

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY
19 CFR Parts 10, 24, 162, 163, and 178

CBP Dec. 13-08

RIN 1515-AD86

UNITED STATES-KOREA FREE TRADE AGREEMENT

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with two changes, interim amendments to the U.S. Customs and Border Protection (“CBP”) regulations which were published in the **Federal Register** on March 19, 2012, as CBP Dec. 12-03, to implement the preferential tariff treatment and other customs-related provisions of the United States-Korea Free Trade Agreement entered into by the United States and the Republic of Korea.

DATES: Effective July 1, 2013.

FOR FURTHER INFORMATION CONTACT:

Textile Operational Aspects: Jackie Sprungle, Trade Policy and Programs, Office of International Trade, (202) 863-6517.

Other Operational Aspects: Katrina Chang, Trade Policy and Programs, Office of International Trade, (202) 863-6532.

Legal Aspects: Yuliya A. Gulis, Regulations and Rulings, Office of International Trade, (202) 325-0042.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2007, the United States and the Republic of Korea (hereinafter “Korea”) signed the United States-Korea Free Trade Agreement (hereinafter “UKFTA” or the “Agreement”). On December 3, 2010, the United States and Korea concluded new agreements, reflected in letters signed on February 10, 2011, that provide new

market access and level the playing field for U.S. auto manufacturers and workers. The provisions of the FTA were adopted by the United States with the enactment of the United States-Korea Free Trade Agreement Implementation Act (the “Act”), Public Law 112–41, 125 Stat. 428 (19 U.S.C. 3805 note), on October 21, 2011. Sections 103(b) and 208 of the Act require that regulations be prescribed as necessary to implement the provisions of the UKFTA.

Following Presidential Proclamation 8783, CBP published on March 19, 2012, CBP Dec. 12–03 in the **Federal Register** (77 FR 15943), setting forth interim amendments to implement the preferential tariff treatment and customs–related provisions of the UKFTA. In order to provide transparency and facilitate their use, the majority of the UKFTA implementing regulations set forth in CBP Dec. 12–03 were included within new subpart R in part 10 of the CBP regulations (19 CFR part 10). However, in those cases in which UKFTA implementation was more appropriate in the context of an existing regulatory provision, the UKFTA regulatory text was incorporated in an existing part within the CBP regulations. For a detailed description of the pertinent provisions of the Agreement and of the UKFTA implementing regulations, please *see* CBP Dec. 12–03.

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on March 15, 2012, CBP Dec. 12–03 provided for the submission of public comments that would be considered before the adoption of the interim regulations as a final rule. The prescribed public comment period closed on May 18, 2012.

Discussion of Comments

Two responses were received to the solicitation of comments on the interim rule set forth in CBP Dec. 12–03. The comments are discussed below.

A. Certification

Comment

A commenter cited four subjects of CBP’s interim regulations which it found favorable, namely: (1) The flexibility for certifications to be issued by the producer, exporter, or importer who possesses the required origin information; (2) the consistent application of the rules of origin to UKFTA; (3) clear regulatory procedures regarding actions that CBP will take with respect to inquiries, audits, and enforcement actions; and (4) the exemption from the *ad valorem* merchandise processing fees for goods that qualify as originating under the UKFTA. In addition, the commenter praised the implementation instructions issued by CBP on March 12, 2012.

The commenter, however, requested clarification concerning the period of validity for blanket certification issued for a twelve-month period for multiple shipments of identical goods from a manufacturer under 19 CFR 10.1004(a)(3)(vii) with respect to the four-year period of a properly executed certificate provided for in 19 CFR 10.1004(f). For example, a U.S. importer receives a blanket certificate from a Korean supplier (producer) for a one-year period (1/1/2013 through 12/31/2013). Based on the validity of the four-year period for the certificate (1/1/2013 through 12/31/2016) as permitted under 19 CFR 10.1004(f), the commenter asks whether the certificate is valid for use to make a duty free claim after the expiration of the one-year period from the supplier (producer), that is, whether the one-year blanket for multiple shipments of identical goods could be extended for another three years.

