Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at http://www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
(2) Evaluate the accuracy of the agency’s estimate of the burden;
(3) Enhance the quality, utility, and clarity of the information to be collected; and
(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Pipeline Corporate Security Review (PCSR).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0056.

Forms(s): Pipeline Corporate Security Review (PCSR) Protocol Form.

Affected Public: Hazardous Liquids and Natural Gas Pipeline Industry.

Abstract: Under the Aviation and Transportation Security Act (ATSA) and delegated authority from the Secretary of Homeland Security, TSA is tasked with developing policies, strategies and plans for dealing with transportation security. To carry out this responsibility regarding pipelines, TSA assesses current industry security practices through its Pipeline Corporate Security Review (PCSR) program. The PCSR Form is a voluntary, face-to-face visit with a pipeline operator during which TSA discusses an operator’s corporate security planning and also completes the PCSR Form. The PCSR Form includes 218 questions concerning the operator’s corporate level security planning, covering security topics such as physical security, vulnerability assessments, training, and emergency communications. TSA uses the information collected during the PCSR process to determine baseline security standards and areas of security weakness in the pipeline mode.

Number of Respondents: 2,200 potential respondents; likely 15 annual respondents.

Estimated Annual Burden Hours: An estimated 120 hours annually, based on TSA conducting 15 PCSR visits a year, each lasting 8 hours.


Susan L. Perkins,
TSA Paperwork Reduction Act Officer, Office of Information Technology.

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Generation II Military Energizer 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 the Generation II military Energizer flashlight, with light-emitting diodes. Based upon the facts presented, CBP has concluded in the final determination that China is the country of origin of the Generation II military Energizer flashlight, for purposes of U.S. Government procurement.

DATES: The final determination was issued on April 29, 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 within June 3, 2013.


SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 29, 2013, 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 Generation II military Energizer flashlights which may be offered to the United States Government under an undesignated government procurement contract. This final determination, in HQ H215657, was issued at the request of Energizer Battery 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 the Generation II military Energizer flashlights assembled in the United States from foreign made parts and programmed with U.S. origin software in the United States are products of China 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 of 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.


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

HQ H215657

April 29, 2013

MAR–02 OT:RR:CTF:VS H215657 RSD

CATEGORt: MARKING

M. Jason Cunningham, Esq.
30 South Wacker Drive
Suite 2200 No. 41
Chicago, Illinois 60606


Dear Mr. Cunningham:

This is in response to your letter dated March 28, 2012, requesting a final determination on behalf of Energizer Battery, Inc. (Energizer), pursuant to subpart B Part 177 Customs and Border Protection (“CBP”) Regulations (19 CFR § 177.22(d)), under 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 a Generation II flashlight. You have provided additional information regarding the processing operations performed on the flashlight in the United States in submissions made through email and a DVD on July 13, 2012, November 8, 2012, and February 14, 2013. We note that Energizer is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination. We regret the delay in our response.

FACTS:

The product at issue is a finished second generation military flashlight (Generation II)
produced by Energizer Battery Inc. On January 3, 2012, our office issued an advisory ruling, H195536, to Energizer, concerning the Generation II flashlight, in which we stated that the assembly of the various foreign parts and the foreign LED into the Generation II flashlight was sufficiently complex and significant to constitute a substantial transformation. In the advisory ruling, we indicated that the origin of the LED would determine the origin of the finished flashlight, and because the LED was of Chinese origin, the country of origin of the finished flashlight would also be China. You have subsequently requested that we reconsider our determination in the advisory ruling by requesting this final determination. You have presented additional information regarding the production of the energizer flashlight, photographs of the Generation II flashlight at various stages of manufacture, and a DVD showing the final assembly process of the flashlight.

You advise that Energizer intends to sell the Generation II flashlight to the U.S. military. The Generation II flashlight is designed to be extremely rugged so that it can withstand forceful impacts without compromising its performance or its waterproof operation. It also provides long-lasting LED and infrared lighting, which is invisible to the naked eye, but useful for signaling in military situations. The previous versions of the generation flashlights relied more upon mechanical switches, while the Generation II flashlight uses a microprocessor and programming control, which requires more sophisticated hardware and software programming.

