DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

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


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 that the country of origin of the blank LED Assembly is India. Based upon the facts presented, CBP has concluded that the Special Ops Flashlight and Sportsman Flashlight are products of India for purposes of U.S. Government procurement. The country of origin of the blank LED assembly is India.

FACTS:

The imported product under consideration is a LED blank assembly. The LED blank assembly is sold to 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 1 3/8 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. LED blank assemblies,
2. Silicon Flashlight top,
3. Silicon Ross bottomed magnetic end cap,
4. Magnets,
5. Packaging tube and cap, and
6. Instructions.
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 United States 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 in the United States into a new and different article of commerce with a name, character, or use distinguishable 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 made in the United States to make the two versions of the finished Special Ops and Sportsman 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.

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