655E1a |
| 5. Co-operation with other international organisations | NC1656E1a |
| 6. New information provided on the WCO Web site | NC1657E1a |
| 7. Annual survey to determine the percentage of national revenue represented by Customs duties | NC1658E1a |
| 8. Progress report on the use of working languages for HS matters | NC1659E1a |
| 9. Content of the HS Classification Handbook | NC1691E1a |
| 10. Corrections to the HS 2012/2007 Correlation Tables | NC1692E1a |

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- III. GENERAL QUESTIONS
1. Correlation between the Harmonized System and the product coverage of selected international Conventions (amendments consequential to the Article 16 Recommendation of 26 June 2009) NC1660E1a
 2. Preparation and timing of HS 2012 publications and progress report on the implementation of the HS 2012 NC1661E1a
 3. New version of the Compendium of Classification Opinions NC1662E1a
- IV. REPORT OF THE PRESESSIONAL WORKING PARTY
1. Amendments to the Compendium of Classification Opinions to reflect the decision to classify the product named “Freia@Solbaertodd” in subheading 2106.90 NC1663E1a, Annex A
 2. Amendments to the Compendium of Classification Opinions to reflect the decision to classify spare cartridges for electronic cigarettes in subheading 3824.90 NC1663E1a, Annex B
 3. Amendments to the Compendium of Classification Opinions to reflect the decision to classify an assembly of two electrical switching devices in subheading 8537.10 NC1663E1a, Annex C
- V. REQUESTS FOR RE-EXAMINATION (RESERVATIONS)
1. Re-examination of the “Classification of products containing more than 99.2 % sodium sulphate and more than 98.5 % sodium sulphate, respectively” (Request by the Russian Federation) NC1664E1a
 2. Re-examination of the “Classification of certain types of monitors referred to as 23.1-inch Maritime Multi Display (MMD) Model JH 23T14 MMD” (Request by Egypt) NC1665E1a
- VI. FURTHER STUDIES
1. Application of General Interpretative Rule 2 (a) in respect of the classification of car-assembly sets (Request by the Russian Federation) NC1666E1a
 2. Possible amendment of the Explanatory Notes in respect of technologies used in the manufacture of ethyl alcohol NC1667E1a
 3. Classification of certain “motorcycle parts” (Request by Peru) NC1668E1a
 4. Classification of a dissolution testing unit (Request by Saudi Arabia) NC1669E1a
 5. Possible amendment of the Explanatory Note to heading 73.21 (Proposal by Jordan) NC1670E1
 6. Classification of tyres for career dump-body trucks (Request by the Russian Federation) NC1671E1a
 7. Possible amendments to the Explanatory Notes to clarify the classification of the product named “Freia@Solbaertoddy” NC1672E1a

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| 8. Classification of the product named “Nervinetas®” (Request by Switzerland) | NC1673E1a |
| 9. Possible amendments to the Explanatory Note to heading 15.09 (Request by Canada) | NC1674E1a |
| 10. Classification of “Lunacalcipol (INN List 102)” | NC1675E1a |
| 11. Classification of “Tonapofylinne (INN List 102)” | NC1676E1a |
| 12. Classification of “Pegdinetanib (INN List 103)” and the clarification of the classification of “Trastuzumab emtansine (INN List 103)” | NC1677E1a |
| 13. Corrigendum amendments to the Explanatory Notes to the HS 2012 | NC1678E1a |

