

aviation aircraft operators to request permission to fly in restricted airspace. The information collected enables TSA to perform a background check on each individual on board the aircraft seeking to fly under the waiver. The affected public consists of aircraft operators of the general aviation community.

Number of Respondents: 6,000.

Estimated Annual Burden Hours: An estimated 4,400 hours annually.

Issued in Arlington, Virginia, on September 15, 2008.

John Manning,

Acting Director, Business Management Office, Office of Information Technology.

[FR Doc. E8-21890 Filed 9-18-08; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

CUSTOMS AND BORDER PROTECTION

Notice of Issuance of Final Determination Concerning Ground Fault Circuit Interrupter

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 a ground fault circuit interrupter ("GFCI"). Based upon the facts presented, CBP has concluded in the final determination that China is the country of origin of the GFCI for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 15, 2008. 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 October 20, 2008.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade (202-572-8792).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 15, 2008, 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 GFCI's which may be offered to the United States Government under an undesignated government procurement contract. This final

determination, in HQ H030645, was issued at the request of Pass & Seymour, Inc. 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 has concluded that, based upon the facts presented, certain GFCI's, assembled in Mexico from parts made in China, are not substantially transformed in Mexico, such that China 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, 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: September 15, 2008.

Myles B. Harmon,

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

HQ H030645

September 15, 2008

MAR-2-05 OT:RR:CTF:VS H030645

GOB

CATEGORY: Marking

Daniel B. Berman, Esq., Hancock & Estabrook, LLP, 1500 AXA Tower I, 100 Madison Street, Syracuse, NY 13202

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 Marking; Ground Fault Circuit Interrupter (GFCI)

Dear Mr. Berman: This is in response to your correspondence of May 1, 2008, requesting a final determination on behalf of Pass & Seymour, Inc. ("P&S"), pursuant to subpart B of Part 177, Customs and Border Protection ("CBP") Regulations (19 CFR 177.21 *et seq.*). Your letter was forwarded to CBP's National Commodity Specialist Division in New York and was returned to this office by memorandum of June 3, 2008. Under the pertinent regulations, which implement 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.

This final determination concerns the country of origin of a ground fault circuit interrupter ("GFCI"). We note that P&S is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

You also request a country of origin marking determination.

Facts

You describe the pertinent facts as follows. The business of P&S includes the design, manufacture, and distribution of GFCI's in the U.S. for residential and commercial use in electrical circuits of less than 1,000 volts. The GFCI's are electrical components, designed for installation in electrical circuits, which are able to detect small imbalances in the circuit's current caused by leakages of current to ground. When leakage is detected, the GFCI opens the electrical circuit, stopping the flow of current. Legrand, the parent company of P&S, produces the subcomponents of the GFCI in China through another subsidiary, Rocom Electric Co. Ltd. ("Rocom"). The subcomponents include the following: cover, reset button, test button, spring, light pipe, strap assembly, assembly terminals, contact, separator, springs, latch block top, spark gap blades, assembly screw terminals, armature, spring assembly, term assemblies, PCB subassembly, assembly screw terminals, back body, screws and labels. Rocom plans to ship the subcomponents to a facility in Mexico where they will be assembled into the GFCI's. The GFCI's will be tested and packaged at the same facility. Upon completion of assembly, testing, and packaging, the GFCI's will be imported into the U.S. by P&S for sale and distribution.

You state that the process in Mexico to assemble the GFCI is comprised of forty-three discrete steps and takes approximately ten minutes. You state that each GFCI is comprised of thirty component parts which, until inclusion in the final GFCI, have little or no functionality.

An exhibit to your correspondence, which includes photographs, describes the assembly process as follows:

1. Place back body into date code fixture/stamping press and press button to apply date code on side of back body.
2. Remove back body from date code fixture. Place hot terminal screw pressure plate assembly into back body cradle on line end.

3. Place neutral terminal screw pressure plate assembly into back body cradle on line end.

4. Place printed circuit board subassembly into back body, capturing terminal screw pressure plate subassemblies under line terminals.

5. Place hot terminal screw pressure plate subassembly into back body cradle on load end.

6. Place neutral terminal screw pressure plate subassembly into back body cradle on load end.

7. Place hot load terminal assembly into back body, over load screw pressure plate subassembly.

8. Place neutral load terminal subassembly into back body, over load screw pressure plate assembly.

9. Place two break springs into latch block.

10. Place latch block with springs onto line contacts, aligning leg of latch block over auxiliary switch on printed circuit board subassembly.

