DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Special Ops Flashlights and Sportsman Flashlights

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 Special Ops Flashlight, Sportsman Flashlight, and a light-emitting diode (LED) blank assembly. Based upon the facts presented, CBP has concluded in the final determination that India is the country of origin of the blank LED Assembly, Special Ops Flashlight, and Sportsman Flashlight for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 7, 2012. 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 June 11, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202–325–0132).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 7, 2012, pursuant to subpart B of part 177, Customs and Border Protection (CBP) Regulations (19 CFR Part 177, Subpart B), CBP issued a final determination concerning the country of origin of the blank LED Assemblies, Special Ops Flashlights and Sportsman Flashlights which may be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ H185149, was issued at the request of Southwest Synergistic Solutions 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 the Special Ops Flashlights and the Sportsman Flashlights which are assembled in the United States using the blank LED assemblies from India are products of India for purposes of U.S. Government procurement. The country of origin of the blank LED assembly is India.

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: May 7, 2012.

Sandra L. Bell,

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

H185149

May 7, 2012

CLA–2 OT:RR:CTF:VS H185149 RSD

CATEGORY: Marking

Mr. Juan Enrique-Cienfuegos
Southwest Synergistic Solutions
215 N. Center, # 703
San Antonio, Texas 78202

RE: Country of Origin of Special Ops Flashlights, Sportsman Flashlights, and Blank LEDs Assemblies

Dear Mr. Cienfuegos:

This letter is in response to your letter of July 12, 2011, to our National Commodity Specialist Division, in which you requested a binding ruling pertaining to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) and the country of origin for marking and government procurement of three items, the special ops flashlight, sportsman flashlight and light-emitting diodes (LEDs) blank assemblies. Your letter was forwarded from our National Commodity Specialist Division (NCSD) in New York to this office for a response to your request for a ruling on the country of origin for government procurement. By separate emails sent from January 6 through 21, 2012, you provided additional information for consideration as part of your ruling request. Samples of the articles were enclosed for our consideration. The classification and country of origin marking issues will be dealt with under separate cover.

Under the pertinent 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 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 special ops flashlight, sportsman flashlight and LED blank assemblies. We note that Southwest Synergistic Solutions 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 imported product under consideration is a LED blank assembly. The LED blank assembly is sold to for hobbyists who want to create their own unique lights. The assembly can be made into two types of flashlights, the Special Ops Flashlight and the Sportsman Flashlight. The LED blank assemblies are cylindrical in shape and measure approximately 1⅜ inches tall with an outside diameter of 7/8 of an inch. The LED blank assemblies consist of multi-colored LEDs with Printed Circuit Boards (PCBs) attached to them. They incorporate four LEDs and a push-button switch that controls the LEDs. Both the LEDs and PCBs are made in India, where the two items are attached together. The power source used for the LED blank assemblies is a 3 volt lithium battery which is imported separately and sourced from China. The battery is attached to the LED blank in the United States. The remaining part that is attached to the LED blank assembly in the U.S. is the plastic battery tube. This is done by holding the PCB and outwardly folding the soldered battery straps to create a slight V shape; inserting the PCB into the battery tube; inserting the 3 V Lithium battery into the bottom side of the battery tube; sliding the battery back plate into place to close the circuit; and testing the LED blank.

You claim the LED assembly is a blank, which can be utilized for several types of lights including flashlights, signal lights, ornamental lights, or novelty lights. The LED illumination is directional and the boards are currently imported with four different LED control software programs. The PCB can be reprogrammed in the United States depending on the demand at the time for a particular version. Furthermore, the sequences can be customized based on the customer's desired settings.

Special Op Flashlight and Sportsman Flashlight

The LED assembly blanks may be used to produce two types of flashlights. The first product is a Special Ops Flashlight containing an infrared LED and 3 visible colored lights. The second flashlight contains visible colored lights and is called the Sportsman Flashlight. The various color wavelengths offer the user a variety of illumination options. The infrared LED is used by special forces or SWAT teams to illuminate maps or their walking path, and can only be seen with infrared night vision optics. The red light is used for low light illumination to preserve night vision equipment. The yellow light is used for low light illumination and animal watching. The green light is used for map reading. The blue light is used for fluid trail blood tracking. The Special Ops and Sportsman flashlight consists of the following components.

1. LED blank assemblies,
2. Silicon Flashlight top,
3. Silicon Ross bottomed magnetic end cap,
4. Magnets,
5. Packaging tube and cap, and
6. Instructions.

The assembly for both flashlights is as follows:

1. Select proper LED blank software version;
2. Insert LED blank into Silicon Flashlight top;
3. Place magnets inside Cross bottomed Magnetic end cap;
4. Attach the Silicon Cross bottomed magnetic end cap to assembled Silicon Flashlight light top;
5. Test for proper function;
6. Place the instructions inside packaging tube; and
7. Place the finished flashlight into the packaging tube and cover with top.