VII. NEW QUESTIONS

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| 1. Classification of certain types of tripods (Request by the Secretariat) | NC1679E1a |
| 2. Possible amendment of the General Explanatory Note to Chapter 40 to clarify the classification of certain synthetic rubber products (Proposal by Canada) | NC1680E1a |
| 3. Possible amendments to Note 1 (b) and the General Explanatory Note to Chapter 38 (Request by Canada) | NC1681E1a |
| 4. Classification of “PARA@Spray” and “PARA@Plus” (Request by the Secretariat) | NC1682E1a |
| 5. Classification of the machines commercially referred to as “tablet computers” | NC1683E1a |
| 6. Classification of shrimp wonton products (Request by Thailand) | NC1684E1a |
| 7. Classification of certain types of “domestic/industrial” electromechanical machines and possible amendments to the Explanatory Notes to clarify criteria for distinguishing between “domestic” and “industrial” electro-mechanical machines (Request by Turkey) | NC1685E1a |
| 8. Possible amendments to the HS Nomenclature in respect of “Anti-malarial Commodities” (Proposal by the United States) | NC1686E1a |
| 9. Possible amendments to the Explanatory Note in respect of certain types of steel doors (Proposal by the Secretariat) | NC1687E1a |
| 10. Possible amendment of the Explanatory Note in respect of the wheels suitable for use with both the vehicles of heading 87.04 and the vehicles of heading 87.16 (Proposal by the Secretariat) | NC1688E1 |
| 11. Classification of mouse pads (Request by the Secretariat) | NC1689E1a |
| 12. Classification of packaged “Insulated Gate Bipolar Transistors (IGBTs)” (Request by Japan) | NC1693E1a |
| 13. Classification of boxes made of soapstone (Request by Switzerland) | NC1694E1a |

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| 14. Classification of the “X Rocker II Gaming Chair”
(Request by Canada) | NC1695E1a |
| 15. Classification of certain chemical products used for
lithium-ion batteries (Request by Japan) | NC1696E1a |
| 16. Possible amendment of the text of subheading
5601.2 (Proposal by the EU) | NC1697E1a |
| VIII. <u>ADDITIONAL LIST</u> | |
| 1. Classification of Micro/Mini SO cards (Re-
quest by India) | NC1698E1a |
| 2. Possible amendment of the Nomenclature in
respect of newsprint (Proposal by India) | NC1699E1a |
| 3. Possible amendments to the Nomenclature in
respect of “textiles in combination with plas-
tics” (Proposal by the Russian Federation) | NC1700E1a |
| IX. <u>OTHER BUSINESS</u> | |
| 1. List of questions which might be examined at a
future session | NC1690E1a |
| X. <u>DATES OF NEXT SESSIONS</u> | |

19 CFR PART 102**Rules of Origin***CFR Correction*

In Title 19 of the Code of Federal Regulations, Parts 0 to 140, revised as of April 1, 2011, on page 578, in § 102.20, in the table, the second entry for 8708.99 is removed.

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING A CERTAIN PATIENT TRANSPORT CHAIR**

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 a certain patient transport chair. Based upon the facts presented, CBP has concluded in the final determination that the U.S. is the country of origin of the patient transport chair for purposes of U.S. government procurement.

DATES: The final determination was issued on July 26, 2011. 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 on or before August 31, 2011.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 26, 2011, 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 the BREEZ patient transport chair which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, Headquarters Ruling Letter (“HQ”) H156919, was issued at the request of Electro Kinetic Technologies 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 has concluded that, based upon the facts presented, the assembly of the BREEZ patient transport chair in the U.S., from parts made in China, Canada, France, 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 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: July 26, 2011.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings, Office of Interna-
tional Trade.

Attachment

HQ H156919

July 26, 2011

OT:RR:CTF:VS H156919 EE

CATEGORY: Marking

ROBERT GARDENIER
M.E. DEY & Co., INC.
700 W VIRGINIA STREET SUITE 300
MILWAUKEE, WI 53204

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

DEAR MR. GARDENIER:

This is in response to your correspondence of March 14, 2011, telephone conference on June 10, 2011, and additional information you submitted on July 21, 2011, requesting a final determination on behalf of Electro Kinetic Technologies (“Electro Kinetic”), 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 BREEZ patient transport chair. We note that Electro Kinetic 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:

Electro Kinetic, headquartered in Germantown, Wisconsin, designs and manufactures ergonomically focused products used to transport people and materials within the retail, healthcare, and material handling industries. The merchandise at issue is the Electro Kinetic BREEZ patient transport chair engineered and assembled in the U.S. from U.S. and foreign components.

The BREEZ transport chair is intended to transport patients or mobility impaired individuals. With the drive system integrated into the wheelchair, the patient transport chair can be maneuvered through tight or crowded hallways, elevators and rooms, transporting patients up to 750 lbs.

