9111-14 **DEPARTMENT OF HOMELAND SECURITY**

U.S. Customs And Border Protection

Notice Of Issuance Of Final Determination Concerning Certain Exercise Equipment

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 two pieces of exercise equipment known as the Matrix® G3-S60 Selectorized Dip / Chin Assist and the Matrix® G3-FW52 Back Extension Bench. Based upon the facts presented, CBP has concluded that the country of origin of the exercise equipment is the United States under Scenario One and China under Scenario 2.

DATES: The final determination was issued on May 10, 2016. 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 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ross Cunningham, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 10, 2016, 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 two pieces of exercise equipment known as the Matrix® G3-S60 Selectorized Dip / Chin Assist and the Matrix® G3-FW52 Back Extension Bench, which may be offered to the U.S. Government under

an undesignated government procurement contract. This final determination, HQ H270580, 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 under Scenario One, the processing in the United States results in a substantial transformation, whereas under Scenario Two, the processing in the United States does not result in a substantial transformation. Therefore, the country of origin of the exercise equipment for purposes of U.S. Government procurement is the United States under Scenario One and China under Scenario Two.

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: May 10, 2016

Myles B. Harmon
Acting Executive Director
Regulations and Rulings
Office of Trade

HQ H270580

May 10, 2016

OT:RR:CTF:VS H270580 RMC

CATEGORY: Country of Origin

John A. Knab
Garvey Shubert Barer PC

1000 Potomac Street NW
Suite 200
Washington, DC 20007

Re: U.S. Government Procurement; Country of Origin of Exercise Equipment; Substantial Transformation

Dear Mr. Knab:

This is in response to your letter dated November 3, 2015, requesting a final determination on behalf of Johnson Health Tech North America ("Johnson") 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 for products offered for sale to the U.S. Government. This final determination concerns the country of origin of two pieces of exercise equipment. As a U.S. importer, Johnson 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.

FACTS:

Johnson is an exercise equipment manufacturer based in Cottage Grove, Wisconsin. It is a wholly-owned subsidiary of the Taiwanese entity Johnson Health Tech. Co., Ltd. ("JHT"). JHT, through its subsidiaries, operates in Taiwan, China, and the United States.

The two pieces of equipment at issue are the Matrix® G3-S60 Selectorized Dip / Chin Assist ("G3 Dip") and the Matrix® G3-FW52 Back Extension Bench ("G3 Back Extension"). The G3 Dip machine is designed to be used for pull-ups and triceps dips. The user kneels on a counterweighted lever that supports some of the user's body weight during pull-up or triceps-dip exercises. This upward pressure helps the user develop strength before transitioning to unassisted pull-ups or triceps dips. The G3 Back Extension is an adjustable bench, angled at 45 degrees, designed to be used for lower-back exercises such as hyperextensions.

In its submission, Johnson described two scenarios for assembling the exercise equipment in the United States. The first scenario would apply to both the G3 Dip and the G3 Back Extension and involves importing all component parts for the equipment from China and welding, painting, and assembling them in the United States. The second scenario would apply only to the G3 Dip and is similar to the first scenario except that some of the sub-assemblies would be welded together in China. The specifics of each scenario are described in greater detail below.

1. **Scenario One – Design, Weldments, and Assembly in the United States**

    a. **Design in the United States**

Johnson states that the G3 Dip and G3 Back Extension will be derived from previous industrial designs that were completed in the United States, although some additional U.S. industrial design may be needed to refresh the look of the equipment. In the design process, U.S.-based engineers will use SolidWorks software to create 3D models and 2D drawings from computer models. Each unit will generally require between 100 and 200 2D computer drawings representing between 300 and 500 separate components and subassemblies. These 2D drawings will then be used as the blueprints in the manufacturing process.

b. Component Parts and Materials Come From China

The G3 Dip will consist of approximately 500 parts all produced in China from Chinese materials except for the cable that connects the weights to the counterweight. This cable will be procured from a U.S. supplier but is of unknown origin. The G3 Back Extension will consist of approximately 200 parts all produced in China from Chinese materials.

c. Description of Manufacturing Process

i. Description of Weldments/Major Subassemblies

Johnson states that the equipment will consist of a number of major subassemblies referred to as "weldments." Each weldment consists of a number of metal parts that are welded together to create a major component. These weldments are subsequently either welded or bolted together to form the finished product.