The Generation II flashlight also incorporates two additional innovations. The IFF Mode for the infrared light is an infrared strobe mode used to “Identify Friend or Foe... Although the flashlight is designed to be used with two AA batteries in the field, it can actually operate with a single AA battery while maintaining the same features, but with a shorter battery life.

The production process is as follows:

1. The LED wafer is “grown” in the U.S. and exported to China. In China, the LED wafer is mounted and coated with resin and then shipped to the Energizer facility in Vermont.
2. A third party in the U.S. mounts the Chinese LED wafer onto a Chinese-origin “hex board” and coats it with resin.
3. In Vermont, the LED is combined with various imported subcomponents from China, including the main PCB, switch PCB, head cover, pivot locks, washers, switch levers, springs, lens rings, screws, buttons, etc., to create the lens head subassembly.
4. The lens head subassembly’s wiring, soldering, and physical connections are inspected.
5. At the second work station, the following Chinese-origin flashlight body components are combined with the lens head subassembly to make the Generation II flashlight: body seal ring, end cap top plate, end cap bottom plate, end cap PCB and switch assembly, body bracket, spring holders, battery cartridge, screws, body with overmold, hinge ring, end cap with overmold, lock wheel with screw and nut, insert, belt clip, clip retainer, and clip screws. During the assembly process, one of the more important operations that must be precisely performed is the spot soldering of the wires, switches and other various components to the LED. The assembly process of the flashlight takes approximately seven minutes to complete under actual production conditions with fully trained qualified operators.

According to the information presented in a November 8, 2012, email, Energizer provides all the technical and quality control training necessaries to be designated as qualified to produce the flashlights. The DVD submitted, demonstrates the assembly process involves putting together more than fifty parts and components in a multi-step process. The DVD shows the two work stations at the Energizer facility in St. Albans, Vermont. As explained above, at the first workstation, the operators combine various subcomponents of the lens head subassembly. After the lens head subassembly is created, it is transferred to a second separate workstation, where the Energizer operators combine the lens head subassembly with approximately thirty other imported components to create the end product, the Generation II military flashlight.

We also note that in producing the flashlights, Energizer installs U.S. origin software that Energizer created in house. The programming allows for battery type detection; battery quantity alternative operation levels; lighting levels; and the control of power, not for the light output, but for the purposes of controlling heat and the protection of the sensitive LEDs. The code writing for the software programming was developed and completed in the United States, but the programming is transmitted to China for flashing the program to the circuitry for the lights. Along with the main white LED light, the flashlight also has four smaller LED’s that emit red, blue, green, or infrared light. A modification that Energizer has made to this model is that each of the LEDs that emit visible light, i.e. white, red, blue, and green, can shine at high, medium, or low intensity. The original programming for this feature was completed in China for the flashlight, occurs in the United States and will use a proprietary source code. It is stated that Energizer has expended significant resources in connection with the redesign and development of this product in the United States. You have enclosed a spreadsheet that identifies all of the costs and country of origin data of all subcomponents used in the lens head subassembly and all the other components used in the production of the Generation II military flashlight.

ISSUE: What is the country of origin of the Energizer military Generation II flashlight 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 of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.


An article is a product of a country or instrumentality only if (i) it is 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. § 177.23. 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. No one factor is decisive, the key 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 (Ct. Int’l Trade 1983), aff’d, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are formal or simple, as opposed to complex or meaningful, will generally 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. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred.
In C.S.D. 85–25, 19 Cust. Bull. 844 (1985), U.S. Customs Service (legacy agency to CBP) (hereinafter, incorporated with the reference to “CBP”) held that for purposes of the Generalized System of Preferences (“GSP”), the assembly of a large number of fabricated components into a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuit sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

CBP has held in a number of cases that complex and meaningful assembly operations, and not a large number of components result in a substantial transformation. For example, in HQ H047362, dated March 26, 2009, CBP found that 61 components manufactured in China and assembled into ground fault circuit interrupters (GCFIs) in Mexico in a two-phase process by skilled workers using sophisticated equipment were substantially transformed in Mexico. In particular, we took into consideration that the first phase involved the assembly of a PCB in a 42-step technically complex process that took 12 minutes and that the second phase of assembling a PCB had the entire major components necessary for the GCFI to fulfill its function. We also took into consideration that in the second phase the PCB would be assembled with 29 other components to form the GCFIs in a 43-step process taking approximately 10 minutes, after which the components lost their individual identities and became an integral part of the interrupters with a new name, character, and use.