The patient transport chair is produced in the U.S. from approximately 481 components. All of the components are of U.S., Chinese, Canadian, or French origin. The majority of the components are assembled in the U.S. into 26 subassemblies which are ultimately assembled with the remaining components into the final product.

You submitted the costed bill of materials for the patient transport chair. The significant materials which comprise the patient transport chair include: wheels, casters, arm weldments, anti-tip weldments, swivel locks, 17 cable assemblies, a transaxle subassembly (which includes a Chinese-origin transaxle), a circuit breaker, a guard plate, a static strap subassembly, a Chinese-

origin frame base weldment, a garment rod, a control box subassembly (which includes a French-origin handle circuit board, a control box, a key switch subassembly, and a forward/reverse switch subassembly), an s-drive subassembly, tire assemblies (which include wheel rims and foam filled tires), a charger subassembly (which includes a Canadian-origin charger), a control box plate, a high back flip seat, and batteries. It takes approximately six and a half hours to produce the finished patient transport chair.

You state that the production of the BREEZ patient transport chair in the U.S. begins with the production of 17 cable subassemblies which include: positive and negative battery cable subassemblies, a handle cable subassembly, an emergency stop switch subassembly, a horn potentiometer subassembly, a speed potentiometer subassembly, a brake cable subassembly, a black horn cable subassembly, a controller cable subassembly, a brown horn cable subassembly, a charger cable subassembly, a motor cable subassembly, and a battery jumper subassembly.

Next, the s-drive, which is part of s-drive subassembly, is programmed for acceleration, deceleration, and speed profiles. The transaxle subassembly, static strap subassembly, control box subassembly, keyswitch subassembly, forward/reverse switch subassembly, s-drive subassembly, tire assemblies, and charger assembly are produced. The wheels are added to the transaxle subassembly and assembled onto the frame. The control box subassembly, circuit breaker, charger assembly, horn and battery subassemblies are then installed onto the frame.

In the final assembly stage, the rear casters, front anti-tip casters, seat, seat belt, headrest, arm rests, foot rests and the IV pole are installed.

You provided a copy of the product brochure for the BREEZ patient transport chair.

ISSUE:

What is the country of origin of the BREEZ patient transport chair for the purpose 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 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 Headquarters Ruling Letter ("HQ") H095239, dated June 2, 2010, CBP held that certain upright and recumbent exercise bikes, assembled in the U.S., were products of the U.S. for purposes of U.S. government procurement. The exercise bikes were assembled from a range of U.S. and foreign components and subassemblies. With the exception of the standard console assembly, all of the subassemblies, which were ultimately assembled to produce the final product, were produced in the U.S. In finding that the imported components were substantially transformed in the U.S., CBP stated that the assembly process that occurred in the U.S. was complex and meaningful, required the assembly of a large number of components, and rendered the final article with a new name, character, and use.

As in HQ H095239, the BREEZ patient transport chair comprises the assembly of a large number of components, namely, 481 components. The majority of the components are assembled in the U.S. into 26 subassemblies which are then assembled with the remaining components into the finished patient transport chair. It takes approximately six and a half hours to produce the finished patient transport chair. We find that under the described assembly process, the foreign components lose their individual identities and become an integral part of the article, the patient transport chair, possessing a new name, character and use. The assembly process that occurs in the U.S. is complex and meaningful, involving the assembly of components into subassemblies which are then made into the final product. Therefore, based upon the information before us, we find that the imported components that are used to manufacture the patient transport chair are substantially transformed as a result of the assembly operations performed in the U.S. and that the country of origin of the patient transport chair for government procurement purposes is the U.S.

HOLDING:

The imported components that are used to manufacture the BREEZ patient transport chair 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 BREEZ patient transport chair for government procurement purposes is the U.S.

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*

[Published in the Federal Register, August 1, 2011 (76 FR 45845)]

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING IRIDIUM SATELLITE TELEPHONES

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 satellite telephones. We were asked to consider six scenarios. Based upon the facts presented, CBP has concluded in the final determination that the application board and transceiver board together convey the essential character of the phones and it is at their assembly and programming where the last substantial transformation occurs. Therefore, when the boards are assembled and programmed in Malaysia, the country of origin of the phones for purposes of U.S. government procurement is Malaysia. When the boards are assembled and programmed in Singapore, the country of origin of the phones for purposes of U.S. government procurement is Singapore.

