



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

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 [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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, 2018

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 convex and concave 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 boring, 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

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