CBP Response

Section 10.1004 of the CBP regulations concerning certification implements, among other provisions, Article 6.15.5 of the UKFTA and requires that a certification be valid for four years after the date it was issued. CBP will not accept a certification that is more than four years old. The time period that a blanket certification may cover is limited to a one-year period. In the example above, the blanket certification issued on 1/1/2013 applies to the one-year period of time during which the identical goods were produced (1/1/2013–12/31/2013). The producer would need to have a new blanket certification for another year's production. Please note that the four-year certification period (through 12/31/2016) would continue to cover only the goods that were produced during the blanket one-year period from 1/1/2013 to 12/31/2013 if these goods were imported into the United States three years after they were produced. The producer would need an amended blanket certification to cover further production of identical goods beyond the initial one-year period, such as 1/1/2014 to 12/31/2014.

B. Verification

Comment

A commenter stated that the use of denial of entry under 19 CFR 10.1027 could be a disproportionate measure and that any action against textile or apparel goods under the UKFTA should be limited to denial of preferential treatment. The commenter requested that CBP consider revising section 10.1027 of part 10 to either (1) remove references to "denial of entry" to textile or apparel goods, or, (2) to further specify the conditions that would trigger a denial of entry

requiring a CBP finding of either (a) repeated unlawful activity or (b) willful presentation of inaccurate origin information.

CBP Response

CBP believes the language in section 10.1027 of the interim regulations accurately reflects the text of the UKFTA and the Act. Article 4.3.10 of the UKFTA specifies that if the importing party is unable to make the determination described in either Article 4.3.3 (verification to determine that a claim of origin for a textile or apparel good is accurate) or Article 4.3.5 (verification to determine that a person is complying with applicable customs measures affecting trade in textile or apparel goods when the importing party has a reasonable suspicion that the person is engaging in unlawful activity relating to trade in textile and apparel goods) within 12 months after its request for a verification, or makes a negative determination, it may, consistent with its law, take appropriate action. Section 207(d)(2) of the Act specifically defines “appropriate action” to include denial of entry into the United States for goods subject to a verification under section 207(a)(1), namely textile or apparel goods.

With regard to country of origin determinations of textile or apparel goods in general, if the CBP port director is unable to determine the country of origin of a textile or apparel product, the importer must submit additional information as requested by the port director. Release of the product from CBP custody will be denied until a determination of the country of origin is made based upon the information provided or the best information available. *See* 19 CFR 102.23(b).

Conclusion

CBP is making two technical corrections to the interim regulatory text as a result of its further review. The first is to correct a cross-reference in section 10.1009(c)(2) to paragraph (c)(1). The second is to the regulatory text of section 10.1027 to improve readability and logical flow by changing the order of paragraphs (c) and (d) concerning verifications of U.S. imports of textile and apparel goods in Korea. This change will move the provision on action by U.S. officials in conducting a verification abroad to appear before the provision on denial of permission to conduct a verification. Accordingly, after further review of the comments and further consideration, CBP has determined that the interim regulations published as CBP Dec. 12–03 should be adopted as a final rule with two technical corrections to 19 CFR 10.1009 and 10.1027 as discussed above.

Executive Order 12866

This document is not a regulation or a rule subject to the provisions of Executive Order 12866 of September 30, 1993 (58 FR 51735, October 4, 1993), because it pertains to a foreign affairs function of the United States and implements an international agreement, as described above, and therefore is specifically exempted by section 3(d)(2) of Executive Order 12866.

