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Dated: May 24, 2011.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### Notice of Issuance of Final Determination Concerning the Transit Connect Electric Vehicle

**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 Transit Connect Electric Vehicle. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the vehicle for purposes of U.S. Government procurement.

**DATES:** The final determination was issued on May 24, 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 June 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Barbara Kunzinger, Valuation and Special Programs Branch: (202) 325-0359.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on May 24, 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 Transit Connect Electric Vehicle which may be offered to the U.S. Government under an undesignated procurement contract. This final determination, in HQ H155115, was issued at the request of Azure Dynamics 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 Transit Connect Electric Vehicle,

assembled in the United States from parts made in the United States, Turkey, Switzerland, Hungary, Japan, Germany, Canada, the United Kingdom, and various other countries is substantially transformed in the United States, such that the United States is the country of origin of the finished article 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, Customs Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: May 24, 2011.

**Sandra L. Bell,**

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

Attachment

HQ H155115

May 24, 2011

OT:RR:CTF:VS H155115 BGK

CATEGORY: Marking

Scott T. Harrison

Chief Executive Officer

Azure Dynamics Corporation

14925 W 11 Mile Road

Oak Park, MI 48237

RE: Government Procurement; Country of Origin of Electric Vehicles; Substantial Transformation

Dear Mr. Harrison:

This is in response to your letter, dated March 16, 2011, as amended April 6, 2011, and April 7, 2011, requesting a final determination on behalf of Azure Dynamics (Azure), pursuant to subpart B of 19 C.F.R. part 177.

Under these regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 et seq.), U.S. Customs and Border Protection (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 purpose 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 Transit Connect Electric Vehicle (TCE). We note that Azure, the U.S. importer and manufacturer, 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 under 19 C.F.R. 177.23(a).

**FACTS:**

Azure purchases and imports a Transit Connect glider from Turkey. A glider is a non-functional base without a powertrain or exhaust components, and consists of a frame,

body, axles, and wheels. The TCE is then assembled in the U.S. from both imported and U.S.-origin components.

A Bill of Materials was submitted with the request. Apart from the glider, parts for the TCE are also imported from Switzerland, Hungary, Japan, Germany, Canada, the United Kingdom, and various other countries. According to the submission, the TCE vehicle is composed of 31 components, of which 14 are of U.S.-origin. For purposes of this decision, we assume that the components of U.S. origin are produced in the U.S. or are substantially transformed in the U.S. and considered products of the U.S.

The U.S. assembly occurs at various stations. The assembly stations at AM General, the manufacturing subcontractor, are described as follows:

**Station 0:** A visual quality inspection of the glider is performed and the materials necessary for assembly are delivered to the proper stations.

**Station 1:** A Vehicle Identification Number is assigned. Holes are drilled into the glider and brackets are installed to support the battery pack and other electric assembly components. The fuel door of the glider is removed, assembled into a charge port, and the charge port is installed. The cab wiring harnesses and instrument clusters are removed and replaced with U.S. origin cab wiring harnesses and Hungarian instrument clusters appropriate for electric vehicles. The low-voltage battery is removed.

**Station 2:** A U.S.-origin battery pack, U.S. engine bay wiring harness, German power steering pump and motor, German battery coolant pump heater, and Turkish power steering lines are installed. Four subassemblies, which previously are assembled at four substations using certain U.S. and foreign components, are also assembled and installed: Cooling pack subassembly, hoses assembly, high voltage junction box assembly, and traction assembly.

The cooling pack subassembly involves the removal of the condenser from the radiator included with the glider and the replacement of the radiator included with glider with a Canadian radiator that is compatible with electric vehicles. U.S. hoses are then installed onto the radiator.

The hoses subassembly involves measuring and cutting U.S.-origin coolant hoses and installing U.S.-origin hoses clips to the hoses.

The high voltage junction box subassembly involves integrating a Canadian active discharge unit with various U.S. and foreign origin vent plugs, mounting studs, internal harnesses, fuses and a fuse holder, and various cables.

The traction subassembly involves the assembly of a U.S. origin motor controller (manufactured by Azure at a different plant and referred to as the Force Drive electric powertrain), a U.S. origin gearbox, a German electric motor, a German origin vacuum pump, a Swiss charger, a Japanese AC compressor, and a Japanese DC-DC converter.