Nine weldments will comprise the G3 Dip: (1) the weight tower frame; (2) the base frame with steps; (3) the kneel pad support; (4) the left-hand chin-up bars; (5) the right-hand chin-up bars; (6) the head plate; (7) the add-a-weight frame support; (8) the add-a-weight weight stack support; and (9) the belt termination. The G3 Back Extension will have three weldments: (1) the base exercise frame; (2) the telescopic adjustment tube; and (3) the thigh pad support.

Johnson notes that none of the parts as imported from China or the weldments as assembled in the United States will be able to function on their own until they are assembled, welded, or bolted together in the United States.

ii. Chinese Operations

In China, Johnson will purchase steel tubing that becomes the basis for the equipment's frame. The tubes will be cut to length, punched or drilled, and bent into the required shape before being packaged with individual parts and sent to the United States.

iii. Assembly in the United States

In the United States, Johnson will first clean the steel tubes in a steam booth and then clamp them into various weld fixtures for welding into weldments.

With respect to the G3 Dip, each weldment will require the following number of welding seams to fuse the various metal components together:

1) Weight Tower Frame – 18 seams;
2) Base Frame With Steps – 12 seams;
3) Kneel Pad Support – 6 seams;
4) Left-Hand Chin-Up Bar – 4 seams;
5) Right-Hand Chin-Up Bar – 4 seams;
6) Head Plate – 1 seam;
7) Add-A-Weight Frame Support – 1 seam;
8) Add-A-Weight Weight Stack Support – 1 seam;
9) Belt Termination – 2 seams.

With respect to the G3 Back Extension each weldment will need the following number of welding seams to fuse the various metal components together:

1) Base Exercise Frame – 16 seams;
2) Telescopic Adjustment Tube – 4 seams;
3) Thigh Pad Support – 2 seams.

After welding the metal components, workers will grind down some of the welds to ensure a proper fit for the final product. Next, metal components will be painted with powder-coat paint and placed into a paint oven to cure the paint. Some of the painted components will then be painted a second time with clear coat to protect the finish. At this point, all components and subassemblies will be ready for assembly into the final product, which will involve bolting together weldments; fastening hardware; adding rubber grips; capping off tube ends; positioning pulleys; adding weights, cables, or belts; and placing warning placards.

For the G3 Dip, Johnson states that it will take approximately 255 steps to assemble the 500 parts that make up the final product. As for the G3

Back Extension, it will take workers 148 steps to assemble the 200 parts that comprise the finished bench.

iv. Post-Assembly Inspection and Testing

Johnson states that significant inspection and testing will be required for each piece of G3 equipment. The inspection will generally consist of a geometric measurement and analysis of the incoming components, a visual inspection of defects in workmanship and materials, functional testing of assembled units, inspection of paint, and cable tensile testing.

v. Labor & Investment in the United States

Johnson states that in order to assemble equipment in the United States using Scenario 1, it will need to hire at least 16 additional employees in the United States. Further investments will also need to be made in designing and building at least two new weld features, expanding into or acquiring new factory space, and updating IT infrastructure.

2. Scenario Two – Design, Some Weldments, and Assembly in the United States

As noted above, Scenario Two would apply only to the G3 Dip machine. It is similar to Scenario One except that three of the nine weldments will be welded together in China and sent to the United States as pre-welded components: (1) the add-a-weight frame support; (2) the add-a-weight weight stack support; and (3) the belt termination. Workers in the United States will then conduct a pre-cleaning and degreasing, an incoming inspection, painting and curing, and assembly on the Chinese-produced weldments. As a result of the additional welding in China, four fewer welding seams would be needed in the United States under Scenario 2. Otherwise, the steps required under Scenario 2 are the same as those described above under "Description of the Manufacturing Process" for Scenario 1. Johnson states that it will take 210 steps to assemble the G3 Dip under Scenario Two and will require 17 additional employees in the United States (one employee more than under Scenario One due to the additional inspections required).

