



This document is scheduled to be published in the Federal Register on 10/21/2015 and available online at <http://federalregister.gov/a/2015-26752>, and on FDsys.gov

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning

Certain Billiards Tables

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 certain billiards tables. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the billiards tables for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 15, 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 no later than [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Grace A. Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202) 325-7941.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 15, 2015 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 billiards tables, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H268491, was issued 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 assembly and installation processes performed in the United States, using imported components, substantially transform the imported components into billiards tables. Therefore, the country of origin of the billiards tables 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: October 15, 2015.

Harold M. Singer
Acting Executive Director
Regulations and Rulings
Office of International Trade

HQ H268491

October 15, 2015

OT:RR:CTF:VS H268491 GaK

CATEGORY: Origin

Jeremy Ross Page
Page Fura, P.C.
311 West Superior, Suite 306
Chicago, IL 60654

RE: U.S. Government Procurement; Country of Origin of Billiards Tables; Substantial Transformation

Dear Mr. Page:

This is in response to your letter, dated August 12, 2015, requesting a final determination on behalf of The Brunswick Corporation (“Company”), 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 (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.

This final determination concerns the country of origin of the Company’s four billiards tables. We note that as a U.S. manufacturer, the Company 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. Diagrams of the tables were submitted with your request.

FACTS:

There are four families of billiards tables at issue: Centurion (“Table A”), Metro (“Table B”), Gold Crown V (“Table C”), and Black Wolf II (“Table D”) (collectively “tables”). The tables are designed and developed in the U.S. and each table is produced in the U.S. from components and subassemblies sourced from various countries, including the U.S. Due to the size and weight of each table, the Company ships the individual components to the U.S. customers’ location and assembles the tables on-site. The assembly and installation of the tables must be performed by certified Company installers who are employed and extensively trained by licensed U.S.-based Company dealers.

The assembly of Table A consists of the following: 1) assembly of base frame and legs, 2) slate assembly, 3) attachment of billiard cloth to slate, 4) assembly of rail and apron, and 5) assembly of the gully return system¹ (if ordered by the customer). Each process must be performed in sequential order, except for the gully return system which is interspersed throughout the process. There are approximately 65 steps and 72 parts, including fasteners (e.g., nuts, bolts, screws, and staples), wax or hard putty and glue. First, the table legs and stretcher are assembled and the base frame is constructed on top of the legs so that a balanced and leveled foundation is created. The next step is the installation of the slate, where the installers must level the base frame and shim three slate pieces to ensure a completely flat surface before attaching the slate to the base frame. After the slate pieces are attached to the table base, the slate joints are filled with wax or hard putty and lightly sanded to ensure a completely smooth surface. Once the slate surface is cleaned and leveled, the installers cut and glue strips of cloth to the slate pockets and stretch the billiard cloth over the slate and attach it to the slate with a contact adhesive. Table A uses a framed slate, which is backed with particle board allowing the billiard cloth to be stapled to it. The billiard cloth installation is said to be complex and essential to ensure that the table performs as designed. The cloth installation consists of 22 steps of stretching it from different directions and attaching it to the slate frame. The failure to properly level the table and base frame, seal the slate joints, screw holes and/or attach the billiard cloth properly will prevent the balls from running true during play. After the billiard cloth is properly attached, the rails and aprons are installed and the bed spot² is affixed to the cloth. If the customer ordered the gullies, they are installed at this stage. The assembly of Table A requires an average of 8 man hours and two certified installers (4 hours per installer). An additional 45 minutes is required for leveling the table after assembly. The installation cost combined with the value of U.S. components, amounts to 43.3% of the total cost. Other components are sourced from Brazil, Vietnam, Indonesia, and Taiwan.³

Table B has a different design than Table A and is higher in quality. The assembly of Table B is the same as Table A, except that step 4 involves the attachment of rail cloth, and the billiard cloth is also not pre-installed on the rail cushions prior to delivery. There are approximately 71 steps and 82 parts. After the billiard cloth is attached to the slate, the installers must wrap the rail cushions in billiard cloth. The loose billiard cloth is draped over each of the six rails and a wooden feather strip (same length of the rail) is pounded into place to affix the billiard cloth to the rail and excess cloth is trimmed. After the six rails are wrapped, the rails and apron are installed on the table and the bed spot is affixed. The assembly of Table B requires the same time as assembly of Table A, but an additional 2 hours to wrap all six rails. The installation cost combined with the value of U.S. components, amounts to 35.3% of the total cost. Other components are sourced from Brazil, Indonesia and Taiwan.⁴

¹ Ball return system.

² Bed spot is the self-adhesive sticker that indicates where the balls are to be racked.

³ Pocket set Centurion/Century (U.S.), 8'1" home framed 3 piece slate set (Brazil), rails 8'H Centurion black (Vietnam), Centurion legs 8' black (Vietnam), Centurion leg stretcher 8' black (Vietnam), Centurion aprons 8' black (Vietnam), B/F 8'H Centurion PW (Indonesia), main hardware Centurion 2013 (Taiwan), and Centurion rail and apron corners (Taiwan).

⁴ 8'1" home framed 3 piece slate set (Brazil), rails 8'H Metro black (Indonesia), castings & ext Metro (Taiwan), main hardware Metro (Taiwan), levelers/brackets Metro (Indonesia), pkg bridge tri racks Metro (U.S.), aprons 8H Metro black carb PHII (Indonesia), leg set Metro black carb (Indonesia), Metro B/F 8'H carb (Indonesia), and drop pockets GCIV, GCV, Metro (U.S.).

