Advisory Committee Act (FACA), Title 5, United States Code (Pub. L. 92–463).

MERPAC is an advisory committee established under the Secretary’s authority in section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards. The Committee will advise, consult with, and make recommendations reflecting its independent judgment to the Secretary.

A copy of all meeting documentation is available at https://homeport.uscg.mil by using these key strokes: Missions; Port and Waterways Safety; Advisory Committees; MERPAC; and then use the announcements key. Alternatively, you may contact Mr. Breyer as noted in the ADDRESSES section above.

Agenda
Day 1

The agenda for the September 12, 2013, meeting is as follows:
(1) The full committee will meet briefly to discuss the working groups’ business/task statements, which are listed under paragraph 2 (a)–(g) below.
(2) Working groups addressing the following task statements, available for viewing at http://homeport.uscg.mil/merpac will meet to deliberate:
(a) Task Statement 30, Utilizing Military Education, Training and Assessment for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and U.S. Coast Guard Certifications;
(b) Task Statement 58, Communication between External Stakeholders and the Mariner Credentialing Program, as it relates to the National Maritime Center;
(c) Task Statement 78, Consideration of the International Labor Organization’s Maritime Labour Convention, 2006;
(d) Task Statement 80, Crew Training Requirements Onboard Natural Gas-Fueled Vessels Other Than Liquefied Natural Gas Carriers;
(e) Task Statement 81, Development of Competency Requirements for Vessel Personnel Working Within the Polar Regions;
(f) Task Statement 82, Review and submit recommendations for proposed revisions to CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings; and
(g) Task Statement 83, Development of competency requirements to meet STCW Chief Engineer III/2 for personnel working on small vessels with high horsepower.
(3) Public comment period. This will be held prior to the Reports of working groups.
(4) Reports of working groups. At the end of the day, the working groups will report to the full committee on what was accomplished in their meetings. The full committee will not take action on these reports on this date. Any official action taken as a result of this working group meeting will be taken on day 2 of the meeting.
(5) Adjournment of meeting.

Day 2

The agenda for the September 12, 2013, committee meeting is as follows:
(1) Introduction;
(2) Remarks from Coast Guard Leadership;
(3) Roll call of committee members and determination of a quorum;
(4) Designated Federal Officer (DFO) announcements;
(5) Reports from the following working groups:
(a) Task Statement 30, Utilizing Military Education, Training and Assessment for STCW and U.S. Coast Guard Certifications;
(b) Task Statement 58, Communication between External Stakeholders and the Mariner Credentialing Program, as it relates to the National Maritime Center;
(c) Task Statement 78, Consideration of the International Labor Organization’s Maritime Labour Convention, 2006;
(d) Task Statement 80, Crew Training Requirements Onboard Natural Gas-Fueled Vessels Other Than Liquefied Natural Gas Carriers;
(e) Task Statement 81, Development of Competency Requirements for Vessel Personnel Working Within the Polar Regions;
(f) Task Statement 82, Review and submit recommendations for proposed revisions to CG–719K, Merchant Mariner Credential Medical Evaluation Report and CG–719K/E, Merchant Mariner Evaluation of Fitness for Entry Level Ratings; and
(g) Task Statement 83, Development of competency requirements to meet STCW Chief Engineer III/2 for personnel working on small vessels with high horsepower.
(6) Other items for discussion:
(a) Report on National Maritime Center (NMC) activities from NMC Commanding Officer, such as the net processing time it takes for a mariner to receive his or her credential after application submittal;
(b) Report on Mariner Credentialing Program Policy Division activities, such as its current initiatives and projects;
(c) Report on International Maritime Organization (IMO)/International Labor Organization (ILO) issues related to the merchant marine industry; and
(e) Briefings about on-going Coast Guard projects related to personnel in the U.S. Merchant Marine, such as possible Task Statements concerning:
• Correction of merchant mariner credentials issued with clear errors;
• Review of draft update to Volume III of the Marine Safety Manual, Chapters 20 to 26; and
• Seafarer fatigue
(7) Public comment period/presentations.
(8) Discussion of working group recommendations. The committee will review the information presented on each issue, deliberate on any recommendations presented by the working groups and approve/formulate recommendations for the Department’s consideration. Official action on these recommendations may be taken on this date.
(9) Closing remarks/plans for next meeting.
(10) Adjournment of meeting.

