

U.S. Customs and Border Protection



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING ROASTED COFFEE

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 roasted coffee. Based upon the facts presented, CBP has concluded in the final determination that Canada or the United States, *i.e.*, the country where the raw green coffee beans are roasted, is the country of origin of the roasted coffee for purposes of U.S. Government procurement.

DATES: The final determination was issued on November 15, 2017. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within December 21, 2017.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202–325–0046).

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on November 15, 2017, CBP issued a final determination concerning the country of origin of roasted coffee which may be offered to the United States Government under an undesignated government procurement contract. This final determination, HQ H291135, was issued at the request of Keurig Green Mountain, 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 roasting of raw green coffee beans substantially transforms the coffee beans into a product of the country where the raw green coffee beans are roasted, *i.e.* Canada or the United States, for purposes of U.S. Government procurement.

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

Dated: November 15, 2017,

Alice A. Kipel,
Executive Director,
Regulations and Rulings,
Office of Trade.

HQ H291135

November 15, 2017

OT:RR:CTF:VS H291135 CMR

CATEGORY: Origin

MARIAN E. LADNER, Esq.
LADNER & ASSOCIATES PC
420 HEIGHTS BOULEVARD
HOUSTON, TX 77007

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); subpart B, Part 177, CBP Regulations; Roasted Coffee

DEAR Ms. LADNER:

This is in response to your request of September 29, 2017, on behalf of your client, Keurig Green Mountain (“Keurig”), requesting a final determination concerning roasted coffee for purposes of government procurement under Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. 2511 *et seq.*). This final determination concerns the country of origin of roasted coffee produced from raw green coffee beans roasted in Canada or the United States. As an importer of this merchandise, Keurig is a party-at-interest within the meaning of 19 CFR 177.23(a) and is entitled to request this final determination.

FACTS:

The coffee will be produced from raw green coffee beans imported into either Canada or the United States. The green coffee beans will either be in their natural caffeinated state or decaffeinated. The decaffeination of the beans is a separate process occurring in a country on the Designated Country list in 48 CFR 52.225–5(a) prior to importation into Canada or the United States. Once imported, the green beans, caffeinated and decaffeinated, undergo a roasting and packaging process. Keurig cleans, blends and roasts the beans. A small percentage of beans are sprayed with flavoring ingredients. After the roasting and flavoring processes are complete, Keurig grinds, degasses and packages the coffee beans for sale. All of the processes after receipt of the green beans, caffeinated or decaffeinated, occur in the country of receipt, *i.e.*, Canada or the United States. We note, in some cases the coffee will remain in bean form.

ISSUE:

Whether the raw green coffee beans are substantially transformed by the roasting process for purposes of United States Government procurement.

LAW AND ANALYSIS:

U.S. Customs and Border Protection (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 United States law or practice for products offered for sale to the United States Government, pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III, Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518).

The rule of origin set forth in 19 U.S.C. 2518(4)(B) states:

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

See also 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of United States Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal 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 CFR 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.

See 48 CFR 25.003.

For more than 30 years, CBP has recognized that roasting green coffee beans substantially transforms the beans into a new and different article of commerce. *See* Headquarters Ruling Letter (HQ) 733563, dated June 24, 1991, citing HQ 070395, dated June 6, 1983; HQ 722980, dated October 17, 1983; HQ 722360, dated June 6, 1984; and, HQ 725641, dated July 25, 1984. These rulings from 1983 and 1984 concluded that roasting, or roasting and blending, of coffee was sufficient to change its character and use and thus effect a substantial transformation. Based on this long held position, depending on where the coffee beans are roasted, the roasting of the green coffee beans substantially transforms the coffee beans into either a product of Canada, or a product of the United States, for purposes of government procurement.

As the decaffeination occurs prior to the roasting of the green beans, we *see* no need to address it. In addition, as all of the other processing, *i.e.*, flavoring, grinding, degassing and packaging, occur in the same country as roasting, there is no need to address these additional processes. The resulting roasted coffee, ground or in bean form, is a product of Canada or the United States.

HOLDING:

Based on the facts and analysis set forth above, for United States Government procurement purposes, the country of origin of the roasted coffee, in ground or bean form, is the country where the raw green coffee beans are roasted, *i.e.*, Canada or the United States.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days after

publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Alice A. Kipel,

Executive Director

Regulations and Rulings Office of Trade

[Published in the Federal Register, November 21, 2017 (82 FR 55387)]

