



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning

Certain Electric Scissor Lifts

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 electric scissor lifts. Based upon the facts presented, CBP has concluded that the country of origin of the electric scissor lifts in question is the United States, for purposes of U.S. Government procurement.

DATES: The final determination was issued on May 21, 2018. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 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: Yuliya A. Gulis, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0042.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 21, 2018 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 C.F.R. Part 177, subpart B), CBP issued a final determination concerning the country of origin of certain electric scissor lifts (R Series Scissor Lift models 2632R, 3246R, and 4045R), produced by JLG Industries, Inc., which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H294980, was issued under procedures set forth at 19 C.F.R. 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 country of origin of the electric scissor lifts is the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 C.F.R. § 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 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 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 21, 2018.

Alice A. Kipel,
Executive Director,
Regulations and Rulings ,
Office of Trade.

HQ H294980

May 21, 2018

OT:RR:CTF:VS H294980 YAG

CATEGORY: Origin

Mr. Thomas A. Coulter
411 East Franklin Street, Suite 500
Richmond, VA 23219

RE: U.S. Government Procurement; Country of Origin of Electric Scissor Lifts; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511 *et seq.*); Subpart B, Part 177, CBP Regulations

Dear Mr. Coulter:

This is in response to your correspondence dated March 1, 2018, requesting a final determination, on behalf of your client, JLG Industries, Inc. (“JLG”), concerning the country of origin of certain electric scissor lifts, pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 177.21 *et seq.*).

We note that JLG 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:

JLG is an Oshkosh Corporation Company, headquartered in McConnellsburg, Pennsylvania, and a global leader in the manufacture of electric powered and engine powered aerial work platforms. The electric scissor lifts under consideration are part of the JLG R Series family of Scissor Lift products. The R Series is partially assembled in Tianjin, China and then shipped to the United States for additional manufacturing and testing, and final assembly. Once completed, the product will be introduced in commerce and offered for sale, lease, or rental to the U.S. Government.

CBP has previously issued an advisory country of origin ruling concerning JLG’s electric scissor lifts and determined them to be of U.S.-origin. The R Series under review in this case are stated to be new models and 95 percent of the processing is the same, except there is a slight increase in the low-level, unskilled assembly in China and an increase in high-level skilled work on the brain of the product performed in the United States.

The three R Series Scissor Lift models that JLG plans to manufacture are the 2632R, the 3246R, and the 4045R models. While the function of all three models is the same, the models differ in specifications, such as size and platform capacity. A Bill of Material was submitted for Model 4045R. You state that the Bills of Material for the other two R Series Scissor Lift models are substantially the same. As reflected in the detailed Bill of Material, there are 29 separate sub-assemblies/components, in varying quantities, of the R Series Scissor Lift. Approximately 40 percent of the parts are of U.S.-origin and 60 percent of Chinese origin. The remaining few components are sourced from South Korea, Italy, Ireland, and Germany (all designated countries for U.S. Government procurement purposes).

JLG also submitted charts outlining the 25 separate operational sequences, man hours and skill level, for the operations performed in China and the United States in the manufacture of the R Series Scissor Lift. You state that the 15 operations performed in the United States are complex and meaningful, and require medium skill to accomplish, while the 10 operations performed in China are relatively simple hardware assembly and packaging. The following processes are performed in China: assembling the front and rear frame, assembling components (doors, etc.), assembling hydraulic tank and steering hose, building up and installing arm, building up routing and frame covers, installing rails and packaging the partially assembled unit into a cargo container for shipment to the United States. As imported, the Chinese good is stated to be a non-operable platform. You assert that the operations performed in the United States result in a “self-propelled, saleable, scissor lift.” Further, you claim a significant part of the final manufacturing and assembly process of JLG’s electric scissor lift occurring in the United States

consists of functional testing, quality verification, machine calibration, dimensional and structural inspection, and testing, requiring specialized employee training and skill.