Regulatory Flexibility Act

CBP Dec. 12–03 was issued as an interim rule rather than a notice of proposed rulemaking because CBP had determined that the interim regulations involve a foreign affairs function of the United States pursuant to section 553(a)(1) of the Administrative Procedure Act. Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*), do not apply to this rulemaking. Accordingly, this final rule is not subject to the regulatory analysis requirements or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in these regulations have previously been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1651–0117, which covers many of the free trade agreements requirements that CBP administers. The collections of information in these regulations are in §§ 10.1003 and 10.1004. This information is required in connection with claims for preferential tariff treatment under the UK-FTA and the Act and will be used by CBP to determine eligibility for tariff preference under the UKFTA and the Act. The likely respondents are business organizations including importers, exporters and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 0.2 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street NW., 5th Floor, Washington, DC 20229–1179. Under the Paperwork Reduction Act, an agency may not

conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 24

Accounting, Customs duties and inspection, Financial and accounting procedures, Reporting and recordkeeping requirements, Trade agreements, User fees.

19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Penalties, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 178

Administrative practice and procedure, Exports, Imports, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

Accordingly, the interim rule amending parts 10, 24, 162, 163, and 178 of the CBP regulations (19 CFR parts 10, 24, 162, 163, and 178), which was published at 77 FR 15943 on March 19, 2012, is adopted as final with the following changes:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and the specific authority citations for subpart R continue to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.1001 through 10.1034 also issued under 19 U.S.C. 1202 (General Note 33, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–41, 125 Stat. 428 (19 U.S.C. 3805 note).

§ 10.1009 [Amended]

■ 2. Paragraph (c)(2) of section 10.1009 is amended by removing the words, “paragraph (c)” and adding in its place the words, “paragraph (c)(1)”.

§ 10.1027 [Amended]

■ 3. Section 10.1027 is amended by redesignating paragraph (c) as paragraph (d) and paragraph (d) as paragraph (c), respectively.

THOMAS S. WINKOWSKI,
*Deputy Commissioner of CBP,
Performing Duties of the Commissioner of
U.S. Customs and Border Protection.*

Dated: May 24, 2013.

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, May 30, 2013 (78 FR 32356)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING MONOCHROME LASER PRINTERS**

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 monochrome laser printers. Based upon the facts presented, CBP has concluded in the final determina-

tion that the United States is the country of origin of the monochrome laser printers for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 21, 2013. 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 July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Suzanne Kane, Valuation and Special Programs Branch: (202) 325-0119.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 21, 2013, 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 monochrome laser printers which may be offered to the U.S. Government under an undesignated procurement contract. This final determination, in HQ H241146, was issued at the request of Ricoh Electronics, 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). In the final determination, CBP concluded that, based upon the facts presented, the particular monochrome laser printers, assembled in the United States from parts made in China, Japan, and the Philippines, are substantially transformed in the United States, such that the United States 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, Customs 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: May 22, 2013.

GLEN E. VEREB,
*Acting Executive Director, Regulations and
Rulings,
Office of International Trade.*

Attachment

HQ H241146

May 21, 2013

OT:RR:CTF:VS H241146 SEK

CATEGORY: Marking

MS. FUSAE NARA
PILLSBURY WINTHROP SHAW PITTMAN LLP
1540 BROADWAY
NEW YORK, NY 10036-4039

RE: U.S. Government Procurement; Country of Origin of Ricoh Aficio SP 5200DNG/SP 5210DNG Monochrome Laser Printers

DEAR MS. NARA:

This is in response to your letter, dated March 11, 2013, requesting a final determination on behalf of your client, Ricoh Electronics, Inc. (Ricoh), pursuant to subpart B of Part 177, Customs and Border Protection (CBP) Regulations (19 CFR § 177.21 *et seq.*). 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 trade 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 certain monochrome laser printers that Ricoh may sell to the U.S. Government. We note that Ricoh is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

The products at issue in this ruling are certain monochrome laser printers manufactured by Ricoh, consisting of the Ricoh Aficio SP 5200DNG and SP 5210DNG. Ricoh intends to import the components and subassemblies of the printers from China and the Philippines for manufacture in the U.S. and subsequent sale to U.S. government agencies.

