U.S. Customs and Border Protection

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING CERTAIN ETHERNET GATEWAY PRODUCTS

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 ethernet gateway products known as AirLink gateways. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the AirLink gateways for purposes of U.S. Government procurement.

DATES: The final determination was issued on February 23, 2018. 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 April 2, 2018.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 23, 2018, 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 ethernet gateway products known as AirLink gateways, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H250154, 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 programming and downloading operations performed in the United States, using U.S.-origin software, substantially transform non-TAA country AirLink

gateways. Therefore, the country of origin of the AirLink gateways 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: February 23, 2018.

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H250154
February 23, 2018
OT:RR:CTF:VS H250154 GaK/RMC
CATEGORY: Origin

MARK J. SEGRIST
SANDLER, TRAVIS & ROSENBERG, P.A.
225 WEST WASHINGTON STREET, SUITE 1640
CHICAGO, IL 60606

Re: U.S. Government Procurement; Country of Origin of Gateway Products; Substantial Transformation

DEAR MR. SEGRIST:

This is in response to your letter dated October 25, 2013, and your supplemental submissions dated February 27, 2014 and March 21, 2014, requesting a final determination on behalf of your client, Sierra Wireless ("Sierra"), pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection ("CBP") Regulations (19 C.F.R. Part 177). A meeting was held at our office on October 3, 2014, where you and your client explained the software development process and the product. A further submission dated April 18, 2017, was provided.

This final determination concerns the country of origin of Sierra's secure Ethernet gateway products ("gateways"). We note that as a U.S. importer, Sierra 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.

Per your letter dated September 22, 2014, we have reviewed your request for confidentiality pursuant to 19 C.F.R. § 177.2(b)(7) with respect to the information submitted. As that information constitutes privileged or confidential matters, it has been bracketed and will be deleted from any published versions.

FACTS:

Sierra produces gateways that provide secure internet connectivity for mobile stations allowing a variety of enterprises, mainly law enforcement, to monitor their infrastructure and instruments by transmitting and receiving data from a central location. The gateways are designed for entities that require 24/7 unmanned operation of remote assets and broadband connectivity. The gateways are frequently installed in police cars and provide a 24/7 internet connection and allow police officers to access information stored in the central location. The gateway also acts as a firewall server, which ensures that the connection between the mobile station and the main office is secure and that unauthorized persons cannot access information transmitted over the internet. Sierra's submissions include details on four different gateway products, branded "AirLink," to be covered by this final determination: GX400, GX440, LS300, and ES440. The different series of gateways are designed differently to meet the needs of a variety of customers[1], but they have the same functions and operate with the same software, referred to as Aleos.

[1] The GX series are designed for in-vehicle field deployments, such as connecting police cars or fire trucks to their network at headquarters. The LS series is designed for hazardous environments and for industrial deployments, such as surveillance of pipelines or meters. The ES series is designed to provide connectivity when landline connections are unavailable and can be used to maintain kiosks and retail operations online.

The hardware components consist of a case/kit that holds the module, a printed circuit assembly ("PCA") that includes a radio module, a decorative cover placed over the case/kit, and various nuts and screws to close the case/kit and hold the cover in place. All the hardware components are designed in the United States and produced and assembled in China. Sierra imports the completed gateways into the United States, where authorized retailers install the ALEOS software. Sierra states that, at the time of importation, the fully assembled gateway is not functional because it does not contain the ALEOS software. Sierra also states that the gateway in its condition as imported has only the basic ability to communicate with a software installation tool to facilitate the download of the ALEOS software. The radio module contains firmware to control its internal function of sending and receiving to/from the network, which cannot take place until the ALEOS software is loaded onto the gateway. Sierra states that the PCA design and the firmware in the radio module are proprietary and are designed to work only with the ALEOS software and that any attempts to install other software will cause the system to crash.

ALEOS was developed entirely in the United States in five steps:

1. *Research:* A list of ideas and potential features of the product is compiled, product roadmap is developed, and product requirements are defined.
2. *Development of Software Specification:* The chief architects create a software design, which is developed by the development team to meet the defined product requirements.
3. *Programming of Source Code:* The development team receives the software development tasks, which results in the source code files written by the software developers.
4. *Software Integration and Build:* The team integrates the source code files by compiling the source code into a binary file that runs on the hardware. During this phase, the developers work out the incompatibilities or bugs by rewriting or correcting source code as needed until a build is complete and ready for testing.
5. *Testing and Validation:* The software package is tested based on functional specifications defined in the product requirements. Once the test case pass rate is met, the software is ready for release.

Since 1993, approximately [3] engineer hours were spent in the development of the ALEOS software in the United States. Some minor software maintenance, such as repair and validation, is conducted in Canada and France, which accounts for approximately [ ]% of the engineer hours spent. Sierra states that the gateways are approximately $45 at import and after the ALEOS software is installed, are valued at between $479 and $899. We assume for purposes of this decision that the figures provided are correct. You also submitted an affidavit from the Vice President of Marketing at Sierra describing the software and installation process, a user guide, an end-user warranty, and a PowerPoint presentation that included photographs and component lists.

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, 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).

