

information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: September 30, 2011.

Lesia M. Banks,

*Director, Records Management Division,
Mission Support Bureau, Federal Emergency
Management Agency, Department of
Homeland Security.*

[FR Doc. 2011-25978 Filed 10-6-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Ethernet Switches

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 switches. Based upon the facts presented, CBP has concluded that the programming operations performed in the United States, using U.S.-origin software, substantially transform the non-TAA country switches. Therefore, the country of origin of the switches is the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 4, 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 November 7, 2011.

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

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 4, 2011, 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

Ethernet switches which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H175415, 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 operations performed in the United States, using U.S.-origin software, substantially transform the non-TAA country Ethernet switches. Therefore, the country of origin of the switches 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: October 4, 2011.

Sandra L. Bell,

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

Attachment

October 4, 2011

HQ H175415

MAR OT:RR:CTF:VS H175415 HkP

CATEGORY: Origin

Josephine Aiello LeBeau, Esq.

Anne Seymour, Esq.

Wilson Sonsini Goodrich & Rosati, PC
1700 K Street, NW, Fifth Floor
Washington, DC 20006-3817

RE: U.S. Government Procurement;
Country of Origin of Local Area
Network Switches; Substantial
Transformation

Dear Ms. LeBeau and Ms. Seymour:

This is in response to your letter, dated July 6, 2011, requesting a final determination on behalf of Arista Networks, Inc. (“Arista”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. Part 177). Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated

country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of Arista’s 7048, 7050, 7100, 7124, and 7500 series (“7 Series”) local area network (“LAN”) switches. We note that as a U.S. importer, Arista 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:

Arista is importing 7 Series Ethernet switches assembled in China. The switches are designed to interconnect servers and storage appliances in data centers. Each switch consists of one or more printed circuit board assembly (“PCBAs”), chassis, top cover, power supply, and fans. After importation, the switches will be programmed with U.S.-origin software.

The following operations occur in China:

1. The chassis and top cover are manufactured from sheet metal.
2. The PCB is populated with various electronic components to make a PCBA.
3. The PCBA is tested to ensure functionality.
4. The power supply and fans are installed in the chassis.
5. The PCBA is installed in the chassis.
6. The chassis and top cover are assembled together.
7. The serial numbers of the components are entered into the data tracking system, and the switch is packaged and shipped to the United States.

The following operations occur in the United States:

1. U.S.-origin EOS™ software is downloaded onto the flash memory on the PCBA.
2. The switch is tested, packaged, and prepared for shipping.

Arista’s EOS™ (Extensible Operating System) software is designed to provide switching functionality, secure administration, and reliability, and to optimize network management. Specifically, EOS software provides the following capabilities and benefits to Ethernet switches: in-service software upgrade, software fault containment, fault repair, security exploit containment, and scalable management interface. According to your submission, the units imported from China could not function as network switches without this software, which was developed in the United States at considerable cost to Arista. Since 2005, more than 140

software engineers have continued to develop the software and more than 80 percent of Arista's Research and Development spending has been on EOS software development.

ISSUE:

What is the country of origin of the Arista's 7 Series Ethernet switches for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

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

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

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

See also 19 C.F.R. § 177.22(a).

In *Data General v. United States*, 4 Ct. Int'l Trade 182 (1982), the court determined that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (predecessor to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign PROM (Programmable Read-Only Memory chip) in the United States substantially transformed the PROM into a U.S. article. In programming the imported PROMs, the U.S. engineers systematically caused various distinct electronic interconnections to be formed within each integrated circuit. The programming bestowed upon each circuit its electronic function, that is, its "memory" which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. This physical alteration, not visible to the naked eye, could be discerned by electronic testing of the PROM. The court noted that the programs were designed by a U.S.

project engineer with many years of experience in "designing and building hardware." While replicating the program pattern from a "master" PROM may be a quick one-step process, the development of the pattern and the production of the "master" PROM required much time and expertise. The court noted that it was undisputed that programming altered the character of a PROM. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a "substantial transformation" than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern.

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

In C.S.D. 84-85, 18 Cust. B. & Dec. 1044, CBP stated:

We are of the opinion that the rationale of the court in the *Data General* case may be applied in the present case to support the principle that the essence of an integrated circuit memory storage device is established by programming; ... [W]e are of the opinion that the programming (or reprogramming) of an EPROM results in a new and different article of commerce which would be considered to be a product of the country where the programming or reprogramming takes place.

Accordingly, the programming of a device that changes or defines its use generally constitutes substantial transformation. See also Headquarters Ruling Letter ("HQ") 558868, dated February 23, 1995 (programming of SecureID Card substantially transforms the card because it gives the card its character and use as part of a security system and the programming is a permanent change that cannot be undone); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitute substantial transformation); and, HQ 733085, dated July 13, 1990; but see HQ 732870, dated March 19, 1990 (formatting a blank diskette does not constitute substantial transformation because it does not add value, does not involve complex or highly technical operations and did not create a new or

different product); 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 imports it).

You believe that under the manufacturing scenario described in the FACTS section above, Arista's 7 Series Ethernet switches are products of the United States. You argue that without the EOS software, the units exported from China lack the intelligence to perform as network switches. In fact, you claim that the EOS software gives the switches their essential character by providing network switching and routing functionality, management functions, network performance monitoring, security and access control, and by allowing interaction with other switches. Further, programming the switches with the EOS software creates a permanent change in the PCBAs that cannot be undone by third parties during the normal course of business. The only reprogramming operation that may be performed during the normal course of business is either updating the installed software or entering licensing keys that enable the activation of additional EOS software features. In support of your position, you cite *Data General (supra)*, HQ H052325 (Feb. 14, 2006) and HQ 735027 (Sept. 7, 1993), among others.