Ricoh states that it developed the SP52000-series printers in Japan, and that the entire engineering, development, design and artwork processes for the printers took place in Japan. The project team consisted of approximately 40 engineers, who were all based in Japan and worked for Ricoh’s parent company, Ricoh Company, Ltd. At the initial stage of the printers production process, individual parts are assembled into various assemblages of parts called subassemblies. The manufacture of subassemblies takes place in multiple countries, including the United States, China, and the Philippines. The subassembly units incorporated in Ricoh’s printers include the following:

- Duplex Unit: enables double-sided copying and printing. It is assembled in China.
- Fusing Unit: contains a fusing roller and a pressure roller, which are both manufactured in Korea, and a heater manufactured in Japan. The main task of the Fusing unit is to permanently affix the toner on the paper by applying heat and pressure to the toner powder. The Fusing unit is assembled in China.
- Laser Unit: receives the image from the Scanning unit and copies the image onto the organic photo conductor (OPC) drum. The Laser unit is

assembled in China. The two key components of the Laser unit, the laser diode unit and two lenses, are manufactured in Japan.

- All in One Unit (AIO): is assembled in China and contains the toner powder manufactured in Japan using a formula developed by Ricoh Company, Ltd.
- Engine Board (EGB): controls all printer engine functions both directly and through other control boards. It is assembled in China.
- Power Supply Unit (PSU): provides the DC power to the system and AC power to the fusing. It is assembled in China.
- Hard Disk Drive (HDD): is either a standard or optional item depending on the model type of printer. Ricoh purchases HDDs made in the Philippines from another company.
- Operation Panel: acts as the interface between the user and printer and is assembled in China.

Ricoh states that the above subassemblies are assembled in China to construct the incomplete and non-functional printer engine. The incomplete engine includes the duplex unit, fusing unit, laser unit, AIO, EGB, PSU and other paper tray and mechanical parts to move paper throughout the printer. Ricoh asserts that the assembly of the incomplete and non-functional printer engine does not require sophisticated skills or expensive machinery.

The next stage of the production process is the Controller unit subassembly. Ricoh states that in a completed printer, the Controller unit functions as the electronic “brain” of the printer and controls its functions. Ricoh states that it has invested significant amounts for R&D in Japan to develop the Controller unit, as well as millions of dollars in Ricoh’s factory in Tustin, California for the machinery to manufacture different types of Controller units. Ricoh considers the manufacturing of the Controller unit, including the printed circuit board (PCB) and programming of the firmware (the fixed internal programs that control electronic devices), to be extremely complex, and necessitating highly skilled labor to perform optical inspections, soldering, functional testing and circuit testing.

The Controller unit is manufactured in the United States in three stages. First, Ricoh manufactures the PCB in the United States, including the automatic board stuffing process using surface mount technology (SMT), automated optical inspection (AOI), and manual soldering. Ricoh states that approximately 1,243 components, including integrated circuits, diodes, capacitors, connectors, and other semiconductor devices are mounted on the PCB using both automated and manual soldering processes. Second, Ricoh programs the PCB with firmware that was developed in Japan. Once the installation of the firmware on the PCB is complete, the Controller unit becomes functional as the “brain” of the printer. Finally, after the assembly of the PCB and the installation of the firmware, the PCB undergoes testing to ensure the functionality and quality of the PCB.

The final assembly of the printers consists of incorporating the Controller unit and HDD into the incomplete, non-functional printer engines. A control board panel is then attached to the Controller unit and fixed. An HDD controller board is attached to a side of an HDD bracket. An HDD is then mounted on the other side of the HDD bracket and fixed. The assembled HDD is mounted on the controller unit and fixed with controller unit and the control board. An interface panel and a ground plate panel are put together. The assembled part is inserted into the control board panel. The assembled

unit is inserted into the rear of the incomplete printer engine and screwed down. The operation panel is connected to the incomplete printer engine by a cable and then attached to the front of the printer engine. The AIO is then installed to the printer engine. The assembled printers will undergo inspection at Ricoh's Tustin, California factory, which is certified as an ISO 14001 factory to conduct the inspection procedure.