You argue that the country of origin of the GX400, GX440, LS300, and ES440 gateway products is the United States because you believe that the last substantial transformation occurs in the United States. You state that the fully-assembled gateways are not functional when they are imported into the United States and that the gateways gain their ability to function as intended only after U.S.-origin software is installed in the United States. In support, you cite, among others, *Data General v. United States,* 4 C.I.T. 182 (1982), Headquarters Ruling ("HQ") H052325, dated February 14, 2006, and HQ H175415, dated October 4, 2011.

In *Data General,* the court determined that 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 the United States, 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. 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. *See also Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982) (holding that the substantial transformation issue is a "mixed question of technology and customs law").

Accordingly, the programming of a device that confers its identity as well as defines its use generally constitutes a substantial transformation. *See* HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitutes a substantial transformation; and HQ 733085, dated July 13, 1990.

CBP has also focused on where the programming took place. For example, in HQ H258960, dated May 19, 2016, CBP considered the country of origin of network transceivers in two different scenarios. In Scenario One, the importer purchased "blank" transceivers from Asia. The transceivers were then loaded with U.S.-developed software in the United States, which made the transceivers functional. In Scenario Two, the importer purchased the transceivers with a generic program preinstalled, which was then removed so that the U.S.-developed software could be installed. We held that, in Scenario One, because the transceivers could not function as network devices without the U.S.-developed software, the transceivers were substantially transformed as a result of the downloading of the U.S.-developed software performed in the United States. However, in Scenario Two, because the transceivers were already functional when imported, the identity of the transceivers was not changed by the downloading performed in the United States, and no substantial transformation occurred.

Similarly, in HQ H175415 dated October 4, 2011, CBP held that imported Ethernet switches underwent a substantial transformation after U.S.-origin software was downloaded onto the devices' flash memory in the United States, which allowed the devices to function. In China, the printed circuit board assemblies, chassis, top cover, power supply, and fan were assembled. Then, in the United States, U.S.-origin software, which gave the hardware the capability of functioning as local area network devices, was loaded onto the hardware. CBP noted that the U.S.-origin software "enables the imported switches to interact with other network switches" and that "[w]ithout this software, the imported devices could not function as Ethernet switches." Under these circumstances, CBP held that the country of origin of the local area network devices was the United States. *See also* HQ H052325, dated March 31, 2009 (holding that imported network devices underwent a substantial transformation in the United States after U.S.-origin software was download onto the devices in the United States, which gave the devices their functionality); and HQ H034843, dated May 5, 2009 (holding that Chinese USB

flash drives underwent a substantial transformation in Israel when Israeli-origin software was loaded onto the devices, which made the devices functional).

In each case, the nature of the article and the effect of the processing performed must be evaluated. Here, like the network devices and Ethernet switches at issue in HQ H175415, HQ H052325, and HQ H258960 (under Scenario One), the Sierra GX400, GX440, LS300, and ES440 gateways are imported into the United States in a non-functional state. It is only after the installation of U.S.-origin software that the devices can function as intended. Moreover, as in HQ H175415, HQ H052325, and HQ H258960, the gateway products at issue here derive their core functionality as communication devices from the installation of the U.S.-developed software. We note that this case is distinguishable from Scenario 2 in HQ H258960, as Sierra's products do not contain pre-installed software when they are imported from China, and they are non-functional at the time of importation to the United States. Therefore, we find that the country of origin of the Sierra GX400, GX440, LS300, and ES440 gateways is the United States.

HOLDING:

Based on the facts provided, the country of origin of the gateways is 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 & Rulings Office of Trade

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING COUNTRY OF ORIGIN OF ALUMINUM HONEYCOMB PANELS

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 aluminum honeycomb panels. CBP has concluded in the final determination that for purposes of U.S. Government procurement the assembly of the parts in the United States does not substantially transform the aluminum panels.

DATES: The final determination was issued on February 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 April 2, 2018.

FOR FURTHER INFORMATION CONTACT: Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202–325–1511).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on 02/21/18, CBP issued a final determination concerning the aluminum honeycomb panels, which may be offered to the United States Government under an undesignated government procurement contract. The final determination, HQ H290528, was issued at the request of Aliva Chemica E Sistemi SRL, 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 was asked to consider whether the cutting, bending, and assembly of aluminum parts constitutes a substantial transformation. In the final determination, CBP concluded that these activities do not constitute a substantial transformation and the origin of the honeycomb panels remains the original country of manufacturing.

Section 177.29, CBP Regulations (19 C.F.R. § 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 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: February 21, 2018.

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H290528
February 21, 201
OT:RR:CTF:VS: H290528 JMV
CATEGORY: Origin

DARLENE BURO
ALL AIR CUSTOM BROKERS, INC.
145–68 228TH STREET, 2ND FLOOR
SPRINGFIELD GARDENS, NY11413

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of Honeycomb Panels

DEAR MS. BURO,

This is in response to your request of June 5, 2017, on behalf of Aliva Chemica E Sistemi SRL ("Aliva") for a final determination concerning the country of origin of a product that you refer to as "aluminum honeycomb panels," pursuant to subpart B of Part 177, U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. § 177.21, *et seq.*).