DATES: The final determination was issued on July 28, 2011. 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 on or before September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on July 28, 2011, 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 satellite telephones which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H130306, was issued 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, the application board and transceiver board together convey the essential character of the phones and it is at their assembly and programming where the last substantial transformation occurs. Therefore, when the boards are assembled and programmed in Malaysia, the country of origin of the phones for purposes of U.S. government procurement is Malaysia. When

the boards are assembled and programmed in Singapore, the country of origin of the phones for purposes of U.S. government procurement is Singapore.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that a notice of final determination 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: July 28, 2011.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings, Office of Interna-
tional Trade.

Attachment

HQ H170315

July 28, 2011

MAR-2 OT:RR:CTF:VS H170315 HKP

CATEGORY: Origin Marking

KEVIN P. CONNELLY, Esq.
SEYFARTH SHAW, LLP
975 F STREET, N.W.
WASHINGTON, D.C. 20004-1454

RE: U.S. Government Procurement; Country of Origin of Iridium 9555 Satellite Telephones; Substantial Transformation; Marking

DEAR MR. CONNELLY:

This is in response to your letter, dated October 21, 2010, requesting a final determination on behalf of Iridium Satellite, LLC (“Iridium”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 CFR Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), 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.

This final determination concerns the country of origin of the Iridium 9555 satellite telephone. We note that as a U.S. importer, Iridium is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. In reaching our decision we have taken into account additional information submitted to this office on January 30, February 4, May 11, and May 31, 2011.

FACTS:

Iridium imports Iridium 9555 satellite telephones from Singapore. The telephones are composed of the following components: (1) Transceiver Board, (2) Application Board, (3) Conductive Spacer, (4) Receiver, (5) Klik Dome Array (provides feedback on switch closure), (6) Vibrator, (7) Display, (8) Radio frequency (RF) emission shields (can lids), (9) Hands Free (HF) Speaker/Cable, (10) Antenna Bearing Housing 1, (11) Antenna Bearing Housing 2, (12) Keypad, (13) HF Speaker Housing, (14) Rear Housing Assembly, (15) Front Assembly, (16) Bezel, (17) USB Cover, (18) Headset Jack (HSJ) Cover, (19) Screw Caps, (20) RF Cap (external antenna connector cover), (21) Antenna Plunger, (22) Antenna Plunger Spring, (23) Bezel Film, and assorted screws.

The transceiver board (no. 1 above) is the radio transceiver that communicates with the Iridium satellite. It demodulates data from the satellite link and sends it to the application board (no. 2 above). In addition, the transceiver board receives commands and voice and data streams from the application board (described *infra*) and formats and modulates them into radio streams that communicate with the Iridium gateway network infrastructure using a GSM-like communication protocol. Among the components on the transceiver board are two digital base band (DBB) chips, which contain the microcontroller for the board, and two digital signal processor (DSP) cores,

made in China, and two radio frequency (RF) backend chips, made in Taiwan. The bill of materials for the transceiver board was submitted for our review. The board is assembled in Malaysia.

The application board is a circuit board that contains all of the user interfaces for the handsets, i.e., the display, user connector, key pad and other buttons, microphone, speaker, and ear piece. The board also contains software for SMS messaging, predictive text, multilingual support, handset configuration, and phone menu items such as contacts. The bill of materials for the application board was submitted for our review. The board is assembled in Malaysia.

The other listed components are manufactured in Singapore, Malaysia, Hong Kong, China, Korea, the United Kingdom, and the United States. With the exception of the components made in Singapore, all of the components are shipped to Singapore, where they are placed in stock until used to manufacture the satellite telephone.

Handset software programming consists of programming the transceiver board using JTAG, a programming process, and separately downloading software to the application board. The software programs for the application board and for the transceiver board are developed in the United Kingdom. Unless otherwise described, as in scenario six below, handset programming occurs in Malaysia and/or Singapore at the board level after the pertinent chips and circuits have been installed onto the relevant board, prior to assembly of the boards with the other components into phones in Singapore. In scenario six, the integrated circuit (IC) for the transceiver board is programmed before it is incorporated into the board.

