DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Printer and Fax Machine

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 the HP

LaserJet Enterprise 500 Color Printer and Fax Machine M551. Based upon the facts presented, CBP has concluded in the final determination that China is the country of origin of the HP LaserJet Enterprise 500 Color Printer and Fax Machine M551, for purposes of U.S. Government procurement.

DATE: The final determination was issued on April 3, 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 [insert 30 days from date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Karen Greene, Valuation and special Programs Branch, Regulations and Rulings, Office of International Trade (202-3235-0041).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on April 3, 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 HP LaserJet Enterprise 500 Color Printer and Fax Machine M551 which may be offered to the United States government under an undesignated government procurement contract. This final determination, in HQ H219519, was issued at the

request of Hewlett-Packard Company 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 HP LaserJet Enterprise 500 Color Printer and Fax Machines M551 assembled in Mexico from foreign made parts 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 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: April 3, 2013

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

Attachment

HQ H219519

April 3, 2013

MAR-2 OT:RR:CTF:VS H219519 KSG

Carlos Halasz
Product Compliance Strategy & Policy
Hewlett-Packard Company
8501 SW 152 Street
Palmetto Bay, FL 33157

RE: Government Procurement; Country of Origin of HP LaserJet Enterprise 500 Color M551 Printer and Fax Machine; substantial transformation

Dear Mr. Halasz:

This is in response to your letter dated May 21, 2012, 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 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 HP LaserJet Enterprise 500 Color Printer and Fax Machine M551 ("LaserJet 500"). We note that 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 telephone conference was held on this matter on September 27, 2012.

FACTS:

The LaserJet 500 is a laser-based office machine for printing and faxing, suitable for use in homes and small to medium-size businesses. It is composed of the following components: (1) an incomplete print engine, which consists of a metal frame, plastic skins, motors, controller board (supplier provided firmware), a laser scanning system, fuser, paper trays, cabling, paper transport rollers, miscellaneous sensing and imaging systems; (2) the formatter board, which consists of a printed circuit board, industry standard components and customized integrated circuits; (3) the fax card; (4) the hard disc drive; (5) the solid state drive; (6) the firmware; (7) the intermediate transfer belt ("ITB"); and (8) minor components and accessories. The incomplete print engine may also come in two other configurations that include either the ITB or the base unit and all of the hardware components.

It is stated that the complete print engine is the central mechanism of the LaserJet 500 that performs printing. It translates a laser image generated by the formatter to markings on paper, transports paper, and fuses the image on the paper. The ITB is essential to the imaging function because it transfers the image from each toner cartridge to the ITB by color plane and then carries the image to the paper. The print formatter is the main controller of the printer. Its main function is to receive input data from remote devices via different input ports, translate that data into format the print engine understands, and send the data onto the print engine, enabling the information to be printed onto paper. It is also responsible for providing command and control signals allowing the engine to start, run and stop motors in a manner that allows the paper to move from input devices to the designated output bin of the printer, while at the same time putting the printed image on the paper.

All the parts are produced in China except for the hard disc drive, which is produced in Malaysia. The firmware that allows access to the hardware (such as trays, and paper size) and software (ex. job counting, security, stored jobs) is developed and written in the U.S. and is tested and debugged in either Brazil or India. The formatter and other sub-systems have their own firmware for operation.

You presented three different scenarios. In scenarios one and two, the LaserJet 500 undergoes the following operations in Mexico: final assembly, downloading firmware written in U.S., and testing, which includes making settings appropriate to the country of the buyer and the client's specific needs. In scenario one, the assembly takes 3-4 minutes whereby the external memory drive is installed onto the formatter and the cables are routed as necessary. The firmware for the engine and formatter is downloaded onto the hard drive or solid state drive. In scenario two, the assembly takes 7-8 minutes and involves the assembly discussed in scenario one, plus the installation of the ITB.
In both scenarios, the testing takes 7-14 minutes and includes making certain settings for the language, paper, functionality, and other feature settings, as described above. In scenario three, the LaserJet 500 undergoes assembly in Mexico that takes 2-3 minutes, the firmware for the sub-systems (engine, formatter) is downloaded onto the hard drive or solid state drive, and the product undergoes testing.

The cost of the incomplete print engine is the most expensive of the hardware components, with the formatter board being the second-most expensive component.

ISSUE:

What is the country of origin of the imported LaserJet 500 for government procurement purposes under the three different scenarios?

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.
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> See also 19 CFR 177.22(a).

It is your position that the country of origin in scenarios one and two is Mexico because the final assembly, programming and testing results in a finished and operational laser printer. You believe that the country of origin in scenario three is Mexico because although the incomplete print engine already includes all hardware components when it is imported into Mexico, the production processing in Mexico consists of loading the firmware onto the print engine.

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 Generalizes 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 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, factor 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 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 programs were 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 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-function 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.

You cite HRL H185775, dated December 21, 2011, where CBP ruled that a laser-jet machine that operates as a printer, scanner, copy and fax machine, was considered a product of Mexico for procurement purposes. The scanner in that case was designed, developed and assembled in the U.S. The control panel was also designed in the U.S. The print engine was produced in Vietnam. The formatter, control panel, and solid state drive were produced in China. The hard disk drive was produced in Malaysia. This case is distinguishable from the instant case because the hardware was produced in various Asian countries.

You also cite HRL H175415, dated October 4, 2011, where CBP held that development of U.S. software, at significant cost to the company and over many years plus the programming of an imported local area network switch in the U.S. together substantially transformed the switch in the U.S. In that case, the software provided the hardware with its essential character of data transmission by providing network switching and routing functionality among other operations. Accordingly, the country of origin of the switch was considered the U.S.

Unlike H185775, in all three scenarios presented in this case, all the components except the hard disc drive are produced in China. The assembly performed in Mexico is a simple assembly not significant enough to result in a substantial transformation of those Chinese components and subassemblies. There is no showing that in any of the scenarios, the processing in Mexico is complex. The downloading of the firmware in Mexico does not change or define the use of the finished printer/fax machine. The firmware itself provides the essential characteristics of performing as a printer and fax machine. While the

firmware may be developed in the U.S., the downloading is not occurring in the U.S. Further, the firmware downloaded in Mexico does not include all the firmware necessary for the finished good. Furthermore, some of the assemblies (formatter, for example) have their own firmware. All the significant parts that are the essence of the finished product are produced in China, particularly the high-cost print engine and formatter board. Accordingly, we find that the country of origin of the imported LaserJet 500 for government procurement purposes would be China under all three scenarios.

HOLDING:

Based on the facts provided, the LaserJet 500 will be considered a product of China under all three scenarios for government procurement purposes.

Sincerely,

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

[FR Doc. 2013-08347 Filed 04/09/2013 at 8:45 am; Publication Date: 04/10/2013]