DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Notebook Computer Products


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 notebook computer products known as the EliteBook 840–G1 Notebook. Based upon the facts presented, CBP has concluded that in all four scenarios, the country of origin of the notebook computer is Country A for purposes of U.S. Government procurement.

DATES: The final determination was issued on March 10, 2015. 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 April 15, 2015.

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade.

Dear Mr. Halasz:

This is in response to your letter dated March 14, 2013, and your supplemental submission dated March 10, 2014 requesting a final determination on behalf of Hewlett-Packard Company (“HP”) pursuant to Subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 et seq.), CBP issues final determinations as to whether an article is or would be product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or for products offered for sale to the U.S. Government. This final determination concerns the country of origin of HP’s EliteBook 840–G1 Notebook (“Elitebook”). As a U.S. importer, HP is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. A meeting was held at our office on January 5, 2015.

In your letter, you requested confidential treatment for certain information contained in the file. Pursuant to 19 CFR 177.2(b)(7), the identified information has been bracketed and will be redacted in the public version of this final determination.

FACTS:

The Elitebook is a commercial notebook computer. The components of the Elitebook are sourced from various countries. The components include:

- **Base Unit:** The base unit is the bottom of the finished notebook made of a metal frame, with metal or plastic skins. The base unit includes antennae, a printed circuit assembly (“PCA”), the central processing unit (“CPU”), the BIOS chip, the keyboard, cables, connectors and speakers. The CPU is sourced in Country A, [******] or Country G, [******]. The base unit is assembled in Country A, a non-TAA designated country.
- **Hinge-Up:** The hinge-up is the top of the finished notebook. It consists of an LCD display, surrounding frame, and hinges for attachment to the base unit. The hinge-up is assembled in Country A.
- **Hard Disk Drive/Solid State Drive:** The drives store data, including the operating system and value-added software. Both drives are sourced in Country A or Country B, [******] a TAA designated country.
- **WLAN Card:** The WLAN card establishes wireless connections with other devices. It consists of a printed circuit board, radio frequency transmit/receive components and motherboard processor. The country of origin of the WLAN card is Country A.
- **Battery:** The country of origin of the battery is Country A.
- **BIOS:** The BIOS executes the instructions that start the notebook and prepares the hardware for use. It loads the operating system and passes control of many functions to the operating system. The BIOS is developed and written at HP’s laboratory in Country D, [******] a TAA designated country.
- **Operating system (“OS”):** OS is a third-party product that HP downloads onto most Elitebooks, and is developed in Country D.
- **Other minor components such as cables, brackets, screws, CD’s and manuals** are sourced from a variety of countries, and comprise less than 2% of the product.

The BIOS is electronically transmitted from Country D to Country E, [******] a TAA designated country, where it is maintained by a HP team. BIOS maintenance includes adding device support, such as a new wireless LAN card, and improving field issues that were not discovered during standard testing. HP states that the Elitebook is non-functional without the BIOS because it executes the instructions that start the notebook and provides the basic instructions for controlling the system hardware, and includes all necessary hardware drivers and provides a uniform interface for the OS to access the hardware. HP further states that the BIOS authenticates the hardware, OS, and application programs before they are loaded.

According to your letter, HP will assemble the Elitebook by one of the four scenarios described below.

**Scenario 1:** This scenario applies when all the components are imported to Country F, [******] a TAA designated country for assembly.
1. The base unit is placed over the hinge-up.
2. The hinges are closed and screwed shut.
3. Cables for the display and the antennae are routed and secured to avoid damage.
4. The unit is moved to a station where the memory, hard disk/solid state drive, and WLAN are installed into the unit, connected and secured in place.

5. The battery is inserted into the base unit.

6. The unit is moved to the next station where the BIOS is downloaded onto the hard disk/solid state drive. The BIOS is downloaded on the flash device (BIOS chip) that is inside the base unit.

After assembly is complete, the unit goes through a testing phase, where the operator performs a "run-in" test to ensure that all accessories are included and the "run-in" test is executed.

Scenario 2: This scenario is identical to Scenario 1 except that the base unit and the hinge-up are combined in Country A and imported into Country F for remaining assembly processes, testing, quality control and packaging.

Scenario 3: This scenario is identical to Scenario 1 except that all the hardware components are assembled in Country A before they are imported to Country F. The programming of a device that occurs in Country F are the BIOS and the OS download as well as the testing, quality control and packaging.

Scenario 4: In this scenario, all the hardware components are assembled in Country A and imported to Country D. The BIOS and the OS is downloaded in Country D then the notebook goes through testing, quality control and packaging.

ISSUE:
In each scenario, what is the country of origin of the Elitebook 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 (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 intended 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, (ii) all accessibility, or (iii) 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.