ISSUE:

What is the country of origin of the Ricoh Aficio SP 5200DNG/SP 5210DNG monochrome laser printers 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 as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers or 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 in 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, 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.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the 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 that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, generally will 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. 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 court noted that the programs were designed by a U.S. project engineer with many years of experience in “designing and building hardware.”

CBP has held in a number of cases involving similar merchandise that complex and meaningful operations involving a large number of components result in a substantial transformation. In support of its position, Ricoh cites HQ H018467 (Jan. 4, 2008). In HQ H018467, CBP considered the country of origin of multi-function printers in which manufacturing took place in two countries. In that case, the following eighteen units were manufactured in the Philippines from components produced in various countries: the automatic document feeder unit, scanner unit, operation panel unit, feed unit, manual paper feed unit, lift up motor unit, subassembly units, automatic document transferring unit, induction heating fuser unit, induction heating power supply unit, transcription unit, developing unit, laser scanning unit, main drive unit, motor drive board, high voltage power supply board, low voltage power supply board, and automatic duplex unit board. The units were sent to Japan where the system control board, engine control board, OPC drum unit, and the toner reservoir were manufactured and incorporated into the units. The control boards were then programmed in Japan with Japanese firmware that controlled the user interface, imaging, memories, and the mechanics of the machines. The machines were then inspected and adjusted as necessary. CBP found that the manufacturing operations in Japan substantially transformed the Philippine units such that Japan was the country of origin of the multifunctional machines. In making our determination we took into consideration the fact that the system control board, the engine control board, and the firmware, which were very important to the functionality of the machines, were manufactured in Japan. We also found that the operations performed in Japan were meaningful and complex and resulted in an article of commerce with a new name, character and use.

Ricoh also cites HQ H185775 (Dec. 21, 2011). In HQ H185775, CBP considered the country of origin of a multifunction office machine. In that case, the incomplete print engine was produced in Vietnam and consisted of a metal frame, plastic skins, motors, controller board with supplier-provided firmware, a laser scanning system, paper trays, cabling paper transport rollers, and miscellaneous sensing and imaging systems. The incomplete print engine was shipped to Mexico, where the following assemblies were added: the formatter board, scanner/automatic document feeder, control panel, fax card, hard disk drive/solid state drive, firmware (which was developed and written in the U.S.), along with other minor components and accessories. The finished products were also tested and prepared for shipping to their ultimate destinations. CBP determined that Mexico was the country of origin because a substantial transformation of the various components occurred in Mexico, and the assembly of the materials from various countries resulted in the final multifunctional office machine product.

In this case, substantial manufacturing operations are performed in both China and Japan. Chinese subassemblies are imported into the United States, where they are combined with U.S.-origin PCBs, and programmed with Japanese-origin firmware. The Controller unit is stated to control the functions and mechanics of the printers along with the Japanese firmware. As the printers are comprised of subassemblies and components from various countries, but are also comprised of a Controller unit assembled in the United States (with U.S.-origin PCBs), which is important to the function of the printers, and the assembly in the United States completes the printers, we find that the last substantial transformation occurs in the United States. *See* HQ H198875, dated June 5, 2012 (CBP found that Singapore was the country of origin of multi-function peripherals assembled to completion in Singapore, where they were also fitted with Singaporean-origin PCBs and programmed with Japanese-origin application software); HQ 563012, dated May 4, 2004 (CBP found that Hong Kong was the country of origin of fabric switches assembled to completion in Hong Kong, where they were also configured and programmed with U.S.-origin software that transformed the switches from non-functional devices into fabric switches capable of performing various Storage Area Network related functions); HQ H170315, scenario III, dated July 28, 2011 (application and transceiver boards for satellite phones were assembled in Malaysia and programmed with U.K.-origin software in Singapore, where the phones were also assembled. CBP found that no one country's operations dominated the manufacturing operations of the phones and that the last substantial transformation occurred in Singapore.) Therefore, the country of origin of the Ricoh Aficio SP 5200DNG/SP 5210DNG monochrome laser printers is the United States.