A copy of all meeting documentation is available at http://homeport.uscg.mil/merpac. Alternatively, you may contact Mr. Breyer as noted in the ADDRESSES section above.


J. G. Lantz,
Director of Commercial Regulations and Standards.

[FR Doc. 2013–20350 Filed 8–20–13; 8:45 am]
BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Hard Disk Drives and Self-Encrypting Drives


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 certain digital storage devices known as hard disk drives ("HDDs") and self-encrypting drives ("SEDs"). Based upon the facts presented, CBP has concluded that the programming operations performed in the United States, using U.S.-origin firmware, substantially transform non-TAA country HDDs. Therefore, the country of origin of the HDDs and SEDs is the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on August 14, 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 on or before September 20, 2013.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325–

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 14, 2013, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain digital storage devices known as HDDs and SEDs, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H241362, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the programming operations performed in the United States, using U.S.-origin firmware, substantially transform non-TAA country HDDs. Therefore, the country of origin of the HDDs and SEDs is the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination 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: August 14, 2013.

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

Attachmen

HQ H241362

MAR OT-RR:CTF:VS H241362 Hkp

CATEGORY: Origin

Stuart P. Seidel, Esq.

Baker & McKenzie

815 Connecticut Avenue NW

Washington, DC 20006–4078

RE: Government Procurement; Trade Agreements Act; Country of Origin of Hard Disk Drives and Self-Encryption Drives; Substantial Transformation

Dear Mr. Seidel:

This is in response to your letter, dated April 24, 2013, requesting a final determination on behalf of Seagate Technology, LLC (“Seagate”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection ("CBP") Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (10 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. In reaching our decision, we have taken into account additional information submitted on June 3, 2013. This final determination concerns the country of origin of three lines of Seagate’s Hard Disk Drives ("HDDs") designated as: (1) "Mission Critical"; (2) "Business Critical"; and, (3) "Personal Storage". We note that as a U.S. import, the term "Seagate" is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. Your request for confidential treatment regarding all cost and fee information submitted in your request is granted and such information will not be disclosed to the public.

FACTS:

Seagate imports fully assembled HDDs from [non-TAA country] or [non-TAA country], an HDD is a digital storage device. The products at issue are three lines of HDDs: (1) Mission Critical, sold under the brand names "Cheetah", "Savvio", and "Enterprise Performance"; (2) Business Critical, sold under the brand name "Constellation"; "Enterprise Capacity", and "Enterprise Value"; and, (3) Personal Storage, sold under the brand names "Barracuda" and "Desktop".

HDDs are designed in the United States and assembled either in [non-TAA country] or [non-TAA country] from components manufactured by Seagate outside the United States or obtained by Seagate from suppliers in Asia. The assembly process in [non-TAA country] or [non-TAA country] is as follows: The Head Disk Assembly ("HDA"), usually comprised of two magnetic recording media ("Media") and three read/write recording heads ("Heads"), a head actuator assembly, and an airtight metal enclosure is assembled in minutes. The HDA is mated to a printed circuit board ("PCB") containing disk drive electronics to create an HDD. It is assembled in seconds.

The HDD is loaded into the factory testing system, and testing firmware is downloaded onto the HDD to facilitate media certifications. The HDD stays in a sequence of media certification operations for one or more days, as necessary. Following successful media certification, the HDD testing firmware is replaced with generic, basic firmware that only allows the HDD’s computer interface functions to be tested. Testing lasts between [xxx] and [xxx]. After testing, the generic firmware is removed and the drive is "forced blocked", that is, it is blocked from being able to have software loaded onto it or to be further tested. It is stated that force blocking renders the HDD unable to function as a storage drive.