As a foreign producer of merchandise, Aliva 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:

The merchandise at issue are Aliva aluminum honeycomb panels, which will be used as architectural finished coating panels for wall and tunnel areas in train stations. The panels come in two variations: straight and curved. Each installed panel will contain a casing, a core, and two mounting blades.

The casing

The casing is a flat sheet of pre-painted aluminum alloy which will be supplied in both perforated and non-perforated variations as required for aesthetic appearance. The flat sheet is produced in Italy in dimensions of two feet in width and variable lengths. These aluminum alloy sheets are painted through a reverse coil process and will include anti-graffiti characteristics as required by the architectural specification. The sheets are then transferred to a specialized processing factory in Italy that cuts the sheet to the final dimensions, and bends three of the side edges to create the casing that will house the honeycomb core. Along one side of the casing, the edge is left flat and two bending lines are engraved on the back of this edge for reference during the production process in the United States. The casing will then be transported to a U.S. production facility to receive and secure the core. Workers at the U.S. production facility will also drill holes at prescribed locations to attach the core.

The core

The core consists of two hard layers called skins and a layer of aluminum honeycomb made up of 3000 series aluminum alloy with hexagonal cells that are 80 microns thick. The skins can either be coated with five microns of primer or pre-painted black with an anti-graffiti finish. The skins are glued to the honeycomb panel to create a singular panel referred to as the core.

The Italian manufacturer will supply and transport the core sheets in bulk to a U.S. manufacturing facility. Each core sheet will produce three to 16 cores. All cores for the curved panels will be cut-to-size to fit the casing in Italy but cores for the straight panels will be cut to size at the U.S. facility. Eight holes are drilled through the back of the core for attachment of the mounting blades. However, all the cores for curved panels will be cut and drilled in Italy.

The mounting blades

The mounting blades are aluminum alloy sheets of unknown origin extruded into L-shaped brackets. Two mounting blades will be attached to the back of each core on either side. The mounting blades are extruded, machined, bent, and cut-to-size in the United States before being secured to the core. Two different profiles are produced for the right and left blades, which hook the finished panel onto Aliva's framing system.

Assembly

In the United States, the core is inserted into the case and then the flat edge of each casing will be bent into place with specialized aluminum bending equipment. An average of 16 holes will be drilled into each panel, and 16 stainless steel rivets will be fastened with a specialized riveting tool to secure the core and casing together. Finally, each mounting blade is secured to the finished panel with four stainless steel rivets.

According to Aliva, the processing in the United States requires skilled labor and increases the value of the component parts. Aliva estimates that the work required to incorporate the casing, core and mounting blades into a singular panel in the United States will take approximately 46 minutes of labor. The importer further states that the processes performed in the United States to produce all of the panels will require "hundreds of thousands of dollars of labor." Aliva indicates that each panel will have a significantly increased value over the collective value of the individual parts (casing, core, and mounting blades) after the processing in the United States is completed.

ISSUE:

Whether the component aluminum parts are substantially transformed by the combining processes in the United States.

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, 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 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 constitutes a substantial transformation, the determinative issue for CBP 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,* 6 C.I.T. 204 (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. *See* HQ H125975, dated January 19, 2011. CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis.

In determining whether a substantial transformation has occurred in the processing of metals, CBP has generally held that cutting or bending materials to defined shapes or patterns suitable for use in making finished articles, as opposed to mere cutting to length or width which does not render the article suitable for a particular use, constitutes a substantial transformation. For example, in Headquarters Ruling Letter ("HRL") 055684, dated August 14, 1979, CBP held that components of a water cooler gas absorption refrigeration unit which were formed by cutting to length, cleaning and bending imported steel tubes into the component shapes and configurations, or by cutting to length, flattening, and drilling holes into imported tubing, substantially transformed constituent materials for GSP purposes, while those imported tubes which were simply cut to length and assembled into the final articles were not. *See also* HRL 555811, dated March 20, 1992 (die cutting, stamping and shaping operations substantially transform aluminum flat stock into new and different articles of commerce).

In HRL 555265, dated July 3, 1989, CBP held rolls of imported aluminum strip were substantially transformed when the aluminum strip was crowned, that is, it was passed between convexed and concaved egg shape rollers to permanently bow the strip. Then the strip was cut to lengths and punched with holes. CBP stated that the cutting and crowning operations permanently altered the physical characteristics of the strip thereby limiting its potential uses. Prior to cutting and crowning, the strip was raw material and possessed nothing in its character indicative of its ultimate use. After the cutting and crowning operations, the strip could be used in the production of

a limited range of articles, such as venetian blind slats or lattice fences. *See also* HRL 557159, dated January 11, 1994 (extruded aluminum cut to length and bent to shape to form the frame of grilles and louvers was substantially transformed).