HOLDING:

The imported components that are used to manufacture the Ricoh Aficio SP 5200DNG/SP 5210DNG monochrome laser printers are substantially transformed as a result of the assembly and firmware installation operations performed in the United States. Therefore, we find that the country of origin of the Ricoh Aficio SP 5200DNG/ SP 5210DNG monochrome laser printers for government procurement purposes 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. 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,

GLEN E. VEREB,
*Acting Executive Director,
Regulations and Rulings,
Office of International Trade.*

[Published in the Federal Register, May 30, 2013 (78 FR 32424)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING MULTIFUNCTIONAL DIGITAL IMAGING
SYSTEMS**

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 multifunctional digital imaging systems. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the multifunctional digital imaging systems for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 21, 2013. 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 July 1, 2013.

FOR FURTHER INFORMATION CONTACT: Suzanne Kane, Valuation and Special Programs Branch: (202) 325-0119.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 21, 2013, 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 multifunctional digital imaging systems which may be offered to the U.S. Government under an undesignated procurement contract. This final determination, in HQ H240213, was issued at the request of Ricoh Electronics, 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). In the final determination, CBP concluded that, based upon the facts presented, the particular multifunctional digital imaging systems, assembled in the United States from parts made in China, Japan, and the Philippines, are substantially transformed in the United States, such that the United States 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, Customs 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: May 21, 2013.

GLEN E. VEREB,
*Acting Executive Director, Regulations and
Rulings,
Office of International Trade.*

Attachment

HQ H240213

May 21, 2013

OT:RR:CTF:VS H240213 SEK

CATEGORY: Marking

MS. FUSAE NARA
PILLSBURY WINTHROP SHAW PITTMAN LLP
1540 BROADWAY
NEW YORK, NY 10036-4039

RE: U.S. Government Procurement; Country of Origin of Ricoh Aficio SP5200SG/5210SFG/5210SRG Multifunctional Digital Imaging Systems

DEAR MS. NARA:

This is in response to your letter, dated March 11, 2013, requesting a final determination on behalf of your client, Ricoh Electronics, Inc. (Ricoh), pursuant to subpart B of Part 177, Customs and Border Protection (CBP) Regulations (19 CFR § 177.21 *et seq.*). 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 trade 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 certain multifunctional digital imaging systems (MFPs) that Ricoh may sell to the U.S. Government. We note that Ricoh is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

The products at issue in this ruling are certain MFPs manufactured by Ricoh, consisting of the Ricoh Aficio SP 5200SG (base model), the SP 5210SFG (incorporating a fax machine), and the SP 5210SRG (incorporating a finisher unit for stacking and stapling). All three MFP models have mono-chrome copying, printing, and scanning functions, and one model, the SP 5210SFG, has an additional facsimile function. Ricoh intends to import the components and subassemblies of the MFPs from China and the Philippines for manufacture in the U.S. and subsequent sale to U.S. government agencies.

Ricoh states that it developed the SP5200-series MFPs in Japan, and that the entire engineering, development, design and artwork processes for the MFPs took place in Japan. The project team consisted of approximately 50 engineers, who were all based in Japan and worked for Ricoh’s parent company, Ricoh Company, Ltd. At the initial stage of the MFP production process, individual parts are assembled into various assemblages of parts called subassemblies. The manufacture of subassemblies takes place in multiple countries, including the United States, China, and the Philippines. The subassembly units incorporated in Ricoh’s SP5200-series include the following:

- Automatic Reverse Document Feeder Unit (ARDF unit): the ARDF unit has a 50 sheet capacity, and its main task is to feed paper, sheet by sheet, to the next scanning process. The ARDF unit is assembled in China.

