

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Lined Paper Notebooks and Filler Paper

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 lined paper notebooks and filler paper. Based upon the facts presented, CBP has concluded in the final determination that Mexico is the country of origin of the lined paper notebooks and filler paper for purposes of U.S. government procurement.

DATES: The final determination was issued on October 27, 2009. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination through December 3, 1956.

FOR FURTHER INFORMATION CONTACT: Alison Umberger, Valuation and Special Programs Branch: (202) 325-0267.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 8, 2009, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of lined paper notebooks and filler paper which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H066155, was issued at the request of Staples, 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. 251118). In the final determination, CBP has concluded that, based upon the facts presented, lined paper notebooks and filler paper, processed in Mexico from jumbo rolls of paper from Taiwan, are substantially transformed in Mexico, such that Mexico is the country of origin of the finished articles 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: October 29, 2009.

Sandra L. Bell,

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

Attachment

HQ H066155

October 27, 2009

OT:RR:CTF:VS H066155 ARU

Category: Marking

Mr. David M. Murphy, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, Counselors at Law, 399 Park Avenue—25th Floor, New York, NY 10022-4877.

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Lined Paper Notebooks and Filler Paper.

Dear Mr. Murphy: This is in response to your ruling request dated June 15, 2009, made on behalf of Staples, Inc. (“Staples”). You ask for a country of origin final determination relating to government procurement 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, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of certain finished lined notebook paper products. We note that Staples is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

Facts:

Staples imports four (4) styles of finished lined paper notebook products into the United States from Mexico: (1) Filler paper, (2) composition notebooks, (3) spiral notebooks, and (4) wireless notebooks. Each of the items will be produced in Mexico from unlined paper rolls sourced from Taiwan. The paper is received by the manufacturer in Mexico in the form of unlined jumbo rolls of paper that are then unwound and processed into the final products.

The production process for the filler paper begins with the jumbo rolls of paper being unwound and processed

through a lining machine. The lining machine prints the line and margin rulings on the paper in a continuous manner. The lined paper is then jogged and cut into large sheets. The large sheets of lined paper are then cut to notebook size, counted and sorted into the specified number of sheets for each package, and are three-hole punched. The finished sheets are matched with a top sheet, shrink-wrapped, and placed in cartons for shipment to the United States.

The production process for the composition notebooks begins with the jumbo rolls of paper being unwound and processed through a lining machine. The lining machine prints the line and margin rulings on the paper in a continuous manner. The lined paper is then jogged and cut into large sheets. The large sheets of lined paper are cut to a medium size, and counted and sorted into the specified number of sheets for each notebook. The groups of lined and cut sheets are then matched with a sheet of printed covers. Two cover designs are printed on one cover sheet. One is on the top of the sheet and the other is on the bottom of the sheet. The sheets and covers are sewn together to create the spine binding which is then folded over. Spine tape is applied to cover the binding. The assembled composition notebook is then cut in half and trimmed to its final size, and is packaged in cartons for shipment to the United States.

The production process for the spiral notebooks begins with the jumbo rolls of paper being unwound and processed through a lining machine while simultaneously being perforated. The lined paper is then jogged and cut into large sheets. The large sheets of lined paper are then cut to notebook size, counted, and sorted into the specified number of sheets for each notebook, and are three-hole punched and spiral hole punched. Piles of printed notebook covers are cut into notebook size and three-hole punched and spiral hole punched. The final sized line sheets are matched with the printed cover sheets and fly sheets (if applicable), and are bound with wire. Depending on the particular style of spiral notebook, several finished notebooks are matched with slip-sheets and shrink wrapped. The finished spiral notebooks are packaged in cartons and shipped to the United States.

The production process for the wireless notebooks begins with the jumbo rolls of paper being unwound and processed through a lining machine. The lining machine prints the line and margin rulings on the paper in a continuous manner while

simultaneously perforating the paper. The lined paper is then jogged and cut into large sheets. The large sheets of lined paper are then cut to a medium size, counted, and sorted into the specified number of sheets for each notebook. The groups of lined and cut sheets are then matched with printed covers and glued together. A spine tape is applied to cover the binding. The assembled wireless notebooks are then cut to final size and three-hole punched. The finished wireless notebooks are packaged in cartons for shipment to the United States.

Issue:

What is the country of origin of the finished lined paper notebook products for purposes of U.S. Government procurement?

Law and Analysis:

Pursuant to subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended ("TAA"; 19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth at 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 CFR 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 Procurement Regulations. See 19 CFR 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 CFR 25.403(c)(1).

A substantial transformation occurs when an article emerges from a process with a new name, character, or use different from that possessed by the article prior to processing. See *Texas Instruments, Inc. v. United States*, 69 CCPA 152, 681 F.2d 778 (1982). In determining whether the combining of

parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). In *Uniroyal*, the court determined that a substantial transformation did not occur when an imported footwear upper, the essence of the finished article, was combined with a domestically produced outsole to form a shoe. See *id.*

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

You claim that the steps involved in converting the paper rolls into notebook products in Mexico is complex and adds value. You also claim that, given the manual nature of many of the steps, the multi-step processes of cutting, lining, perforating, punching, sorting, counting, binding, and final assembly take substantial time to complete and account for the majority of the processing time for the finished products.

In Headquarters Ruling Letter ("HRL") 557408, dated January 14, 1994, CBP considered whether substantial transformation occurred in Mexico when bingo game faces were printed on U.S.-origin unprinted paper:

[I]t is apparent that a substantial transformation occurs when unprinted paper is printed in Mexico with bingo game faces. Upon exportation from the U.S., the paper is a raw material of a generic nature with varied

uses, but is dedicated to use as bingo game faces after the printing is completed. At this point, the sheets have a new identity, name, and character. Prior to this processing, the paper possessed nothing in its character which would indicate the nature of the final product.

Similarly, in the instant case, the jumbo rolls of paper sourced from Taiwan utilized to produce the subject finished products undergo a substantial transformation in Mexico as the items are changed into separate and distinct articles of commerce. The jumbo rolls of paper are fully converted to notebooks or filler paper in Mexico through the multi-step processes of printing, cutting, perforating, punching, sorting, counting, binding, and final assembly. Through these processes, the jumbo rolls of paper will undergo a change in name, (jumbo rolls of paper to filler paper, composition notebooks, spiral notebooks, or wireless notebooks), character, and use (from raw materials with multiple potential uses to lined paper notebooks and filler paper, articles with a specific use). As a result, the jumbo rolls of paper sourced from Taiwan are substantially transformed in Mexico and the finished lined paper notebook products, upon importation to the United States, will be considered products of Mexico.

Holding:

Based on the facts provided, the processing operations performed in Mexico impart the essential character to the finished lined paper notebook products. As such, the finished lined paper notebook products, upon importation to the United States, will be considered products of Mexico.

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. 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*

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