In HQ H017620, dated February 5, 2008, CBP considered the country of origin of the prior model Generation I flashlight for government procurement purposes. We determined that the manufacturing operations performed in the U.S. to produce the replacement lens head subassembly and the finished flashlight resulted in a substantial transformation of the imported components. In support of this conclusion, we explained that the U.S. origin LED impaled the essential character to both the replacement part and the finished product, as it generated the primary light of both products. We also recognized that Energizer had expended significant resources in connection with the design and development of the flashlight in the United States. We also pointed out that the U.S.-origin LED and the labor performed in the United States during the assembly and testing operations represented the majority of the costs associated with the production of both the replacement lens head subassembly and the finished flashlight.

In HQ H017620 and HQ H057777, we indicated in the advisory ruling H195536 that the U.S. assembly of the various foreign parts and LED into the military Generation II flashlight did not result in a substantial transformation. We mentioned that the LED still imparted the essential character of the finished flashlight, and since it was not of U.S. origin, the country of origin of the flashlight for government procurement purposes would not be the United States. You have now provided additional information with this request for a final determination regarding the assembly process of the Generation II military flashlight. Some of the information was presented on a DVD showing the assembly process. Upon consideration of the additional information that you have provided and our observations of the assembly process shown in the DVD, we continue to believe that our conclusion in advisory ruling H195536 that the foreign made components and parts do not undergo a substantial transformation when they are assembled together in the United States was correct. We note virtually all of the components of the military Generation II flashlight, including the most fundamental nature. While the programming does not seem to be exceptionally complex, and it only takes several minutes to complete. You point out that the operators must solder some of the components together, but we do not believe that the soldering involved in this case is a particularly complex operation that is indicative of a substantial transformation, when compared to the operation performed in China in creating the various parts including the LED of the flashlight.

It is also noted that in the United States, the Generation II flashlight is programmed with software that is written in the United States. We observe, however, that the programming is not essential to the basic operation of the flashlight. The programming constitutes only an enhancement how the flashlight operates, but it does not change its fundamental nature. While the programming does provide the flashlight with some additional features, such as being able to detect the battery type installed in the flashlight, and controlling the power level for protection of the LEDs, the programming is not sufficiently complex enough to change...
the identity or the character of the device. The flashlight could still function as a flashlight without the software programming; after the software is loaded onto the device, it still remains a flashlight.

Consequently, we find that the assembly and programming operations Energizer performs in the United States on the various imported components (individual parts and subassemblies) do not create a new article of commerce with a new name, character, and use. Therefore, we find the imported components, including the LED, from China are not substantially transformed as a result of the operations performed in the United States to produce both the lens head subassembly and the completed Generation II military flashlight. Accordingly, we find that the country of origin of the Generation II military flashlight for government procurement purposes remains the country of origin of the components and subassemblies, including the LED, China.

HOLDING:

Based upon the specific facts of this case, we find that the imported components of the flashlight and replacement lens head subassembly are not substantially transformed as a result of the described assembly operations and programming operations performed in the United States. The country of origin for government procurement purposes of the Generation II military flashlight is China.

Notice of this final determination will be given in the Federal Register, as required by 19 CFR § 177.31, that CBP reexamine the matter if there is new and material evidence which demonstrates that the assembly operations and programming operations performed in the United States are not substantially transformed as a result of the operations performed in the United States on the various imported components (individual parts and subassemblies) do not create a new article of commerce with a new name, character, and use. Therefore, we find the imported components, including the LED, from China are not substantially transformed as a result of the operations performed in the United States to produce both the lens head subassembly and the completed Generation II military flashlight. Accordingly, we find that the country of origin of the Generation II military flashlight for government procurement purposes remains the country of origin of the components and subassemblies, including the LED, China.

FOR FURTHER INFORMATION CONTACT:
Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION:
In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in National Coalition for the Homeless v. Veterans Administration, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency’s needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for “off-site use only” recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Office of Enterprise Support Programs, Program Support Center, HHS, room 12–07, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable Federal landholding agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in National Coalition for the Homeless v. Veterans Administration, No. 88–2503–OG (D.D.C.).

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