The Heads in the HDA incorporate semiconductor, magnetic, mechanical, and manufacturing process design into an integrated recording reader and writer. It takes approximately [xxx] hours to design a Head, [xxx] of which are allocated to design work in the U.S., [xxx] hours to design work in [non-TAA country], and [xxx] hours to design work in [non-TAA country]. The Media in the HDA incorporates thin film magnetics, mechanical surface design and manufacturing process design. It takes approximately [xxx] hours to design Media, [xxx] of which are allocated to design work in the U.S., [xxx] hours to work done in [TAA country], and [xxx] hours to work done in [non-TAA country].

Fully assembled HDDs are shipped to the United States. According to the information submitted, in their imported condition, HDDs cannot function as storage media. The disk heads cannot move, data cannot be stored or retrieved and, were the HDDs to be installed on computers or networks, they would not be recognized or listed. The HDDs, however, have a rudimentary serial port that enables the HDD to communicate with a computer using a proprietary Seagate protocol so that firmware may be installed and tests performed.

In the U.S., the imported HDD is unblocked and programmed with two types of firmware:

1. Servo Firmware, which controls all motors, preamp and servo functions without which the motors, Media, and Heads will not operate and the HDD will not work; and
2. Non-Security Controller Firmware, which manages all communications between the host and target drives as well as all data within the drive. It allows data files to be stored on the Media in the HDD, to be found and listed within applications, and to be saved, retrieved and overwritten.

Installation and testing of the Servo and Non-Security Controller Firmware takes between [xxx] and [xxx], depending on the capacity and model of the HDD. Both types of firmware are developed in the U.S. and [TAA country]. Approximately 80% of the work hours spent on combined firmware
design is allocated to work performed in the United States at Seagate’s design centers and approximately 25% to work performed in [TAA country]. Combined, the compiled firmware code is approximately 2 MB in size and contains approximately one million lines of code. The firmware loaded onto the HDD in the U.S. makes the HDD a fully functional generic storage device.

During programming operations, approximately 25% of the generic HDDs are reformatted based on specific customer requirements, such as security features, format sizes, and format modes. Customer-specific code is developed in the United States. Security Controller Firmware, which may be added on to Non-Security Controller Firmware as a part of a customer’s code, allows the HDDs to be secured through encryption, which involves enabling an encryption program and security interface, locking the debug ports, and loading credentials and certificates. The Security Controller Firmware is written in the U.S. (85–90%) and in [TAA country] (10–15%). Based primarily on technology totally designed in the U.S., involving thousands of hours and millions of dollars. After the HDDs are configured to customer security requirements, the HDDs are known as self-encrypting drives (SEDs). SEDs encrypt data as it is being written and decrypt data as it is being read.

After programming is complete, the HDDs and SEDs are validated or tested. A final quality assurance inspection is performed, after which the HDDs and SEDs receive new part numbers and labels, and are sold.

ISSUE:
What is the country of origin of Seagate’s Hard Disk Drives and Self-Encrypting Drives 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 by the Bipartisan Trade Promotion Act of 2007 (§ 251 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.

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).

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 rule of origin. See 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations define “U.S.-made end product” as: [A]n 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.

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. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

In Data General v. United States, 4 Ct. Int’l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused the PROM’s interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its “memory” which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs designed by a U.S. project engineer with many years of experience in “designing and building hardware.” While replicating the program pattern from a “master” PROM may be a quick one-step process, the development of the pattern and the production of the “master” PROM required much more software expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a “substantial transformation” than the manual interconnection of resistors, resistors and diodes upon a circuit board creating a similar pattern.