- Scanning Unit: performs the task of converting the original images into digital signals. It is assembled in China.
- Duplex Unit: enables double-sided copying and printing. It is assembled in China.
- Fusing Unit: contains a fusing roller and a pressure roller, which are both manufactured in Korea, and a heater manufactured in Japan. The main task of the Fusing unit is to permanently affix the toner on the paper by applying heat and pressure to the toner powder. The Fusing unit is assembled in China.
- Laser Unit: receives the image from the Scanning unit and copies the image onto the organic photo conductor (OPC) drum. The Laser unit is assembled in China. The two key components of the Laser unit, the laser diode unit and two lenses, are manufactured in Japan.
- All in One Unit (AIO): is assembled in China and contains the toner powder manufactured in Japan using a formula developed by Ricoh Company, Ltd.
- Base Engine and Image Control unit (BICU): controls the mechanical function of the MFP and is, in turn, controlled by the Controller unit. It is assembled in China.
- Power Supply Unit (PSU): provides the DC power to the system and AC power to the fusing. It is assembled in China.
- Fax Unit: is either a standard or optional item depending on the model type of the SP5200-series MFP. It is assembled in China.
- Hard Disk Drive (HDD): is either a standard or optional item depending on the model type of the SP5200-series MFP. Ricoh purchases HDDs made in the Philippines from another company.
- Operation Panel: acts as the interface between the user and MFP and is assembled in China.

Ricoh states that the above subassemblies are assembled in China to construct the incomplete and non-functional printer engine. The incomplete engine includes the automatic document feeder, scanning unit, duplex unit, fusing unit, laser unit, AIO, BICU, PSU and other paper tray and mechanical parts to move paper throughout the MFP. Ricoh asserts that the assembly of the incomplete and non-functional printer engine does not require sophisticated skills or expensive machinery.

The next stage of the production process is the Controller unit subassembly. Ricoh states that in a completed MFP, the Controller unit functions as the electronic “brain” of the MFP and controls its functions. Ricoh states that it has invested significant amounts for R&D in Japan to develop the Controller unit, as well as millions of dollars in Ricoh’s factory in Tustin, California for the machinery to manufacture different types of Controller units. Ricoh considers the manufacturing of the Controller unit, including the printed circuit board (PCB) and programming of the firmware (the fixed internal programs that control electronic devices), to be extremely complex, and necessitating highly skilled labor to perform optical inspections, soldering, functional testing and circuit testing.

The Controller unit is manufactured in the United States in three stages. First, Ricoh manufactures the PCB in the United States, including the automatic board stuffing process using surface mount technology (SMT), automated optical inspection (AOI), and manual soldering. Ricoh states that approximately 1,335 components, including integrated circuits, diodes, ca-

pacitors, connectors, and other semiconductor devices are mounted on the PCB using both automated and manual soldering processes. Second, Ricoh programs the PCB with firmware that was developed in Japan. Once the installation of the firmware on the PCB is complete, the Controller unit becomes functional as the “brain” of the MFP. Finally, after the assembly of the PCB and the installation of the firmware, the PCB undergoes testing to ensure the functionality and quality of the PCB.

The final assembly of the MFPs consists of incorporating the Controller unit and HDD into the incomplete, non-functional printer engines. The HDD is mounted on the Controller unit, and the HDD control board is inserted into the socket of the controller unit. The assembled unit is inserted to the rear of the incomplete printer engine. The operation panel is connected to the incomplete printer engine by several cables, and then attached to the front of the printer engine. An AIO is installed to the printer engine, and finally the fax unit is installed to the printer engine. The final MFPs will undergo inspection at Ricoh’s Tustin, California factory.

ISSUE:

What is the country of origin of the Ricoh Aficio SP5200SG/5210SFG/5210SRG MFPs 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 as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers or 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 in 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, 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.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the 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 that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, generally will 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. 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 court noted that the programs were designed by a U.S. project engineer with many years of experience in “designing and building hardware.”