Six alternative manufacturing scenarios for the Iridium 9555 satellite telephones have been described to CBP.

Scenario I:

(1) The Malaysian-origin transceiver and application boards, both programmed in Malaysia, are shipped to Singapore.

(2) The antenna plunger housing 1 is placed into the antenna plunger spring insertion jig, and both are inserted into the antenna bearing housing 1. The antenna cable is fitted and secured with clips onto bearing housing 2, and the bearing housings are fitted together. The antenna assembly is then inserted into the antenna bearing housing with the antenna cable.

(3) The antenna assembly, antenna cable, and vibrator are inserted into the rear housing and fitted with clips.

(4) The rear speaker is placed onto the rear housing and the speaker cable is positioned. The LCD flex cable that is connected to the display is inserted into the connector on the application board and fastened with clips. The application board, assembled with the LCD and the rear housing, is moved to the next station.

(5) The application board with LCD is removed from the rear housing. The receiver is placed on the back of the LCD display, oriented, and pinned with a guide pin to the application board. The transceiver board is stacked on top of the conductive space gasket, which is stacked on top of the application board. The boards are screwed together.

(6) The various can lids are placed on the assembly. The antenna cable and rear speaker cable are plugged into the connectors on the boards.

(7) The HSJ cover and USB cover are inserted into the front housing. The keypad is placed onto the front housing. The rear housing with the stack of boards is assembled with the bezel onto the front housing. The front and rear housings are screwed together.

(8) The phones are scanned, given serial numbers, and shipped to Malaysia for testing, labeling, and packaging for export.

Scenario II:

The application board and transceiver board are programmed and tested in Malaysia and shipped to Singapore. However, the application board is shipped without an audio jack or a power jack. The jacks are soldered onto the board in Singapore. The telephones are then manufactured in Singapore, as in Scenario I.

Scenario III:

The application board and the transceiver board undergo programming and functional testing in Singapore, not in Malaysia. The telephones are then manufactured in Singapore, as in Scenario I.

Scenario IV:

The transceiver board undergoes programming and functional testing in Singapore, not in Malaysia. The application board is programmed and tested in Malaysia and shipped to Singapore. The telephones are then manufactured in Singapore, as in Scenario I.

Scenario V:

The application board is programmed and tested in Singapore, not in Malaysia. The transceiver board is programmed and tested in Malaysia and shipped to Singapore. The telephones are then manufactured in Singapore, as in Scenario I.

Scenario VI:

The IC that stores the firmware which controls the functionality of the phone is programmed in Singapore and then shipped to Malaysia, where it is incorporated into the transceiver board. The programmed transceiver board is then shipped to Singapore. The application board is programmed and tested in Malaysia and shipped to Singapore. The telephones are then manufactured in Singapore, as in Scenario I.

ISSUE:

For each scenario, what is the country of origin of the Iridium 9555 satellite telephone for purposes of U.S. government procurement and country of origin marking?

LAW AND ANALYSIS:

Country of Origin

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 desig-

nated 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*, 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. In Customs Service Decisions (C.S.D.) 85–25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences (“GSP”), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled.

In *Data General v. United States*, 4 Ct. Int’l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its “memory” which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S. project engineer with many years of experience in “designing and building hardware.” While replicating the program pattern from a “master” PROM may be a quick one-step process, the development of the pattern and the production of the “master” PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no

less a “substantial transformation” than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

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, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

Scenario I:

In this scenario, the application and transceiver boards are assembled and programmed in Malaysia with U.K.-origin software and shipped to Singapore. After importation into Singapore, the boards are assembled with other originating and non-originating components into satellite phones. The completed phones are then shipped to Malaysia for testing, labeling and packaging.

You claim that as a result of the assembly operations performed in Singapore, the application board and the transceiver board from Malaysia as well as the other non-originating components undergo a substantial transformation, such that the finished telephones become products of Singapore for purposes of U.S. Government procurement. You cite Headquarters Ruling Letter (HQ) 557208 (July 24, 1993), and New York Ruling Letter (NY) R02686 (Oct. 28, 2005), in support of your position.