Table C is very similar to Table B, but due to the different design and materials, the assembly process is claimed to be more complex and costly. Specifically, the assembly of the rails and pocket castings requires shimming and alignment to ensure a quality fit. The assembly of the apron is also more complex due to Table C's higher fit and finish, and inclusion of corner castings and a ball storage box. There are approximately 77 steps and 91 parts. The assembly of Table C requires the same amount of time to assemble as Table B. The installation cost combined with the value of U.S. components, amounts to 28.7% of the total cost. Other components are sourced from Brazil, Indonesia, and Taiwan.⁵

The assembly of Table D is similar to Table A, with the exception of delineation of the rail and apron assembly process. There are approximately 60 steps and 71 parts. While Table D is similar to the other tables in this request, Table D is unique because it requires the complete assembly of both legs. The assembly of Table D requires an average of 8 man hours and two certified installers. Since the rails are pre-wrapped, only an additional 45 minutes are required to level the table. The installation cost combined with the value of U.S. components, amounts to 49.4% of the total cost. Other components are sourced from Brazil, Indonesia, Vietnam, and Taiwan.⁶

ISSUE:

What is the country of origin of the four billiards tables 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.

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

⁵ 9'1" pro framed 3 piece slate set (Brazil); drop pockets GCIV, GCV, Metro (U.S.); quick set foot plates (U.S.); GC IV 9' base frame new (Brazil); rail Gold Crown V 9' mahogany/nickel (Indonesia); main hard ware GC V (Taiwan); storage box GC V trim nickel (Taiwan); main castings GC V nickel (Taiwan); leg set 9' GCVMAH carb (Brazil); stretcher 9' GCVMAH carb (Brazil); aprons GCV 9' mahogany/nickel carb (Brazil).

⁶ 8'1" home framed 3 piece slate set (Brazil), drop pocket set (U.S.), Black Wolf II hardware and feet (Indonesia), B/F 8H BRL/GEN carb (Vietnam), PKT APR 8H Black Wolf carb (Vietnam), leg posts Black Wolf carb (Vietnam), leg panels 8'H Black Wolf carb (Vietnam), Black Wolf corners silver 2012 (Taiwan), rails Black Wolf II 8' (Brazil).

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. § 177.21. 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 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. 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. No one factor is determinative.

In *Carlson Furniture Industries v. United States*, 65 Cust. Ct. 474 (1970), the U.S. Customs Court ruled that U.S. operations on imported chair parts constituted a substantial transformation, resulting in the creation of a new article of commerce. After importation, the importer assembled, fitted, and glued the wooden parts together, inserted steel pins into the key joints, cut the legs to length and leveled them, and in some instances, upholstered the chairs and fitted the legs with glides and casters. The court determined that the importer had to perform additional work on the imported chair parts and add materials to create a functional article of commerce. The court found that the operations were substantial in nature, and more than the mere assembly of the parts together.

In Headquarters Ruling Letter (“HQ”) W563456, dated July 31, 2006, CBP held that certain office chairs assembled in the U.S. were products of the U.S. for purposes of U.S. government procurement. The office chairs were assembled from over 70 U.S. and foreign components. In finding that the imported parts were substantially transformed in the U.S., CBP stated that the assembly processes that occurred in the U.S. were complex and meaningful, required the assembly of a large number of components, and rendered a new and distinct article of commerce that possessed a new name, character, and use. CBP noted that the U.S.-origin seat

and back frame assemblies, which were made with the importer's trademark fabric, together with the tilt assembly, were of U.S. origin and gave the chair its unique design profile and essential character. In HQ 561258, dated April 15, 1999, CBP determined that the assembly of numerous imported workstation components with the U.S.-origin work surface into finished workstations constituted a substantial transformation. CBP held that the imported components lost their identity as leg brackets, drawer units, panels etc. when they were assembled together to form a workstation. In HQ H083693, dated March 23, 2010, CBP held that a certain wood chest assembled in the U.S. was a product of the U.S. for purposes of U.S. government procurement. The wood chest was assembled from over twenty U.S. and foreign components in a twenty-step process which took approximately forty-one minutes. CBP held that the components used to manufacture the wood chest, when combined with a U.S. origin laminate top, were substantially transformed as a result of the assembly operations performed in the U.S.

In the instant case, the tables' components range from 71 to 91 which can only be assembled by two skilled installers, operating under the control and training of the Company and its authorized network of dealers. The assembly of the components requires the installers to maintain proper leveling throughout, while building different parts of the billiards table, which is essential to the ball running true during play. We find that the assembly processes that occur in the U.S. are complex and meaningful, require the assembly of a large number of components, and render a new and distinct article of commerce that possesses a new name, character, and use. Therefore, we find that the imported components lose their individual identities and become an integral part of the billiards tables as a result of the U.S. assembly operations and combination with U.S. components; and that the components acquire a different name, character, and use as a result of the assembly operations performed in the U.S. While not dispositive, we note, in addition, that the engineering, design, and development of the tables occur in the U.S. Accordingly, the assembled billiards tables will be considered products of the U.S. for purposes of U.S. Government procurement.

HOLDING:

Based on the facts of this case, we find that the country of origin of all four billiards tables is the U.S. 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 matter anew and issue a new final 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,

Harold M. Singer, Acting Executive Director
Regulations and Rulings
Office of International Trade

[FR Doc. 2015-26752 Filed: 10/20/2015 08:45 am; Publication Date: 10/21/2015]