11. Drop separator over device, aligning test resistor lead through role in separator. Snap separator onto back body.

12. Place strap subassembly into center channel of separator.

13. Place hot side load contact into slot in separator.

14. Bend test resistor lead over with finger to test blade slot.

15. Press test blade leg into slot in separator, capturing test resistor lead in slot on bottom leg of test blade.

16. Place neutral side load contact into slot in separator.

17. Place light pipe into slot in separator.

18. Place reset button spring subassembly into hole through separator.

19. Set two shutter subassemblies into pockets in test button subassembly.

20. Place test button subassembly on top of device, fitting over reset button subassembly and light pipe.

21. Turn device over. Place four assembly screws in holes at corners of back body.

22. Run assembly screws in and torque down with driver.

23. Place device in automated final tester fixture.

24. Short circuit test.

25. False trip test.

26. Trip level test in forward polarity.

27. Trip level test in reverse polarity.

28. Grounded-neutral test.

29. Test-button test.

30. Dielectric test.

31. Response time test with 500 ohm fault resistor.

32. If device passes all tests, hand solder link across solder bridge on bottom of printed circuit board to activate miswire circuit.

33. Depress reset button on device and place device in automatic miswire-function tester. Push button to initiate test to verify device trips.

34. If device passes, snap plastic cap into back body, covering miswire solder bridge.

35. Remove miswire label from roll and apply across back body and load terminal screws.

36. Remove UL label from roll and apply to neutral side of device, overlapping back body, separator and cover.

37. Place cardboard protector over face of device.

38. Place wallplate subassembly with captive screws over cardboard protector and face of device.

39. Take stack of three pre-folded instruction sheets and fuse box label and place under device.

40. Remove product box label from roll and place on flap of individual box.

41. Assemble individual box, closing flap on one end.

42. Slide device, protector, wallplate and instruction sheets into individual box and close flap.

43. Place individual box in carton for shipping.

Issues

1. What is the country of origin of the GFCI's for the purpose of U.S. government procurement?

2. What is the country of origin of the GFCI's for the purpose of marking?

Law and Analysis

Government Procurement

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 CFR 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 Acquisition Regulations. See 19 CFR 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 CFR 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

... an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR 25.003.

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. Factors which may be relevant in this evaluation may include the nature of the operation (including the number of components assembled), the number of different operations involved, and whether a significant period of time, skill, detail, and quality control are necessary for the assembly operation. 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. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F.2d 1022 (Fed. Cir. 1983). In *Uniroyal*, the court determined that a substantial transformation did not occur when an imported upper, the essence of the finished article, was combined with a domestically produced outsole to form a shoe.

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, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In a number of rulings (e.g., HQ 735608, dated April 27, 1995 and HQ 559089 dated August 24, 1995), CBP has stated: "In our experience these inquiries are highly fact and product specific; generalizations are troublesome and potentially misleading. The determination is in this instance 'a mixed question of technology and customs law, mostly the latter.'" *Texas Instruments, Inc. v. United States*, 681 F.2d 778, 783 (CCPA 1982)."

In HQ 734050 dated June 17, 1991, CBP held that the assembly of five subassemblies by a screwdriver operation that took 45 minutes was not a substantial transformation. In HQ 561392 dated June 21, 1999, CBP considered the country of origin marking requirements of an insulated electric conductor which involved an electrical cable with pin connectors at each end used to connect computers to printers or other peripheral devices. The cable and connectors were made in Taiwan. In China, the cable was cut to length and connectors were attached to the cable. CBP held that cutting the cable to length and assembling the cable to the connectors in China did not result in a substantial transformation. In HQ 560214 dated September 3, 1997, CBP held that where wire rope cable was cut to length, sliding hooks were put on the rope, and end ferrules were swaged on in the U.S., the wire rope cable was not substantially transformed. CBP concluded that the wire rope maintained its character and did not lose its identity and did not become an integral part of a new article when attached with the hardware. In HQ 555774 dated December 10, 1990, CBP held that Japanese wire cut to length and electrical connectors crimped onto the ends of the wire was not a substantial transformation. In HQ 562754 dated August 11, 2003, CBP found that cutting of cable to length and assembling the cable to the Chinese-origin connectors in China did not result in a substantial transformation of the cable.