The above situations are in contrast to those where the imported components constitute the essence of the end product. For example, in HRL 562653, dated May 14, 2003, CBP considered whether brake kits that were machined and assembled in the United States were substantially transformed. Unplated, drilled and slotted brake rotors and calipers from Italy were plated with a protective zinc coating and some of the calipers were painted/labeled. After painting, the calipers were machined to specification, in accordance with the mounting profile determined by engineers. The two imported plated rotors were each mounted to a U.S.-origin bell by means of ten small bushing assemblies, each of which was comprised of a bushing, spacer, spring washer and bolt. The bushing and the spring were imported from Italy, while the remaining articles were of U.S.-origin. CBP found that, at importation, both the rotors and the calipers were not rough, generic forms with a multitude of uses, but were essentially complete articles which already bore the name of the finished product; therefore, the use of the articles was determined at the time of importation. While the calipers underwent some machining operations in the United States, the overall shape and form of the finished articles was essentially the same as the imported articles. Likewise, although all of the rotors were plated in the United States, and some underwent additional drilling and/ or slotting in the United States, the overall dimensions and diameter remained the same. The imported rotors also did not lose their identity and did not become an integral part of a new article when assembled to the U.S. bell. Additionally, the use of the calipers and rotors was predetermined at importation. Thus, CBP found that the imported rotors and calipers did not undergo a change in name, character or use as a result of processing in the United States and remained products of Italy. *See also* HRL 734873, dated September 7, 1994 (imported brake rotor castings were not substantially transformed by processing, which included removing 0.06–0.12 inches of external surface, drilling 5–10 holes, counter coring, installing studs or bolts, and grounding for a fine finish); and *National Hand Tool Corp. v. United States,* 16 C.I.T. 308 (1992) (finding no substantial transformation occurred because components had been cold-formed or hot-forged "into their final shape before importation", and that "the form of the components remained the same" after the assembly and heat-treatment processes performed in the United States).

Here, the U.S processing of the panels is minimal and does not alter the character of the casing and core. The pre-importation processing is significantly more complicated than the post-importation processing, which essentially consists of some cutting and assembly of parts. The physical characteristics of the casing and the core are already determined by the processing in Italy. Most of the cutting and bending of the casing and the core occurs prior to importation. In Italy, the aluminum sheets are produced; the core is created by linking the skins with the aluminum honeycomb; the aluminum for the casing is cut to size; the casing is painted; three of the four bends in the casing are completed; the core is primed and painted; and the curved core panels are cut. In contrast, in the United States the last edge of the casing is bent, the straight core panels are cut, the core and the casing are attached, and the mounting blades are cut into shape and attached; thus, the form of

the components remains essentially the same after U.S. processing. Since the form, materials, and structure remain the same, we find there is no change in character of the core and casing.

The processing here is similar to the brake kits in HRL 562653. The major parts are imported in essentially the same shape that they will be in when assembled into the final product. Although there is some cutting, drilling, and slotting, the casing and the core do not lose their identity or become an integral part of a new article when assembled in the United States. Like the brake kits, at importation the casing and core are not rough, generic forms with a multitude of uses—they are imported only to be assembled to be sold as wall panels. Therefore, the casing and core are not new and different articles of commerce from the assembled panels.

Here, because the core and the casing are not substantially transformed in the United States, the country of origin of the completed panels is Italy.

HOLDING:

Based on the facts of this case, aluminum honeycomb panels are not substantially transformed through the assembly of the parts in the United States. The country of origin of the aluminum honeycomb panels is Italy.

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 International Trade

NOTICE OF ISSUANCE OF FINAL DETERMINATIONS CONCERNING COUNTRY OF ORIGIN OF THE HUB AND MOBILE PLATFORMS, AND THE AMC HOME TELE-HEALTH SYSTEM

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determinations.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued two final determinations concerning the country of origin of tablet computers and smart phones known as the Hub and Mobile Platforms, and CareConsole Hub and Mobile Hub. CBP has concluded in the final determinations that for purposes of U.S. Government procurement the installation of proprietary software on tablet computers or smart phones does not substantially transform the imported tablet computers or smart phones.

DATES: The final determinations were issued on February 21, 2018. Copies of the final determinations are attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of these final determinations within April 2, 2018.

FOR FURTHER INFORMATION CONTACT: Joy Marie Virga, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202–325–1511).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on February 21, 2018, CBP issued two final determinations concerning the country of origin of tablet computers, smart phones, and systems, which may be offered to the United States Government under an undesignated government procurement contract. These final determinations, HQ H284834 and HQ H284617, were issued at the request of 1Vision, LLC and Care Innovations, LLC, respectively, 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 determinations, CBP was asked to consider whether disabling the general applications of a tablet computer or smart phone and loading specialized software onto the device, enabling a patient to provide medical information to the VA, constituted a substantial transformation. In one final determination, CBP was further asked if the integration of the altered tablets and smartphones into a larger telehealth system constituted a substantial transformation. In the final determinations, CBP concluded that these activities do

not constitute a substantial transformation and the origin of the tablet computers, smart phones, and systems remains the original country of manufacturing.

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: February 21, 2018.

ALICE A. KIPEL,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H284834
February 21, 2018
OT:RR:CTF:VS: H284834 JMV
CATEGORY: Origin

GEORGE W. THOMPSON, ESQ.
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1250 CONNECTICUT AVE. NW, SUITE 200
WASHINGTON, DC, 20036

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Tablet Computers, CareConsole Hub and Mobile Hub

DEAR MR. THOMPSON:

This is in response to your letter of March 20, 2017, on behalf of 1Vision, LLC ("1Vision"), requesting a final determination concerning the country origin of a product that you refer to as the AMC Home Tele-health System ("Tele-health System" or "the System"), pursuant to subpart B of Part 177, U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. § 177.21, *et seq.*). You state in your letter that this request is being made pursuant to a contract with the Department of Veterans Affairs (VA) with 1Vision requiring the filing of a request for a country of origin determination from CBP.

