

FOR FURTHER INFORMATION CONTACT:

Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: January 19, 2011.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2011-1556 Filed 1-25-11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning the Engenio 7900 Storage System

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 Engenio 7900 Storage System (the 7900 System). Based upon the facts presented, CBP has concluded in the final determination that Mexico is the country of origin of the 7900 System for purposes of U.S. Government procurement.

DATES: The final determination was issued on January 19, 2011. 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 February 25, 2011.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325-0034.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 19, 2011, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the 7900 System which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H125975, was issued at the request of LSI Corporation, 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 7900

System, assembled to completion in Mexico from components made in non-TAA countries and TAA countries and programmed with U.S.-origin software in Mexico, is substantially transformed in the Mexico, such that Mexico is the country of origin of the finished system for purposes of U.S. Government procurement.

Section 177.29, Customs 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: January 21, 2011.

Sandra L. Bell,

Executive Director, Regulations and Rulings, Office of International Trade.

HQ H125975

January 19, 2011

VAL-2 OT:RR:CTF:VS H125975 HkP

CATEGORY: Marking

Lisa A. Crosby, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005

RE: Government Procurement; Country of Origin of the LSI Engenio 7900 Storage System: Substantial Transformation

Dear Ms. Crosby:

This is in response to your letter dated September 24, 2010, requesting a final determination on behalf of LSI Corporation ("LSI"), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection 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 Engenio 7900 Storage System (7900 System). We note that as a U.S. importer and manufacturer, LSI 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:

According to the information submitted, the 7900 System is an electronic data storage system that ensures data integrity and availability. The system offers drive-level encryption, multiple replication options, proactive drive health monitoring, RAID¹ 6 technology and persistent cache backup to ensure that data is fully protected. Together these features help LSI customers optimize storage performance, reduce operational costs and more efficiently manage both physical and virtual environments. The 7900 System can support transactional applications, such as database and online transaction processing, as well as throughput-intensive applications, such as high performance computing and rich media. To support these varied applications, the 7900 System is designed to be highly configurable, although certain system features are standard.

For purposes of this request, the Wembley configuration has been put forward as representative of the 7900 System and is described as having the following components:

- An Engenio Operating System (EOS). It features a complex and sophisticated code base including a RAID data protection layer, with stored data protected from loss due to power failure, component failure and other such events. The EOS also includes a graphical user interface that allows users to manage the storage array in the system, adjust system settings, and perform management tasks while the system is online. The EOS is unique to LSI products and the 7900 System could not function without the EOS, which represents approximately 45 percent of the overall development cost for the 7900 System. The country of origin of the EOS is the United States.
- A controller assembly, which transmits commands to hard drives and relays data to and from hard drives. The controller is programmed by the supplier with basic firmware that provides generic functionality to ensure that the controller works. The country of origin is Thailand.
- A mounting assembly, which secures the controller assembly. The country of origin is Mexico or China.
- A set of Hard Drives, which provides high-capacity data storage. The country of origin is Thailand.
- A Slot Drive Module Assembly, which secures and organizes the hard drives. The country of origin is Mexico or Malaysia.

¹ Redundant Array of Independent Disks.

- A Cabinet assembly, to enclose all of the other components. The country of origin is Mexico.

LSI subcontracts the production of the 7900 System to Flextronics Corp., which assembles the components at its technology center in Guadalajara, Mexico. Production of the 7900 System begins with the receipt and inspection of hardware components that are chosen based on the work order and their suitability for the selected configuration. Unit-specific labels, the wiring diagram and traveler sheets are printed at this time. Next, the mounting assembly, which is supplied knocked-down or loosely connected, is installed in the cabinet using mounting rails and screws in accordance with the wiring diagram. Clips used to secure cabling are also positioned in the rails in accordance with the diagram. The slot drive module assembly is then installed in the cabinet with screws after a gasket has been used to determine that each module is evenly placed. The modules are then covered with protective cardboard wrap and fillers. The controller and hard drives are then placed in the slot drive module assembly in accordance with the wiring diagram. Each unit is attached to rails in the cabinet using screws, and accessories for each unit are placed in an accessory bag. The cabling is then installed and power cords are attached in two positions, with cable bobbins placed at precise intervals. Once cabling has been completed, filler panels are installed in the empty spaces in the cabinet.

Once the hardware has been assembled, the U.S.-origin EOS software is downloaded to the 7900 System, resulting in the reprogramming of the generic firmware pre-loaded onto the controller assembly. The final configured version of the EOS flashed onto the 7900 System in Mexico, incorporates customer-specific settings and features LSI's latest proprietary base code. According to your submission, this software imparts the functionality, storage management, performance monitoring, access control and other features that enable the 7900 System to operate as a high-performance storage solution.