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 Linterns 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 minimal 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. 115–80, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. Uniroyal, Inc. v. United States, 980 F.2d 1091, 1096 (Citations omitted) (Ct. Int’l Trade 2000), citing National Hand Tool Corp. v. United States, 16 Ct. Int’l Trade 308, 311 (1992). In Uniden (concerning whether the assembly of cordless telephones and the installation of their detachable A/C (alternating current) adapters constituted instances of substantial transformation), the Court of International Trade applied the “essence test” and found that “[t]he essence of the telephone is housed in the base and the handset.

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 8002.00.80, 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 various distinct electronic 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 effectuated 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 concluded that the programming of a device that confers its identity as well as defines its use generally constitutes substantial transformation. See also Headquarters Ruling Letter (“HQL”) 51886, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its characteristic and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 730277, dated September 7, 1993 (programming blank media (EEPROM) with instructions 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); and, HQ 734516, dated June 28, 1993, (motherboards are not substantially transformed by the implanting 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).

Scenario 1 and 2:
In Scenario 1, the base unit containing a PCA, CPU, BIOS chip, amongst other components is placed in a hard disk drive assembly (which contains a LCD display) in Country F. The hard disk drive and WLAN are installed and the OS and BIOS are downloaded. In Scenario 2, the base unit and hinge-up are already assembled in Country A before importation into Country F. After the hardware components are assembled, the BIOS is downloaded onto the flash device.

HP claims that as a result of the assembly operations performed in Country F, the various foreign components undergo a substantial transformation, such that the finished Elitebook becomes a product of Country F for purposes of U.S. Government.
Scenario 3:
In Scenario 3, all of the hardware components are assembled in Country A and imported into Country F. The operations that occur in Country F are BIOS download, OS download, testing, quality control and packaging. The issue is whether the downloading of the BIOS and OS substantially transforms the notebook computer. As indicated above, the programming of a device that defines its use generally constitutes a substantial transformation. Software downloading by itself, however, does not amount to programming, which involves writing, testing and implementing code necessary to make a computer function in a certain way. See HQ H241177 (Dec. 3, 2013) supra, see also Data General supra.

Consistent with the Customs rulings cited above, we find that the BIOS and OS downloading does not result in a substantial transformation in Country F. Given these facts, we find that the country where the last substantial transformation occurs is Country A, where the major assembly processes are performed. The country of origin for purposes of U.S. Government procurement in Scenario 3 is Country A.

Scenario 4:
Here, all of the hardware components are assembled in Country A and imported into Country D. In Country D, the BIOS and OS are downloaded and the Elitebook is tested for quality assurance and packaged. As indicated above, software downloading by itself does not result in a substantial transformation. Consistent with the Customs rulings cited above, we find that the country where the last substantial transformation occurs is Country A, where the major assembly processes are performed. The country of origin for purposes of U.S. Government procurement in Scenario 4 is Country A.

HOLDING:
Based on the facts of this case, we find that in Scenarios 2, 3, and 4, the last substantial transformation takes place in Country A. The country of origin of the Elitebook is Country A for purposes of U.S. Government procurement and country of origin marking.

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. Pursuant to 19 CFR § 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,
Glen E. Vereb
Acting Executive Director, Regulations and Rulings, Office of International Trade

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BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY
Federal Emergency Management Agency

Notice of Public Meetings on the Proposed Revised Guidelines for Implementing Executive Order 11988, Floodplain Management, As Revised Through the Federal Flood Risk Management Standard

AGENCY: Federal Emergency Management Agency, DHS.
ACTION: Notice.

SUMMARY: This notice is to announce two public meetings to solicit public input on the proposed “Revised Guidelines for Implementing Executive Order 11988, Floodplain Management.”

DATES: The first public meeting will be held in Fairfax, VA on March 24, 2015, from 9:00 a.m. to 12:00 p.m. Eastern Time (ET). The second public meeting will be held by webinar on March 25, 2015, from 3:00 p.m. to 6:00 p.m. Eastern Time (ET).

ADDRESSES: The first public meeting will be held in Fairfax, VA, at George Mason University, 4400 University Drive, Jackson Center Building #30, Fairfax, VA 22030. The second public meeting will be by webinar.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section by March 20.

Due to space constraints of the facility, seating will be limited to 300 participants for the Fairfax, VA meeting. To reserve a seat in advance for this meeting, or the webinar, please provide a request via email or mail with the contact information of the participant (including name, mailing address, and email address), the meeting(s) to be attended, and include the subject/attention line (or on the envelope if by mail): Reservation Request for FFRMS Meeting. Advance reservations must be received 3 business days prior to each meeting to ensure processing.

Unregistered participants will be accepted after all participants with reservations have been accommodated and will be admitted on a first-come, first-serve basis, provided the person capacity is not exceeded. To submit reservations, please email: FEMA–FFRMS@fema.dhs.gov or send by mail to the address listed in the FOR FURTHER INFORMATION CONTACT caption.

To facilitate public participation, members of the public are invited to