As a domestic producer, 1Vision 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:

The products at issue are the Tele-health System in its entirety and the components, the CareConsole Hub and the Mobile Hub. The CareConsole Hub and the Mobile Hub, respectively, begin as a tablet computer and a smart phone. The CareConsole Hub is produced in the Republic of Korea and the Mobile Hub is produced in China. Both products are intended for purchase by the Veterans Health Administration for use by patients at home. The CareConsole Hub and the Mobile Hub are designed to collect health data that is measured by other peripheral devices, such as blood pressure cuffs, blood glucose monitors, etc. These other peripheral devices are not imported with the tablet and could be used "as is" within the 1Vision ecosystem, without any changes.

In the United States, the tablet and smart phone go through a number of software uninstallations and installations. The generic Android functions originally included on the devices, such as alarms, calculators and text messaging, are removed. In order to enable the devices to function within the Tele-health System, other functions, such as Bluetooth capability, are modified and additional software is added. In addition, 1Vision also further processes the devices to include additional security mechanisms and to enable them to function in Plain Old Telephone Systems ("POTS"), an analog telephone service that continues to be the basic form of home and small business service connection to telephone networks.

Finally, the AMC CareConsole Mobile Application is installed on both devices. According to the information provided, this software was developed entirely in the United States. The software enables the patient to provide vital sign data by connecting to the peripheral devices via Bluetooth. The patient's information is then forwarded to VA clinicians over the VA intranet. This application is installed on the tablet to meet the VA's requirements for

medical devices, including patient confidentiality and interoperability with VA systems and protocols. After the software installation is completed, the tablets cannot run any other program and cannot be reprogrammed to perform any other function.

The CareConsole Hub and Mobile Hub are then integrated into the Tele-health System, which also includes servers, data storage, networking, additional software, and health monitoring devices such as blood pressure cuffs and glucose monitors. The integration process consists of the CareConsole Hub or Mobile Hub contacting the Tele-health System, hosted in the VA data centers, which then sends an activation code and configuration file to the CareConsole Hub or Mobile Hub. The CareConsole Hub and Mobile Hub are then automatically configured to the peripheral health monitoring devices.

All the components, other than the CareConsole Hub and Mobile Hub, come from the United States, Mexico, Japan, Taiwan, Ireland, or the Republic of Korea. These components are customized as necessary to function in conjunction with each other. The CareConsole Hub and Mobile Hub collect information from the patients in their homes and transmit that data to the Tele-health System. The information is then presented to the VA Care Coordinators through the web application. The Tele-health System's various components are installed at multiple locations, including in the patients' homes, VA data centers and VA offices.

Like the Hub and Mobile Hub, the servers also cannot be used out of the box and must be customized. The servers are acquired without an operating system or software and are inoperable until software is installed. The servers are first installed at the VA Facility. The installation process takes five business days as it involves various assembling, configuring and testing processes. The final step is to load the AMC CareConsole software onto the servers.

ISSUE:

1. Whether the imported tablets and smart phones are substantially transformed by the uninstallation and installation of software in the United States, so as to make them a product of the United States.
2. Whether all the components of the Tele-health System are substantially transformed through the creation and installation of that system in the United States so as to make them a product of the United States.

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, 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 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 *Data General v. United States,* 4 C.I.T. 182 (1982), the court determined that 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 the United States, the programming bestowed upon each integrated 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. The essence of the article, its interconnections or stored memory, was established by programming. *See also, Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982) (stating the substantial transformation issue is a "mixed question of technology and customs law"); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitutes a substantial transformation); and, HQ 734518, dated June 28, 1993 (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

"The term 'character' is defined as 'one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.' " *National Hand Tool Corp. v. United States,* 16 C.I.T. 308, 311 (1992) (citing *Webster's Third New International Dictionary* (1981)). In *National Juice Prods. Ass'n v. United States,* the Court of International Trade applied the "essence test" and found that the fundamental character of orange juice concentrate was not changed by the addition of water, orange essences, and oils to make frozen concentrated orange juice, and hence, there was no substantial transformation. 10 C.I.T. 48, 628 F. Supp. 978 (1986).

HQ H258960, dated May 19, 2016, reviewed the country of origin of hardware components of certain transceivers in two scenarios that are instructive to the case at issue here. The hardware components of the transceivers were wholly manufactured in a foreign country and imported into the United States. In the first scenario, the transceivers were "blanks" and completely non-functional and specialized proprietary software was developed and downloaded in the United States, making the transceivers functional and compatible with the OEM technology. In the second scenario, the transceivers were preprogrammed with a generic program that was replaced with

specialized proprietary software. It was argued that in both scenarios, the imported hardware was substantially transformed by the development, configuration, and downloading operations of the U.S. origin software. In the first scenario, we found that the non-functional transceivers were substantially transformed as a result of downloading performed in the United States, with proprietary software developed in the United States. However, in the second scenario, it was determined that since the transceivers had generic network functionality, programming them merely to customize their network compatibility would not actually change the identity of the imported transceivers. *See also* HQ H241177, dated December 3, 2013. Accordingly, it was determined that the country where the last substantial transformation occurred was China or another Asian country where the hardware components were manufactured.