CBP has held in a number of cases involving similar merchandise that complex and meaningful operations involving a large number of components result in a substantial transformation. In support of its position, Ricoh cites HQ H018467 (Jan. 4, 2008). In HQ H018467, CBP considered the country of origin of multi-function printers in which manufacturing took place in two countries. In that case, the following eighteen units were manufactured in the Philippines from components produced in various countries: the automatic document feeder unit, scanner unit, operation panel unit, feed unit, manual paper feed unit, lift up motor unit, subassembly units, automatic document transferring unit, induction heating fuser unit, induction heating power supply unit, transcription unit, developing unit, laser scanning unit, main drive unit, motor drive board, high voltage power supply board, low voltage power supply board, and automatic duplex unit board. The units were sent to Japan where the system control board, engine control board, OPC

drum unit, and the toner reservoir were manufactured and incorporated into the units. The control boards were then programmed in Japan with Japanese firmware that controlled the user interface, imaging, memories, and the mechanics of the machines. The machines were then inspected and adjusted as necessary. CBP found that the manufacturing operations in Japan substantially transformed the Philippine units such that Japan was the country of origin of the multifunctional machines. In making our determination we took into consideration the fact that the system control board, the engine control board, and the firmware, which were very important to the functionality of the machines, were manufactured in Japan. We also found that the operations performed in Japan were meaningful and complex and resulted in an article of commerce with a new name, character and use.

Ricoh also cites HQ H185775 (Dec. 21, 2011). In HQ H185775, CBP considered the country of origin of a multifunction office machine. In that case, the incomplete print engine was produced in Vietnam and consisted of a metal frame, plastic skins, motors, controller board with supplier-provided firmware, a laser scanning system, paper trays, cabling paper transport rollers, and miscellaneous sensing and imaging systems. The incomplete print engine was shipped to Mexico, where the following assemblies were added: the formatter board, scanner/automatic document feeder, control panel, fax card, hard disk drive/solid state drive, firmware (which was developed and written in the U.S.), along with other minor components and accessories. The finished products were also tested and prepared for shipping to their ultimate destinations. CBP determined that Mexico was the country of origin because a substantial transformation of the various components occurred in Mexico, and the assembly of the materials from various countries resulted in the final multifunctional office machine product.

In this case, substantial manufacturing operations are performed in both China and Japan. Chinese subassemblies are imported into the United States, where they are combined with U.S.-origin Controller units containing U.S.-origin PCBs, and programmed with Japanese-origin firmware. The Controller unit is stated to control the functions and mechanics of the MFPs along with the Japanese firmware. The HDD, which is manufactured in a third country, is also installed into the MFPs in the United States. As the MFPs are comprised of subassemblies and components from various countries, but are also comprised of a Controller unit assembled in the United States (with U.S.-origin PCBs), which is important to the function of the MFPs, and the assembly in the United States completes the MFPs, we find that the last substantial transformation occurs in the United States. *See* HQ H198875, dated June 5, 2012 (CBP found that Singapore was the country of origin of MFPs assembled to completion in Singapore, where they were also fitted with Singaporean-origin PCBs and programmed with Japanese-origin application software); HQ 563012, dated May 4, 2004 (CBP found that Hong Kong was the country of origin of fabric switches assembled to completion in Hong Kong, where they were also configured and programmed with U.S.-origin software that transformed the switches from non-functional devices into fabric switches capable of performing various Storage Area Network related functions); HQ H170315, scenario III, dated July 28, 2011 (application and transceiver boards for satellite phones were assembled in Malaysia and programmed with U.K.-origin software in Singapore, where the phones were also assembled. CBP found that no one country's operations dominated

the manufacturing operations of the phones and that the last substantial transformation occurred in Singapore.) Therefore, the country of origin of the Ricoh Aficio SP5200SG/5210SFG/5210SRG MFPs is the United States.

HOLDING:

The imported components that are used to manufacture the Ricoh Aficio SP5200SG/ 5210SFG/5210SRG MFPs are substantially transformed as a result of the assembly and firmware installation operations performed in the United States. Therefore, we find that the country of origin of the Ricoh Aficio SP5200SG/5210SFG/5210SRG MFPs for government procurement purposes 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. 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,

GLEN E. VEREB,
*Acting Executive Director,
Regulations and Rulings,
Office of International Trade.*

[Published in the Federal Register, May 30, 2013 (78 FR 32427)]