This case involves 30 components manufactured in China which are proposed to be assembled in Mexico in a process involving 43 steps which will

take ten minutes. After a careful consideration of the pertinent facts and authorities, we find that the assembly operations to be performed in Mexico are not sufficiently complex for the process to result in a substantial transformation of the components. We note that the printed circuit board subassembly from China is placed into the back body of the GFCI. It is a major functional part of the finished GFCI and provides the essential character to the GFCI. Further, we note that: only a short amount of time is required for assembly (ten minutes); the assembly process itself is not at all complex; many of the steps involve testing, which we do not find in this case to be significant with respect to a substantial transformation claim; and all of the components are manufactured in China.

Therefore, based upon our finding that there is no substantial transformation of the components in Mexico, we determine that the country of origin of the GFCI for government procurement purposes is China.

Country of Origin Marking

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, CBP Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Section 134.1(b), CBP Regulations (19 CFR 134.1(b)), defines the country of origin of an article as the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin for country of origin marking purposes; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin.

Section 134.1(j), CBP Regulations provides that the "NAFTA Marking Rules" are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g), CBP Regulations defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

Part 102, CBP Regulations (19 CFR Part 102), sets forth the "NAFTA Marking Rules" for purposes of determining whether a good is a good of a NAFTA country. Section 102.11, CBP Regulations (19 CFR 102.11) sets forth the required hierarchy for determining country of origin for marking purposes. Section 102.11(a), CBP Regulations provides that the country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other requirements of these rules are satisfied.

"Foreign Material" is defined in section 102.1(e), CBP Regulations as "a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced."

We find that we are unable to determine the country of origin of the GFCI by section 102.11(a), CBP Regulations. Section 102.11(a)(1) and (2) are not applicable, i.e., the GFCI is not wholly obtained or produced and the GFCI is not produced exclusively from domestic materials. Further, pursuant to section 102.11(a)(3), CBP Regulations, there is no applicable change in tariff classification for each foreign material as set out in section 102.20, CBP Regulations, as the GFCI and the PCB subassembly are both classified in subheading 8536.30.80, Harmonized Tariff Schedule of the United States ("HTSUS").

Section 102.11(b), CBP Regulations provides in pertinent part that, except for a good that is specifically described in the HTSUS as a set, or is classified as a set pursuant to General Rule of Interpretation 3 (neither of these conditions are satisfied), where the country of origin cannot be determined under paragraph (a) of section 102.11:

- (1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good[.]

Section 102.18(b)(1), CBP Regulations provides in pertinent part as follows:

- (b)(1) For purposes of identifying the material that imparts the essential character to a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under

the § 102.20 specific rule or other requirements applicable to the good.

A change in tariff classification is not allowed with respect to the PCB subassembly. As stated above, both the PCB subassembly and the GFCI are classified in subheading 8536.30.80, HTSUS. The PCB subassembly is manufactured in China (as are all of the components of the GFCI). Therefore, under section 102.11(b)(1), CBP Regulations, the country of origin of the GFCI is China.

Pursuant to 19 U.S.C. 1304, the country of origin of the GFCI for country of origin marking purposes is China.

Holdings

The assembly operations to be performed in Mexico are not sufficiently complex for the process to result in a substantial transformation of the components. Therefore, the country of origin of the GFCI for government procurement purposes is China.

Pursuant to 19 U.S.C. 1304, the country of origin of the GFCI for country of origin marking purposes is China.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

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

[FR Doc. E8-21934 Filed 9-18-08; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5186-N-38]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* September 19, 2008.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 11, 2008.

Mark R. Johnston,
Deputy Assistant Secretary for Special Needs.
[FR Doc. E8-21696 Filed 9-18-08; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2008-N0230; 20124-1113-0000-F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

DATES: To ensure consideration, written comments must be received on or before October 20, 2008.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection,

by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 6034, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, (505) 248-6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE-122856

Applicant: George Myers, Buda, Texas.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapilla*) within Texas, Oklahoma and Kansas.

Permit TE-187090

Applicant: Patricia Salas, Castle Hills, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.

Permit TE-188015

Applicant: Pueblo of Santa Ana-Natural Resources, Pueblo of Santa Ana, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of the Rio Grande silvery minnow (*Hybognathus amarus*) on lands within the Pueblo of Santa Ana.

Permit TE-189566

Applicant: Monica Geick, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.