HQ 557208 concerned the eligibility of cordless phones imported from Mexico to benefit from the Generalized System of Preferences (GSP). The phones were manufactured in Mexico by assembling three PCB subassemblies (a base unit circuit board, a base unit control board, and a handset main board) of Mexican origin with various other components, such as speakers, microphones, and antennas. CBP found that the process of assembling the various components onto the three boards resulted in a substantial transformation of the imported components, such that the PCB subassemblies were new and different articles with a new name, character, and use. CBP also found that the assembly operations in Mexico substantially transformed the PCB subassemblies into cordless telephones. We note that HQ 557208 is distinguishable from the instant case because all the operations in HQ 557208, including the assembly of the PCBs, were performed in one country (Mexico). In this case, manufacturing operations take place in both Malaysia and Singapore.

NY R02686 concerned the country of origin marking of a cellular phone. CBP found that a digital mobile telephone was substantially transformed in China, where final assembly took place, although the manufacturing process took place in both Korea and China. The phone’s printed circuit board was fully fabricated in Korea and then shipped to China, where it was combined with the keypad, housing, antenna, and battery pack to form a complete and fully functional cellular phone. The decision does not indicate the origin of these components. CBP found that the Chinese manufacturing operations

produced a new and different article of commerce with a distinctive name, character and use, such that the phone should be marked "Made in China".

In this case, the transceiver board causes the phone to communicate with the satellite and demodulates its signals, which it sends on to the application board. The transceiver board also receives commands from the application board and modulates its signals so that the phone can communicate with the Iridium network. The application board contains all the interfaces that allow a user to use the phones, significantly, the microphone, speaker, earpiece and keypad, which control the functionality of the phones and convey their essential character.

In Scenario I, a large number of parts are assembled in Malaysia and programmed to form the Malaysian-origin boards. Upon importation into Singapore, the boards are assembled with components such as covers, housing, an antenna, and cables by means of insertion, stacking, screwing, and fitting together with clips. We find that these operations are not sufficiently complex and meaningful to transform the Malaysian boards, which are the essence of the phones, into a new article with a new name, use and identity. Moreover, these boards are combined with components of various origins in a third country, namely Singapore, which is a distinguishable fact from HQ 557208 and NY R02686. See *Belcrest Linens supra*. As a result, in Scenario I we find that the country in which the last substantial transformation takes place is Malaysia, which is the country of origin of the phones.

Scenario II:

For Scenarios II through VI, you argue that because U.K.-origin software is loaded onto certain components in Singapore, additional value is added by the Singaporean operations, and that the components and subassemblies are, therefore, substantially transformed in Singapore. In support of your view you cite *Data General*, discussed *supra*, Customs Service Decisions (C.S.D.) 84-85 (April 2, 1984), and HQ 733085 (July 13, 1990). At issue in C.S.D. 84-85 was whether the programming of an EPROM (erasable programmable read only memory) was a manufacturing process that resulted in a new article for purposes of determining country of origin. CBP found that the rationale of the court in *Data General*, that is, programming a PROM is no less a substantial transformation than the manual interconnection of the components on a circuit board, could be applied to support the principle that the essence of an integrated circuit memory storage device is established by programming. Consequently, in C.S.D. 84-85 the programming or reprogramming of an EPROM was found to result in a new and different article of commerce. In HQ 733085, applying *Data General*, CBP found that programming in the United States of a foreign identification card to make it secure changed the name, character and use of the card. The card could not function with the computer security system for which it was designed until it had been properly programmed. Programming done in the United States using a binary code of U.S. origin substantially transformed the ID cards.

As in Scenario I, in Scenario II the application board and transceiver board are assembled and programmed with U.K.-origin software in Malaysia. However, in this scenario, the audio jack and the power jack for the application board are soldered onto it in Singapore, not Malaysia. Once in Singapore, the

boards are assembled with other originating and non-originating components into satellite phones. The phones are then shipped to Malaysia for testing, labeling, and packaging.