After the EOS is flashed onto the system, the system is tested pursuant to detailed testing procedures. There are seven separate test sequences and two optional customer dependent sequences. The first two test sequences (Canister level testing) check the individual RAID Controller functions and features while the latter test sequences (Module level testing) test the dual RAID module system functions. Canister level testing involves a review

of board configuration and the Enterprise Storage Subsystem. Module level testing involves a chassis function test, chassis stress test, input/output test, extended manufacturing stability test, connectivity test, final configuration test, and cabinet test. A quality inspector also reviews the system for conformance with LSI requirements.

Next, finishing touches are made to the system and it is made ready for transport. The cabinet assembly containing the fully assembled and finished system is packed onto a pallet, along with boxes housing accessories, and staged for shipment to the United States. When the 7900 System is installed at the U.S.-customer's site, the software is further customized in accordance with the customer's requirements.

You have asked us to determine the country of origin of the 7900 system when:

- (1) The mounting assembly and the slot drive mounting assembly are of Mexican origin;
 - (2) The mounting assembly is of Mexican origin and the slot drive module assembly is of Malaysian origin;
 - (3) The mounting assembly is of Chinese origin and the slot drive module assembly is of Mexican origin; and
 - (4) The mounting assembly is of Chinese origin and the slot drive module assembly is of Malaysian origin.
- In each of these scenarios, all other production specifications would be as previously described, including the origin of the other components.

ISSUE:

What is the country of origin of the 7900 System for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to Subpart B of Part 177, 19 CFR § 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 *Data General v. United States*, 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, 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 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 the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming 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-functioning 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 creating a similar pattern.

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 (Ct. Int'l Trade 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 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 worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

You argue that the country of origin of the 7900 System is Mexico because the components imported into Mexico are substantially transformed there as a result of the Mexican assembly operations, particularly the downloading of the EOS software. In support of your argument, you note that CBP has applied the principle in *Data General* in several rulings, such as in HQ 563012 (May 4, 2004), concerning the country of origin of a fabric switch, and in HQ H034843 (May 5, 2009), concerning the country of origin of a portable flash drive. However, we note the factual difference between these decisions and the instant case. In the cited decisions final assembly took place in one country and programming in another whereas, in the present case, final assembly and programming take place in the same country.

You also cite several rulings in which final assembly and programming of the concerned device took place in the same country, which we find to be more on point with the instant case. In HQ H082476 (May 11, 2010), and in NY N083979 (Dec. 3, 2009), the United States was determined to be the country of origin of ICS clustered storage units, when foreign components were assembled into the units in the U.S. and programmed here. In HQ H025023 (April 1, 2008), CBP determined that the Czech Republic was the country of origin of a fabric switch that was assembled to completion and programmed in that country. See also HQ H089762, dated June 2, 2010 (GTX Mobile and Handheld Computer), and

HQ H090115, dated August 2, 2010 (Unified Communications Solution).

In regard to the 7900 System, all the components are assembled into the 7900 System in Mexico. Once assembled into the System, the previously programmed controller assembly is reprogrammed with the EOS software, which is stated to impart the functional intelligence to the System to allow for storage management, performance monitoring and access control. According to the information submitted, the 7900 System cannot function in its intended manner without the EOS software downloaded in Mexico.

We find that the other major operating hardware components are the controller assembly and the hard drives set, both of Thai origin. The purpose of the other components, the mounting assembly, slot drive module assembly, and cabinet assembly, is to mainly hold the operating assembly components in place. These may be of Mexican origin or some other country of origin. As they are not as important to the overall working capabilities of the 7900 System, we do not find that their origin affects the outcome of determining the origin of the 7900 System.

In prior decisions, the country where the software was developed and where the programming occurred, was determined to be important. In this case, the software, developed in the U.S., is claimed to be important to the function of the 7900 System. However, the downloading of the software and assembly of the system occurs in Mexico. In addition, considering that the other two operating systems are not of Mexican origin, the assembly involves multiple countries of origin with development and programming also occurring in two different countries. Accordingly, we find that as a result of the assembly and programming operations that take place in Mexico, the imported components of various origins lose their individual identities and are substantially transformed into a new and different article, that is, the 7900 System. Therefore, the country of origin of the 7900 System is Mexico.

HOLDING:

Based on the facts provided, the assembly and programming operations performed in Mexico on the components of the 7900 System give rise to a new and different article, the 7900 System. As such, the 7900 System is to be considered a product of Mexico 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,

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

[FR Doc. 2011-1674 Filed 1-25-11; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5482-N-02]

Notice of Submission of Proposed Information Collection to OMB; Fair Housing Initiatives Program Grant Application Testing Training

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

This is a request for approval to provide technical assistance (training) to promote a greater and more consistent use to Testing and development of consistent Testing Methodologies among FHIP grantees.

DATES: *Comments due on or before:* March 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 60 days from the date of this Notice. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, e-mail OIRA_Submission@OMB.EOP.GOV.

FOR FURTHER INFORMATION CONTACT: Myron P. Newry, Director, FHIP Support Division, Office of Programs,