In this case, you contend that the deletion of software and the installation of new software performed in the United States transform the generic tablet computers and smartphones into medical devices. You emphasize that the U.S. operations disable the Android applications and install health monitoring software, which, you argue, creates an entirely new purpose for the devices. You further stress the complexity and number of steps taken to transform the tablets and smartphones into devices that may be used within the Tele-health System. Therefore, you contend that this operation substantially transforms the tablets and smartphones into new medical devices with distinct names, characters and uses.

In essence, what is being done by the uninstallation and installation of software in the United States, is to limit the original capacity of the imported tablets and smartphones for the purpose of facilitating the reception, collection and transmission of a patient's medical data to VA clinicians for their review. The out-of-box tablets and smartphones have the ability to perform these general functions, but in order to meet the requirements outlined in the VA Request for Procurement, the CareConsole Hub and Mobile Hub are modified as discussed. In other words, when the tablets and smartphones are created, they have the ability to receive, collect, and transmit data. The installed software merely enables these devices to receive and collect an individual patient's medical data from the peripheral devices and transmit this medical data to the clinicians at the VA.

It is clear that loading the specialized software onto a tablet computer or smartphone that remains fully functional as such would be insufficient to constitute a new and different article of commerce, since all of the functionality of the original device would be retained. In this case, however, in addition to adding the software, we are being asked to consider the effect of disabling the general applications that have been programmed onto the tablet and smartphone. In our judgment, this added factor does not cause or require a different result. The functions of the original tablet and smartphone produced in the Republic of Korea or China, necessary to receive and transmit data are in essence still present on the modified devices, as aided by the software. While the tablet and smartphone are no longer freely programmable machines, we find the imposition of this limitation is insufficient to constitute a substantial transformation of the imported tablets and smartphones.

Furthermore, we note that the converted tablets and smartphones loaded with the AMC CareConsole Application Software do not actually measure any health related functions, such as blood pressure, or oxygen saturation levels,

nor do they provide any medical treatment to patients. Instead, the devices function to receive medical data that is obtained from other peripheral devices, such as a blood pressure cuff or an oxygen sensor, and to transmit that medical data to a clinician for review. Therefore, it appears that after the proprietary software is downloaded onto the tablets and smartphones, they function basically as a type of communications device.

In reviewing the processing performed in the United States on the imported tablets and smartphones under consideration, we note that it is analogous to the situation of the transceivers described by the second scenario of HQ H258960. The imported devices are preprogrammed with a generic program, which is the standard Android operating system, prior to their importation. When they are first imported, the tablets and smartphones can perform all of their standard functions of an android tablet or smartphone, and can in their imported condition be used for their intended purpose, but are customized for use within the VA Healthcare network. Accordingly, like the transceivers described in the second scenario of HQ H258960, we find that the name, character, and use of the imported devices remain the same. Therefore, we further find that the imported devices are not substantially transformed in the United States by the downloading of the proprietary software, which allows them to function with the VA Healthcare network. After the AMC CareConsole Application software is downloaded, the country of origin of the imported tablets and smartphones remains the country where they were originally manufactured, which in this case is the Republic of Korea and China, respectively.

The Tele-health System

In this situation, you also present an additional argument that the "end product" is an entire system that includes all hardware and software components, because it is defined as such in the VA contract. The implication of this claim is that CBP should consider the Tele-health System as a whole in its substantial transformation analysis. The VA's determination on what is the "end product" is based upon different criteria from what CBP must consider in determining the country of origin of a product using the substantial transformation test. We note that the components at issue do not lose their individual identities and, therefore, are not substantially transformed into a new and different article.

In HQ H125975, dated January 19, 2011, which 1Vision cites in support of its argument, the LSI Engenio 7900 Data Storage System ("7900 System") was under consideration for government procurement purposes. The 7900 System was assembled in Mexico from components originating in various other nations. These parts included the Engenio Operating System, a controller assembly, a mounting assembly, a set of hard drives, a slot drive module assembly, and a cabinet assembly. Further, the controller assembly was reprogrammed with the EOS software to impart the functional intelligence to the 7900 System to allow for storage management, access control and performance monitoring. CBP found that as a result of the assembly and programming operations that took place in Mexico, the imported components of various origins lost their individual identities and were substantially transformed into a new and different article, that is, the 7900 System.

Although the CareConsole Hub, Mobile Hub and servers are customized to the VA contract specifications, the programming of each component to function in coordination with each other for a common purpose does not lead to a

substantial transformation finding. As discussed above, the tablets and phones are not substantially transformed by the uninstallation and installation of software. Similarly, we cannot find a substantial transformation of the servers because software is installed. Moreover, the installation of the software onto the servers would not affect the other components of Tele-health System as they remain separate articles of commerce. Unlike the situation in H125975, all the devices and peripheral equipment remain identifiable as separate components. The peripheral medical devices, such as the blood pressure cuffs, blood glucose monitors etc., remain, as stated, "as is" and without any customization; the CareConsole Hub and Mobile Hub, as explained above, remain and continue to function as communication devices; the servers remain and continue to function as servers, etc. The fact that these devices are programmed to function in conjunction with each other for the purpose of receiving, collecting and transmitting medical data does not mean that a change of use or character occurs. Since the components have not lost their separate identities during assembly of the Tele-health System and have not become an integral part of a new and distinct item, which is visibly different from any of the individual components, we find there is no substantial transformation.