The electric scissor lifts have three control modules that act as the “brain” of the machine. It is stated that these modules are the most critical components in controlling the machine’s functions. These modules are: (1) the platform module, (2) the power controller module, and (3) the logic module. With the exception of the shell of the logic module, which is manufactured in Mexico, all three control modules are manufactured in the United States. The other smart components that interface with the modules referenced above, are also manufactured, assembled, and installed in the United States. These components include batteries, a platform control box (allows the user to lift and lower the platform, and drive and steer the machine), and ground control panel (a secondary operator interface that allows the user to lift and lower the platform while not in the work platform). Finally, all software contained in the “brain” is developed and programmed entirely in the United States. The software and module development consumed over 8,000 hours of engineering time. The modules are installed and tested in the United States. Final machine calibration of the electric scissor lifts is also performed subsequent to importation.

ISSUE:

What is the country of origin of the electric scissor lifts for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

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, 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 (“TAA”), as amended (19 U.S.C. § 2511 *et seq.*).

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 final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement 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 Trade Agreements Act. *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.” See 48 C.F.R § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 C.I.T. 204, 573 F. Supp. 1149 (1983), *aff’d*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982).

In Headquarters Ruling Letter (“HQ”) H022169, dated May 2, 2008, a glider (consisting of a frame, finished cab, axels, and wheels) was imported into the United States and assembled with approximately 87 different component parts (including the essential parts: a motor, controller, and charger of Canadian origin; a gear box and axel of U.S. origin; and brakes of Indian origin) into an electric mini-truck. The process consisted of eight assembly work stations involving attachment and installation operations, as well as quality control and testing of the product. CBP held that the imported glider and other foreign components were substantially transformed into an electric mini-truck by the assembly operations that took place in the United States. Our decision was based on finding that the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character, and use. Likewise, in HQ H155115, dated May 24, 2011, CBP found that assembly in the United States of an imported glider, and other imported and U.S.-origin parts constituted a substantial transformation into an article with a new name, character, and use. The assembly process in the United States was complex and time-consuming and involved a significant U.S. contribution in both parts and labor.

Similarly, in HQ H118435, dated October 13, 2010, the assembly of a chassis, plastic body parts, and various miscellaneous pieces of plastic trim from China and U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers into electric golf and recreational vehicles was considered a substantial transformation. CBP found that a substantial transformation occurred in the United States given the complexity and duration of the U.S. manufacturing process, along with the fact that between 12 and 17 of the 53 to 62 components were U.S. components and critical in making the electric vehicle.

Based on the information provided in your letter and consistent with CBP rulings cited above, we note that while many important components of the R Series Scissor Lift products are of Chinese origin, and many significant processing operations occur in China, the Chinese operations require less skill and precision, and the product remains inoperable when imported into the United States. In contrast, the final assembly of the product, 15 out of 25 operational sequences of which are performed in the United States, requires a good deal more skill, precision and technical expertise. Many of the critical operations involved in completing the product, such as installing the work platforms’ software, manufacturing the “brain” of the system and attaching

the modules to the product, are also performed in the United States. More importantly, 40 percent of the remaining components of the electric scissor lifts are of U.S.-origin. This includes the three control modules, which act as the “brain” of the machine, without which the machine cannot function; batteries; the platform control box; and, the ground control panel. We also recognize that the software contained in the three modules is completely developed and programmed in the United States. In addition, significant operations to produce the product are performed in the United States, such as sophisticated testing, inspection, calibration and preparation of the product. Consequently, we find that the imported partially assembled R Series lifts are substantially transformed as a result of the assembly operations performed in the United States to produce the fully functional and operational electric scissor lifts. Based on the information presented, it is our opinion that the country of origin of the RS Scissor Lift is the United States.

HOLDING:

Based on the facts provided, the finished electric scissor lifts will be considered a product of the United States 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,

Alice A. Kipel, Executive Director
Regulations and Rulings
Office of Trade