In Texas Instruments v. United States, 681 F.2d 778, 782 (C.C.P.A. 1982), the court observed that the substantial transformation issue is a “mixed question of technology and customs law.” In C.S.D. 84–85, 18 Cust. B. & Dec. 1044 (Apr. 2, 1984), CBP stated:

We are of the opinion that the rationale of the court in the Data General case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming . . . [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. See also Headquarters Ruling Letter (‘‘HQ’’) 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with software that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; but see HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or different product); HQ 734518, dated June 28, 1993, (motherboards are not substantially transformed by the importing of the central processing unit on the board because, whereas in Data General use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

HQ H052325, dated February 14, 2006, concerned the country of origin of a switch and a switch/router. The Brocade 7800 Extension Switch was assembled to completion in China and programmed in the U.S. with U.S.-origin operating system (OS) software and customer specified firmware and software. The Brocade FX8–24 switch/router contained a PCB that was assembled and programmed in China and shipped to the U.S., where it was assembled with other components to make the final product. The completed unit was then programmed with U.S.-origin OS software and customer specified firmware and software. In both cases, the U.S.-origin OS software provided the devices with their functionality. Customs found that in both cases, the processing performed in the United States, including the downloading of the U.S.-origin OS software, resulted in a substantial transformation of the foreign
See

with software primarily developed in the

unsubstantially transformed in the U.S.

See

of the programming performed in the U.S.,

firmware causes the imported HDDs to

overwritten. Together, the U.S.-origin

applications, and saved, retrieved and

particular, Controller firmware allows data

between the host and target drives as well as

firmware, which manages all communication

Seagate protocol that is used solely to install

without this software, the imported devices

could not function as Ethernet switches. As a

result of the programming performed in the

U.S., software developed in the U.S.,

CBP found that the imported switches were

U.S., with software developed in the U.S.,

resulting in the programming performed in the

for products offered for sale to the

U.S. Government. Consequently, the question

of whether additional programming performed in the

U.S., using U.S.-origin firmware incorporating an encryption code,

transforms the HDD into a SED subject to

U.S. export control jurisdiction is outside the

scope of this determination.

Please be advised that whether the HDDs

may be marked “Made in the U.S.A.” or with

similar words, is an issue under the authority

of the Federal Trade Commission (“FTC”). We suggest that you contact the FTC,

Division of Enforcement, 6th and Pennsylvania Avenue, NW, Washington, DC

20508, on the propriety of markings indicating that articles are made in the

United States.

HOLDING:

Based on the facts provided, the programming operations performed in the United States impart the essential character to Seagate’s hard disk drives. As such, the HDDs are considered products of the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the determination. Pursuant to 19 C.F.R.

§ 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade. Sincerely,

Sandia L. Bell.

Executive Director Regulations and Rulings Office of International Trade

[FR Doc. 2013–20425 Filed 8–20–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX13N05ESB0500]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of a new information collection, Registry of Climate Change Vulnerability Assessments.

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: Submit written comments on or before October 21, 2013.

ADDRESSES: You may submit comments on this IC to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 807, Reston, VA 20192 (mail); (703) 648–7197 (fax); or dgovoni@usgs.gov (email). Please reference “Information Collection 1028—NEW, Registry of Climate Change Vulnerability Assessments” in the subject line.

FOR FURTHER INFORMATION CONTACT: Laura Thompson, National Climate Change and Wildlife Science Center, U.S. Geological Survey, 12201 Sunrise Valley Drive, Mail Stop 400, Reston, VA 20192 (mail); (703) 648–4083 (phone); or lthompson@usgs.gov (email).

SUPPLEMENTARY INFORMATION:

I. Abstract

The USGS proposes to collect information on existing assessments of the vulnerability of various resources controlled to climate change (hereafter VA or “vulnerability assessments”). This information will include organization conducting the study, its location, the topical focus of the assessment, methodology and supporting data used, and point of contact information. Because many governmental and nongovernmental parties are conducting such assessments, and because their conclusions, methodologies, and related data assets may be of interest or utility to others contemplating such assessments, the USGS will make the information collected available on the Web in the form of a simple registry-type database. Users, including the