As discussed under Scenario I, as a result of the assembly and programming operations in Malaysia, we find that the boards are products of Malaysia and convey the essential character of the phones. Applying the principle in *Belcrest Linens* and C.S.D. 85-25, we find that soldering the jacks onto the application board in Singapore is not a sufficiently complex and meaningful process that transforms the Malaysian application board into a new article with a new name, use and identity. As in Scenario I, we find that the assembly in Singapore of the transceiver and application boards with components such as covers and housing by means of inserting, screwing, clipping together and the like, does not substantially transform the boards, which convey the essential character of the phones, into a new and different article. Further, unlike HQ 733085 where U.S. code was programmed onto cards in the U.S., here U.K. software is programmed in Malaysia. Consequently, we find that the country of origin of the phones in this scenario is Malaysia.

Scenario III:

In the rest of the scenarios, handset programming may take place wholly, or in part, in Singapore.

In this scenario, the application and transceiver boards are assembled in Malaysia, but programmed with U.K.-origin software in Singapore. The phones are then assembled in Singapore, as described in Scenario I. Accordingly, in this scenario, there are three countries under consideration where programming and/or assembly operations take place, the last of which is Singapore. In this scenario, no one country's operations dominate the manufacturing operations of the telephones. The boards assembled in Malaysia are important to the function of the phone, as is the U.K. software. But the assembly in Singapore completed the phone. Therefore, we find that the last substantial transformation occurred in Singapore. Consequently, we find that the country of origin of the phones in this scenario is Singapore.

Scenario IV:

In this scenario, the transceiver board is assembled in Malaysia and programmed in Singapore. However, the application board is assembled and programmed in Malaysia. The phones are assembled in Singapore, as described in Scenario I.

Relying on previous discussion, we find that the programming and assembly operations performed in Singapore substantially transform the boards into products of Singapore. Consequently, we find that the country of origin of the phones in this scenario is Singapore.

Scenario V:

This scenario is the inverse of Scenario IV. Here, the application board is assembled in Malaysia and programmed in Singapore. The transceiver board is assembled and programmed in Malaysia. The phones are assembled in Singapore, as described in Scenario I.

Similar to Scenario IV, we find that the programming and assembly operations in Singapore substantially transform the boards into products of Singapore. Consequently, we find that the country of origin of the phones in this scenario is Singapore.

Scenario VI:

In this scenario, the ICs for the transceiver boards that store the phones' U.K.-origin firmware are programmed in Singapore, prior to being incorporated into the transceiver boards assembled in Malaysia. The application board is assembled and programmed in Malaysia. The phones are then assembled in Singapore, as described in Scenario I.

As in Scenario I, we find that the country where the last substantial transformation takes place is Malaysia, which is the country of origin of the phones.

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." *United States v. Friedlander & Co.*, 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940).

Part 134, CBP Regulations (19 C.F.R. § 134) implements 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 "the 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 laws and regulations]." For country of origin marking purposes, a substantial transformation of an article occurs when it is used in manufacture, which results in an article having a name, character, or use differing from that of the article before the processing. However, if the manufacturing or combining process is merely a minor one that leaves the identity of the article intact, a substantial transformation has not occurred. See *Uniroyal, Inc. v. United States*, 3 Ct. Int'l Trade 220, 543 F. Supp. 1026, 1029 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983).

In Scenarios I, II, and VI, the country where the last substantial transformation occurs is Malaysia. Accordingly, in these scenarios the country of origin for marking purposes is Malaysia, and the phones may be marked "Made in Malaysia". In Scenarios III through V, the country where the last substantial transformation takes place is Singapore. Therefore, in these scenarios the country of origin for marking purposes is Singapore, and the

phones may be marked “Made in Singapore”. Your suggested marking, “Substantially Transformed in [country]”, would be confusing to the ultimate purchaser.

HOLDING:

Based on the facts of this case, we find that in Scenarios I, II and VI, the country where the last substantial transformation takes place is Malaysia. The country of origin of the Iridium 9555 satellite phones is Malaysia for purposes of U.S. Government procurement and country of origin marking.

In Scenarios III through V, the country where the last substantial transformation takes place is Singapore. The country of origin of the Iridium 9555 satellite phones is Singapore for purposes of U.S. Government procurement and country of origin marking.

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 of 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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