HQ H052325 concerned the country of origin of a switch and a switch/router. The Brocade 7800 Extension Switch was assembled to completion in China and programmed in the U.S. with U.S.-origin operating system (OS) software and customer specified firmware and software. The Brocade FX8-24 switch/router contained a PCBA that was assembled and programmed in China and shipped to the U.S., where it was assembled with other components to make the final product. The completed unit was then programmed with U.S.-origin OS software and customer firmware and software. In both cases, the U.S.-origin OS software provided the devices with their functionality. Customs found that in both cases, the processing performed in the United States, including the downloading of the U.S.-origin OS software, resulted in a substantial transformation of the foreign origin components, and that the United States was the country of origin.

In HQ H014068, dated October 9, 2007, CBP determined that a cellular phone designed in Sweden, assembled in either China or Malaysia and shipped

to Sweden, where it was loaded with software that enabled it to test equipment on wireless networks, was a product of Sweden. Once the software was installed on the phones in Sweden, they became devices with a new name, character and use, that is, network testing equipment. As a result of the programming operations performed in Sweden, CBP found that the country of origin of the network testing equipment was Sweden.

In this case, hardware components are assembled into complete Ethernet switches in China. The switches are then shipped to the U.S., where they are programmed with EOS software, developed in the U.S. at significant cost to Arista and over many years. Since 2005, more than 140 software engineers have continued to develop the software and more than 80 percent of Arista's Research and Development spending has been on EOS software development. The U.S.-origin EOS software enables the imported switches to interact with other network switches through network switching and routing, and allows for the management of functions such as network performance monitoring and security and access control. Without this software, the imported devices could not function as Ethernet switches. As a result of the programming performed in the U.S., with software developed in the U.S., the imported switches are substantially transformed in the U.S. *See Data General*, C.S.D. 84-85, HQ 052325, HQ 558868, HQ 735027, and HQ 733085. The country of origin of the switches is the United States.

Please be advised, however, that whether the switches may be marked "Made in the U.S.A." or with similar words, is an issue under the authority of the Federal Trade Commission ("FTC"). We suggest that you contact the FTC, Division of Enforcement, 6th and Pennsylvania Avenue, NW, Washington, DC 20508, on the propriety of markings indicating that articles are made in the United States.

HOLDING:

Based on the facts provided, the programming operations performed in the United States impart the essential character to Artista's 7 Series Ethernet switches. As such, the switches will be considered products of the United States for purposes of U.S. Government procurement.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine

the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Sandra L. Bell,

*Executive Director
Regulations and Rulings Office of
International Trade*

[FR Doc. 2011-25991 Filed 10-6-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5546-D-01]

Delegation of Authority to the Office of Disaster Management and National Security

AGENCY: Office of the Secretary, HUD.

ACTION: Delegation of Authority.

SUMMARY: Through this notice, the Secretary delegates authority to the Chief Disaster and National Security Officer, Office of Disaster Management and National Security.

DATES: *Effective Date:* September 30, 2011.

FOR FURTHER INFORMATION CONTACT:

Laura L. McClure, Acting Chief Disaster and National Security Officer, Office of Disaster Management and National Security, Department of Housing and Urban Development, 451 7th Street, SW., Room 10170, Washington, DC 20410-6000, telephone number 202-402-6300 (this is not a toll free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at telephone number 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

The Secretary of HUD hereby delegates to the Chief Disaster and National Security Officer authority and responsibility to advise HUD departmental leadership on all aspects of disaster and national security preparedness, response, and recovery; to identify and mitigate risks; to improve departmentwide capacity, coordination, and support for disaster management and national security; and to ensure that HUD's security and disaster management programs support national objectives and the security of the United States while supporting HUD's mission. In carrying out this responsibility, the Chief Disaster and National Security Officer shall, among other duties:

1. Assess, coordinate and improve execution of the Department's disaster management and national security programs.

2. Represent the Department's interests in interagency committees and groups that address disaster management, national security, law enforcement, and the protective service detail.

3. Develop criteria to assess and help improve disaster and national security preparedness, response, and recovery and develop policy, program options, and recommendations together with key program offices.

4. Develop and coordinate crosscutting disaster and national security policies, programs, and plans that improve departmental preparedness, response, and recovery including implementation of the National Response Framework, National Continuity Policy, and Presidential Decision and National Security Directives.

5. Integrate current and future disaster and national security programs into departmentwide response effort.

6. Manage and support the Department's Protective Services functions and related investigation and law enforcement liaison functions.

7. Manage access to and protect HUD classified programs and information and maintain and operate classified systems.

Section A. Authority Delegated

The Secretary hereby delegates all authority pursuant to the following authorities to the Chief Disaster and National Security Officer:

1. *Federal Law Enforcement and Personal Security Protection.* Authority for providing personal security protection for the Secretary, Deputy Secretary, and their immediate families, as warranted, including authorities set forth in 28 U.S.C. 566(c), 566(d), 566(e), 561(a), 561(f), 561(g), 564, 509, 510; 28 CFR 0.111, 0.112, 0.113; and 18 U.S.C. 115(a)(1), 351, 3053. Authority for law enforcement and noncriminal investigations and enforcement of HUD Handbook 0752.2, Adverse Action, including authority under 42 U.S.C. 3535(d).

2. *National Security and Operations.* Authority to execute and support departmental preparedness activities pursuant to White House and Department of Homeland Security guidance and requirements, including but not limited to: Homeland Security Presidential Directive—20: *National Continuity Policy* (2007), Federal Continuity Directive 1: *Federal Executive Branch National Continuity Program and Requirements* (2008), and