ISSUE:

What is the country of origin of the G3 Back Extension and the G3 Dip 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 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 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, 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. *See Belcrest Linens v. United States*, 6 CIT 204 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). 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.

CBP has consistently held that complex and meaningful assembly operations in the United States can result in a substantial transformation. *See, e.g.*, HQ H156919, dated July 26, 2011. By contrast, assembly operations that are minimal or simple will generally not result in a substantial transformation. For example, in HQ 733188, dated July 5, 1990, CBP held that no substantial

transformation occurred when Venezuelan exercise benches and boards were assembled in the United States. The metal frames as imported from Venezuela were essentially complete, and the U.S. assembly consisted primarily of attaching the cushions and minor parts. Further, no machining was done in the United States and no specialized training, skill, or equipment was required to assemble the exercise equipment. CBP thus held that no substantial transformation occurred in the United States.

Similarly, the Court of International Trade has applied the "essence test" to determine whether the identity of an article is changed through assembly or processing. For example, in *Uniroyal, Inc. v. United States*, 3 CIT 220, 225, 542 F. Supp. 1026, 1030 (1982), *aff'd* 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the "very essence of the finished shoe" and thus were not substantially transformed into a product of the United States. Similarly, in *National Juice Products Association v. United States*, 10 CIT 48, 61, 628 F. Supp. 978, 991 (1986), the court held that imported orange juice concentrate "imparts the essential character" to the completed orange juice and thus was not substantially transformed into a product of the United States.

Here, with respect to Scenario One, although all or nearly all the parts will be of Chinese origin, the extent of U.S. assembly operations is sufficiently complex and meaningful to result in a substantial transformation. Unlike the exercise equipment at issue in HQ 733188, the G3 Dip and G3 Back Extension under Scenario One will not be essentially complete when their component parts are imported. To the contrary, they will require substantial additional work to create a functional article of commerce. Under Scenario 1 for the G3 Dip, U.S. workers will need to produce nine separate weldments and weld 49 seams to create the major components that comprise the finished equipment. Likewise, with respect to the G3 Back Extension, U.S. workers will need to produce three separate weldments and weld 22 seams to create the major components that comprise the finished equipment.

In addition to the extensive welding operations that U.S. workers will undertake in Wisconsin, the parts that make up the frame will need to be cleaned and degreased, ground down, and sprayed with paint and clear coat in the United States. Next, workers will assemble 200 to 500 individual parts that go into the final product in an assembly process that will involve 148 to 255 individual steps. The assembly process will involve fastening hardware; adding rubber grips; capping off tube ends; positioning pulleys; adding weights, cables, or belts; and placing warning placards. Together with the U.S. welding operations, this assembly will cause the individual parts to lose their separate identities and to become integral components of a product with a new name, character, and use.

In addition to the extent and complexity of the U.S. assembly operations, several additional factors weigh in favor of finding that a substantial transformation will occur in the United States. As noted above, CBP also considers the resources expended on product design and development in the United States and the degree of skill required during the actual manufacturing process. Here, Johnson will expend significant resources in the United States on product development when its U.S.-based engineers create 3D CAD models and 2D drawings for use as blueprints during the

manufacturing process. Furthermore, these engineers and the workers who will weld the subassemblies together require significant education, skill, and attention to detail.

With respect to Scenario Two, however, three of the G3 Dip's weldments will be imported from China as pre-assembled components (the add-a-weight frame support, the add-a-weight weight stack support, and the belt termination). Under *Uniroyal*, 3 CIT 220, these critical components together impart the "very essence" of the finished product. The processing in the United States thus will not result in a substantial transformation. *See also National Juice Prods. Ass'n*, 10 CIT 48.

Based on the facts presented, the country of origin of the exercise equipment is the United States under Scenario One and China under Scenario Two.

HOLDING:

The country of origin of the finished exercise equipment under Scenario One is the United States for purposes of government procurement and China under Scenario Two.

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,

Myles B. Harmon
Acting Executive Director
Regulations & Rulings
Office of Trade

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