**Station 3:** Multiple quality control inspections are performed. Various brackets, gaskets, nuts and bolts, and cords and wires are installed. The original-low voltage battery

is re-installed, along with the U.S. origin vehicle control unit, a German driveshaft, and a Japanese heater assembly.

Station 4: The coolant, power steering, and windshield washer reservoirs are filled. A functional electric test, a diagnostic test, and a complete system check are performed. Other various parts, including a potentiometer to the heater blend door, a data link control wiring harness, and a brake sensor to the brake pedal, are installed, and a tire inflation kit, labels, books, and manuals are added to the vehicle.

Station 5: A tire pressure check, wheel alignment, headlight aiming, brake test, battery charge, road test, and underbody check are performed.

#### ISSUE:

What is the country of origin of the subject TCE vehicles for purposes of U.S. Government procurement?

#### LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulations. See 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations, 48 C.F.R. § 25.003, define "U.S.-made end product" as:

[A]n 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.

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). 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. Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

You claim that the U.S. assembly operations, along with the value of the U.S. origin contributions (labor and components), results in a substantial transformation of the imported parts, and warrants a determination that the U.S. is the country of origin for purposes of U.S. Government procurement. You also note that "the 16 foreign components used in the assembly of the TCE vehicle cannot function alone and must be assembled with the U.S.-origin parts in order to constitute a working TCE vehicle." You cite Headquarters Ruling Letter (HRL) H022169, dated May 2, 2008, and HRL H118435, dated October 13, 2010, in support of your argument.

In HRL H118435, the U.S. was determined to be the country of origin for purposes of U.S. Government procurement for a line of electric golf and recreational vehicles. In that case, the chassis, plastic body parts, and various miscellaneous pieces of plastic trim were imported into the U.S. from China and assembled with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The vehicles were composed of approximately 53 to 62 components, of which between 12 and 17 were of U.S. origin. HRL H118435 held that none of the imported parts could function as an electric vehicle on their own and needed to be assembled with other necessary U.S. components. Additionally, it was held that given the complexity and duration of the U.S. manufacturing process, the operations were more than mere assembly. It was determined that a substantial transformation occurred, and further, the critical components to making an electric vehicle—battery pack, motor, electronics, wiring assemblies, and charger—were of U.S.-origin. The same conclusion was reached in HRL H133455, dated December 9, 2010, in which a chassis and various parts were imported from China to be combined with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers. The ratio of imported components to U.S.-made components varied, but the assembly process was the same.

In HRL H022169, CBP found that an imported mini-truck glider was substantially transformed as a result of assembly

operations performed in the U.S. to produce an electric mini-truck. The decision was based on the fact that, under the described assembly process, the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character, and use. In addition, a substantial number of the components added to the imported glider were of U.S. origin. The glider was assembled with approximately 87 different components, 68 of which were of U.S. origin. The batteries, charger, and gear box were of U.S. origin, and other major parts, including the electric motor and brakes, were of foreign origin.

As stated in HRL H022169 (citing HRL 731076, dated November 1, 1988), CBP considers the manufacture of an automobile more than a mere simple assembly operation. The assembly process here is complex and time-consuming and involves a significant U.S. contribution, in both parts and labor. The components used to power the vehicle are assembled together in the U.S., and then incorporated into the vehicle in the U.S. For example, the U.S.-origin battery pack, motor controller, and wiring harnesses are all critical components for the operation of the electric vehicle. Furthermore, in HRLs H118435, H133455, and H022169, it was found that the assembly of the U.S. and imported components was necessary for the vehicles to function, and that the assembly resulted in a substantial transformation. We find the same to be true in this case. The glider and other components cannot function as an electric vehicle on their own. Therefore, based on the information discussed and the rulings cited, we find that the assembly of the glider and other components of various origins constitutes a substantial transformation and results in an article with a new name, character, and use, such that the country of origin for the TCE vehicle is the U.S. for purposes of U.S. Government procurement.

#### HOLDING:

Based on the facts of this case, the country of origin of the TCE vehicle 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,  
Sandra L. Bell  
Executive Director  
Office of Regulations and Rulings  
Office of International Trade

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**BILLING CODE P**