

U.S. Customs and Border Protection



NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING NEC MICROWAVE RADIOS

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 NEC iPasolink 250 and 650 microwave radios. Based upon the facts presented, CBP has concluded in the final determination that Japan is the country of origin of the microwave radios for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 13, 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 October 21, 2013.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Valuation and Special Programs Branch: (202) 325–0041.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 13, 2013, pursuant to subpart B of Part 177, Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of NEC iPasolink microwave radios, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H206977, was issued at the request of NEC Corporation of America, 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, based upon the facts presented, the microwave radios were substantially transformed in Japan, such that Japan is the country of origin of the microwave radios 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: September 13, 2013.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings,
Office of International Trade.

Attachment

H206977

September 13, 2013

OT:RR:CTF:VS H206977 KSG

JOSEPH L. DE LA LUZ

DIRECTOR, TRADE COMPLIANCE NEC CORPORATION OF AMERICA

6535 N. STATE HWY. 161

IRVING, TEXAS 75039-2402

RE: Government Procurement; Country of Origin of NEC iPASOLINK 250 and 650 microwave radios; substantial transformation

MR. DE LA LUZ:

This is in response to your letter dated February 27, 2012, and additional submissions dated July 27, 2012, and June 13, 2013, requesting a final determination on behalf of NEC Corporation of America (“NEC”), 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 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.

The final determination concerns the country of origin of the NEC iPASOLINK 250 and 650 microwave radios (“microwave radios”). We note that as a U.S. importer, NEC is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. A conference was held on this matter on August 28, 2012.

FACTS:

The iPASOLINK 250 and 650 are hybrid digital microwave radios, used for wireless point-to-point communications. The hybrid nature of the radio enables the simultaneous transmission of both Time Division Multiplexed and Ethernet-based data in their native formats.

The microwave radios are comprised of two major units, the indoor unit (“IDU”) and the transmitter-receiver unit chassis (“TRX chassis”). The TRX chassis consists of a transmitter-receiver (“TRX”) and a branching unit. The TRX chassis comes in two forms: an indoor TRX or an outdoor unit (“ODU”). The function is the same regardless of the mounting method. The ODU is normally attached directly to or mounted behind a parabolic antenna. The indoor TRX is a rack mountable card file-type shelf housed indoors in an environmentally controlled (air conditioned) shelter or other enclosure and it consists of a TRX, a branching circuit unit, and a chassis or card cage. The IDU, which is common to either type of mounting, is manufactured in India, and consists of a rack mounted shelf or card cage that can house a variety of plug-in units determined by the specific application of the radio. At a minimum, the IDU consists of: a shelf with cooling fans, a main card, a modulator/demodulator (modem), and a power supply. The shelf and fans provide a means of mounting and connecting the cards that perform the signal processing that occurs inside the radio. The fans supply forced air cooling to ensure the operation meets the specifications over the stated temperature range of the IDU. The modem cards accept data from the main

card and map that data into frames that are then applied to the modulator. The modulator then modulates an Intermediate Frequency (IF) based on the sequence of bits in the blocks presented for transmission. The main card contains independent Ethernet and Time Division Multiplexed switch fabrics where source and destination addresses of packets or circuits are analyzed and cross-connects are made. The main card also provides the operation, administrative, and maintenance functions of the radio. Once switching/cross-connecting is complete, the main card prepares the individual Time Division Multiplexed and Ethernet data streams for hand-off to the modem card. The power supply accepts a line voltage.

NEC iPASOLINK 250 and 650 microwave radios are comprised of components from Japan and India. The TRX, the branching circuit, and the modem are manufactured in Japan. The main card, the tributary unit, the power supply unit, the IDU chassis and fans are manufactured in India. The Indian components are assembled with the Japanese-origin modem to manufacture the IDU in India. The software is developed in India and Japan. The software developed by NEC in Japan pertains to the interface between the main card and the modem cards.

All these components are shipped to the U.S. Five components are shipped to the U.S. from India to be assembled into the IDU: the fan filter unit, the fan unit, the power supply unit, the main card, and the chassis. Two major sub-assemblies are shipped to the U.S. from Japan: the modem and the indoor TRX unit or the ODU with the antenna attached.

In the U.S., the components listed above that are imported from India (the fan filter unit, the fan unit, the power supply unit, and the main card) and the modem are inserted into various slots in the chassis. Sub-modules of the modem are assembled. Then, the indoor TRX is stacked on top of the chassis, the IDU is stacked and interconnected with U.S.-origin coaxial cables in the middle of the chassis, and the ODU is placed in the bottom of the chassis. The microwave radios are tested, and the software is customized to fit specific customer applications and downloaded in the U.S.

ISSUE:

What is the country of origin of the imported microwave radios for government procurement purposes?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR 177.21et 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.

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 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 Acquisition Regulations. *See* 19 CFR 177.21. 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 CFR 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 name, character, or use distinct from that of the article or articles from which it was transformed. 48 CFR 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. Additionally, factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

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*, 573 F. Supp. 1149 (CIT 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. In Customs Service Decision ("C.S.D.") 85-25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences, the assembly of a large number of fabricated components onto 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 were assembled.

In *Data General v. United States*, 4 CIT 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedule of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign Programmable Read Only Memory Chip ("PROM") in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROM's, 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 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 pro-

grams were designed by a U.S. project engineer with many years of experience. While replicating the program pattern from a “master” PROM may be a quick one-step process, the development of the pattern and production of the “master” PROM required much time and expertise. The court noted that it was undisputed that programing 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-functional 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 transistors, resistors and diodes upon a circuit board created a similar pattern.

It is your position that the country of origin is the U.S. because the final assembly, programming, customization of the software and testing results in a finished and operational microwave radio.

In this case, the software is developed in Japan and India, and the TRX and the modem are manufactured in Japan, which are significant components that are imported fully assembled. You state in your submission that “in terms of component material value content and functionality, the critical components that impart the essential character of the microwave radios, are of Japanese origin. . . .” The TRX carries the microwave signal, which is the essence of a microwave radio. For all these reasons, we concur that the TRX imparts the essential character to the microwave radios. Further, other significant parts such as the TRX chassis, the branching unit and a cable are produced in Japan. The assembly which occurs in the U.S. does not involve numerous parts and is a rather simple assembly. Given the totality of the factors considered in this case, we find that the country of origin of the microwave radio for government procurement purposes is Japan.

HOLDING:

Based on the facts provided, the microwave radio is considered a product of Japan for government procurement purposes.

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 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.*