HOLDING:

Based on the facts of this case, the imported tablets and smartphones used with the CareConsole Hub and Mobile Hub platform are not substantially transformed by the installation of the AMC CareConsole Application. Therefore, the country of origin of the tablets and smartphones will remain the country where they were originally manufactured. Additionally, all components of the Tele-health System are not substantially transformed through the creation and installation of that system in the United States so as to make them a product of the United States.

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

HQ H284617
February 21, 2018
OT:RR:CTF:VS: H284617 JMV
CATEGORY: Origin

DAVID E. FLETCHER, ESQ.
COOLEY LLP
1299 PENNSYLVANIA AVENUE, NW SUITE 700
WASHINGTON, DC 20004–2400

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Tablet Computers, Health Mobile and Hub Platforms

DEAR MR. FLETCHER,

This is in response to your letter of March 21, 2017, on behalf of Care Innovations requesting a final determination concerning the country of origin of a product that you refer to as "the Hub Platform and the Mobile Platform," pursuant to subpart B of Part 177, U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. § 177.21, *et seq.*). You state in your letter that this request is being made pursuant to a letter from the Department of Veterans Affairs (VA) to Care Innovations requiring the filing of a request for a country of origin determination from CBP.

As a domestic importer of merchandise, Care Innovations 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:

The products at issue are referred to as the Hub Platform and the Mobile Platform. The Hub Platform is a home based platform that operates via Plain Old Telephone Systems ("POTS"), while the Mobile Platform is a handheld platform with wireless connectivity. Both platforms begin as iPad tablet computers that are produced by Apple in China, which are later encased with protective cases that are also manufactured in China. The tablet is designed for use by patients at home to collect health data that is measured by other peripheral devices such as blood pressure monitors, spirometer etc. These other devices are not imported with the tablet.

After the tablets are imported into the United States, Care Innovations performs additional production steps in its Roseville, California facility to create the Hub Platform and Mobile Platform. Care Innovations installs the Health Harmony Mobile software on the tablet computers, adds a Subscriber Identity Module ("SIM") card supplied by the cellular service provider, and packages the tablets in the protective cases. For the Hub Platform, which runs on POTS, Care Innovations attaches a POTS modem and router, manufactured in the United States with imported components. For both the Hub Platform and the Mobile Platform, Care Innovations installs the Airwatch Mobile Device Manager application, which removes the functionality usually available on an Apple iPad Mini tablet so that the user will only be able to run the Health Harmony Mobile software. The end result is a tablet locked into "single app mode," running only the Health Harmony application functionality and Bluetooth linked peripheral screens.

Care Innovations also adds physical asset tags to each tablet and registers them on Care Innovation's Mobile Device Management server; registers component details in the customer database; and verifies and documents the

testing of the image and registered software. Care Innovations then packages the Hub Platform and Mobile Platform with the necessary licenses, privacy notices, and quick start guides. Finally, Care Innovations activates the platforms' features and prepares the platforms to be assigned to a specific end user.

ISSUE:

Whether the imported tablets are substantially transformed by the installation of Care Innovations' software, so as to make them a product of the United States.

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, 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 *Data General v. United States,* 4 C.I.T. 182 (1982), the court determined that 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 the United States, the programming bestowed upon each integrated 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. The essence of the article, its interconnections or stored memory, was established by programming. *See also, Texas Instruments v. United States,* 681 F.2d 778, 782 (CCPA 1982) (stating the substantial transformation issue is a "mixed question of technology and customs law"); HQ 735027, dated September 7,

1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitutes a substantial transformation); and HQ 734518, dated June 28, 1993 (motherboards are not substantially transformed by the implanting of the central processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

"The term 'character' is defined as 'one of the essentials of structure, form, materials, or function that together make up and usually distinguish the individual.' " *National Hand Tool Corp. v. United States,* 16 C.I.T. 308, 311 (1992) (citing *Webster's Third New International Dictionary* (1981)). In *National Juice Prods. Ass'n v. United States,* the Court of International Trade applied the "essence test" and found that the fundamental character of orange juice concentrate was not changed by the addition of water, orange essences, and oils to make frozen concentrated orange juice, and hence, there was no substantial transformation. 10 C.I.T. 48, 628 F. Supp. 978 (1986).