You indicate that all the software for the flashlights is written in the United States. The PCB's used in the LED blank assemblies produced in India will always be programmed with one version of the U.S. software. Some will have only one function programmed at the time of import and if reprogramming is required, it will be reprogrammed in the United States using the programming pads found on the backside of the PCB. The boards are reprogrammed on a reprogramming dock for loading the new software. Other PCB's will be set to a default mode, but the user will have the ability to select more than 15 different function modes already found in the PCB program utilizing the switch found on the PCB to set the PCB into program mode. The program will be selected by the number of clicks the switch receives.

You report that you are currently able to sell a version of the LED blank assemblies with multiple functions which could be used as a flashlight, a novelty device, a signaling device, or a tactical light. The end user determines how they want to use the LED blank assembly. Buyers of this version will be made aware of their ability to switch between different program modes and how to do it. However, for the Sportsman Flashlight or the Special Ops Flashlight, the LED blank assemblies program selection will be entered prior to shipping, and there is no ability to change modes. The software may be upgraded, but the LED blank assemblies need to be returned to the company for reprogramming. Once the LED blank assembly is returned, it no longer has to be disassembled to reach the reprogramming pads. The switch may be manipulated to give the customer their desired change.

ISSUE:

What is the country of origin of the flashlights and the LED assemblies for government procurement purposes?

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 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.

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) defining ''country of origin'' in identical terms

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of Subpart B of Part 177 consistent with the Federal Procurement Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1).

The Federal Procurement Regulations define ''U.S.-made end product'' as: * * * an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. *See* 48 C.F.R. § 25.003. Therefore, the question presented in this final determination is whether, as a result of the operations performed in the United States, the imported flashlight devices are substantially transformed into products of the United States.

A substantial transformation is said to have occurred when an article emerges from a manufacturing process with a name, character, or use that differs from the original material subjected to the process. *M.B.I. Merchandise Industries, Inc.* v. *United States,* 16 C.I.T. 495, 502 (1992) (citing *United States* v. *Gibson-Thomsen Co.,* C.C.P.A. 267, 270 (C.A.D. 98) (1940)) The question of whether a substantial transformation occurs for marking purposes is a question of fact; to be determined on a case-by-case basis. *National Hand Tool Corp.* v. *United States,* 16 C.I.T. 308, 311 (1992) (quoting *Uniroyal Inc. United States,* 3 C.I.T. 220, 542 F. Supp. 1026 (1982), aff'd, 1 Fed.Cir. 21, 702 F.2d 1022 (1983)).

Assembly operations which are minimal or simple, as opposed to complex or meaningful will generally not result in a substantial transformation. In determining whether the United States processing constitutes a substantial transformation, the 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 (CIT 1983), aff'd, 741 F.2d 1368 (Fed. Cir. 1984). *See also* C.S.D. 85–25. If the manufacturing or combining process is merely a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *See Uniroyal.*

CBP considers the totality of the circumstances in determining whether an imported article loses it identity when it is combined with other articles in the United States. 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. CBP takes into account such factors as resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and degree of worker skill required during the actual manufacturing process. *See* HQ H107335 dated September 9, 2010; and HQ H006417 dated August 20, 2008. No single factor is determinative.

We conclude that the LED blank assemblies provide the essential character to the finished Special Ops and Sportsman flashlights. The LED blank assemblies are clearly the dominant component contained in the flashlights. When they are imported into the United States, the LEDs blank assemblies which are produced in India, incorporate the four light emitting diodes and a push–button switch that control the LEDs. Thus, they are capable of generating the four different light colors that are the defining characteristic of the flashlights. As such, they possess all the basic functions of the two finished flashlights. In our judgment, the assembly of the other components with LED blank assemblies to make the finished flashlights constitutes a simple assembly operation that involves a small number of components which does not appear to require a considerable amount of time, a high degree of skill or attention to detail. Although the LEDs require programming to allow them to function as flashlights rather than in some other capacity such as signaling, decorative or novelty devices, the programming operation is not sufficiently complex to change the identity or nature of the devices. After the software is loaded onto the LED blank assemblies, the devices still function to emit light. Therefore, we conclude that the LED blank assemblies imported from India are not substantially transformed as a result of the processing operations performed in the United States to make the two versions of the finished flashlights. Consequently, the country of the origin of the finished Special Ops and the Sportsman Flashlights for government procurement purposes is the same as the country of origin of the imported LED blank assemblies, namely India.

HOLDING:

The country of origin of the Special Ops Flashlight, Sportsman Flashlight and Light-Emitting Diodes (LED) blank assemblies for government procurement purposes is India.

Sincerely,

Sandra L. Bell, Executive Director
Regulations and Rulings Office of International Trade

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