HQ H258960, dated May 19, 2016, reviewed the country of origin of hardware components of certain transceivers in two scenarios that are instructive to the case at issue here. The hardware components of the transceivers were wholly manufactured in a foreign country and imported into the United States. In the first scenario, the transceivers were "blanks" and completely non-functional and specialized proprietary software was developed and downloaded in the United States, making the transceivers functional and compatible with the OEM technology. In the second scenario, the transceivers were preprogrammed with a generic program that was replaced with specialized proprietary software. It was argued that in both scenarios, the imported hardware was substantially transformed by the development, configuration, and downloading operations of the U.S. origin software. In the first scenario, we found that the non-functional transceivers were substantially transformed as a result of downloading performed in the United States, with proprietary software developed in the United States. However, in the second scenario, it was determined that since the transceivers had generic network functionality, programming them merely to customize their network compatibility would not actually change the identity of the imported transceivers. *See also* HQ H241177, dated December 3, 2013. Accordingly, it was determined that the country where the last substantial transformation occurred was China or another Asian country where the hardware components were manufactured.

In this case, you assert that the software downloading operations performed in the United States transform the generic tablet computers into medical devices. You further argue that the tablets undergo a complex production process performed by skilled production associates at Care Innovations' Roseville, California facility. You emphasize that the U.S. operations disable the generic Apple iPad applications and install health monitoring software that cannot be undone by third parties during the normal course of operations. Therefore, you contend that this operation substantially transforms the Apple iPad tablet into a new medical device with a distinct name, character and use.

In essence, what is being done by the installation of the software in the United States, is to limit the original capacity of the imported tablets for the purpose of facilitating the reception, collection and transmission of a patient's medical data to VA clinicians for their review. The original tablet has the

ability to perform these functions, but it was determined that in order to meet FDA regulations, it is best to disable the various functions of the tablet and to replace them with one function via the specialized software. In other words, when the tablets are created, they have the ability to receive, collect, and transmit data. The installed software just enables the tablets to receive and collect an individual patient's medical data from the peripheral devices and transmit this medical data to the clinicians at the VA.

It is clear that loading specialized software onto the tablet computer that remains fully functional as a computer would be insufficient to constitute a new and different article of commerce, since all of the functionality of the original computer would be retained. In this case, however, in addition to adding the software, we are being asked to consider the effect of disabling the general applications that have been programmed onto the tablet. In our judgment, this added factor does not cause or require a different result. The functions of the original tablet produced in China that are necessary to receive and transmit data are in essence still present on the modified tablet, as aided by the software. While the tablet is no longer a freely programmable machine, we find the imposition of this limitation is insufficient to constitute a substantial transformation of the imported tablets in the United States.

Furthermore, we note that the converted tablets loaded with the Health Harmony software do not actually measure any health related functions, such as blood pressure, or oxygen saturation levels, nor do they provide any medical treatment to patients. Instead, the converted tablets function to receive medical data that is obtained from other peripheral devices, such as a blood pressure monitor or pulse oximeter, and to transmit that medical data to a clinician for review. Therefore, it appears that after the proprietary software is downloaded onto the tablets, the tablets continue to basically function as a type of communications device.

It is also claimed that the FDA considers the Hub Platform and the Mobile Platform to be medical devices and that the IRS will tax the Health Harmony system, including the tablet, as a medical device. Thus, you contend that CBP should also consider the tablets loaded with the Health Harmony software to be medical devices rather than tablets. We note, however, that the IRS and FDA's determinations as to whether any items are considered medical devices are based upon different criteria from what CBP must apply in determining the country of origin of a product using the substantial transformation test. In HQ H019436, dated March 17, 2008, CBP considered the tariff classification of a SONA Sleep Apnea Avoidance Pillow imported from China. The ruling noted that while the subject merchandise was considered a Class II therapeutic cervical pillow for snoring and mild sleep apnea by the FDA, this determination did not control tariff classification. Similarly in this case, the IRS and FDA's determinations that the imported tablets are medical devices and will be taxed as such are of limited relevance to CBP's determination as to the country of origin of the devices.

In reviewing the processing performed in the United States on the imported tablets under consideration, we note that it is analogous to the situation of the transceivers described by the second scenario of HQ H258960. The imported tablets are preprogrammed with a generic program, which is the standard Apple iPad operating system, prior to their importation. When they are first imported, the tablets can perform all of the standard functions of an Apple iPad tablet, and can in their imported condition be used in conjunction with the proprietary software. Accordingly, like the transceivers

described in the second scenario of HQ H258960, we find that the name, character, and use of the imported tablet computers remain the same. Therefore, we further find that the imported tablets are not substantially transformed in the United States by the downloading of the proprietary software, which allows them to function within the VA Healthcare network. After the Health Harmony software is downloaded, the country of origin of the imported tablets remains the country where they were originally manufactured, which in this case is China.

Finally, you argue that since CBP concluded that a predecessor of the Health Harmony System, Stehekin, was considered part of a patient monitoring system rather than a standard computer in NY Ruling N004877 dated January 26, 2007, it would be inconsistent to conclude that Health Harmony, as Stehekin's descendant, is, for purposes of government procurement, merely a "standard computer" manufactured outside the United States. You claim that Stehekin is analogous to the tablet computer that Care Innovations uses today because it included a purpose-built computer, produced in China, that was used to deliver remote patient monitoring software and capability. However, the issue decided in N004877 was a question of tariff classification, not substantial transformation, and is therefore, not applicable.

HOLDING:

Based on the facts of this case, the imported tablets used with the Mobile Platform and the Hub platform are not substantially transformed by the installation of the proprietary Health Harmony software. Therefore, the country of origin of the tablets will remain the country where they were originally manufactured.

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