



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Fixed and Portable Ceiling Lifts

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 fixed and portable ceiling lifts for healthcare purposes. Based upon the facts presented, CBP has concluded in the final determination that the ceiling lifts would not to be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) for purposes of U.S. Government procurement.

DATES: The final determination was issued on March 1, 2021. 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 no later than [insert 30 days from date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Albena Peters, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0321.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 1, 2021, CBP issued a final determination concerning the country of origin of fixed and portable ceiling lifts for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H311763, was issued at the request of the party-at-interest, 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, the fixed and portable ceiling lifts would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b) 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: March 1, 2021.

Joanne R. Stump,
Acting Executive Director,
Regulations and Rulings,
Office of Trade.

HQ H311763

March 1, 2021

OT:RR:CTF:VS H311763 AP

CATEGORY: Origin

F. Scott Galt, Partner
Armstrong Teasdale LLP
CIPP/E
7700 Forsyth Blvd. Suite 1800
St. Louis, MO

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 Fixed and Portable Ceiling Lifts

Dear Mr. Galt:

This is in response to your request of June 12, 2020, on behalf of Span America, Inc. (“SA”), for a final determination concerning the country of origin of certain fixed and portable ceiling lifts for healthcare purposes. This request is being sought because your client wants to confirm eligibility of the merchandise for U.S. government procurement purposes under Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*). SA is a party-at-interest within the meaning of 19 C.F.R. 177.22(d)(1) and 177.23(a).

FACTS:

SA is a U.S.-based manufacturer of equipment and accessories for use in medical facilities. Its corporate headquarters and principal manufacturing facility is located in Greenville, South Carolina. SA manufactures fixed and portable ceiling lifts used in clinical or home settings to safely lift and/or transport immobilized individuals. SA produces two types of ceiling lifts: the Savaria FL Fixed Lift (“fixed lift”) and the Savaria PL Portable Lift (“portable lift”). The fixed and portable lifts are powered with rechargeable lithium ion batteries. Users can operate the lifts through the push buttons located on the spreader bars or a remote control. The fixed lift includes buttons that control vertical and lateral movement, while the portable lift only contains buttons to raise and lower the lift.

The fixed lift attaches to ceiling-mounted track systems. Each fixed lift consists of: (1) a motor unit base which connects to the ceiling track system; (2) a spreader bar that is a horizontal bar with hooks on each end to which slings are attached used to support a person’s weight; and (3) a retractable belt which extends down from the motor unit to the spreader bar and connects these two components. The lift’s base unit contains a motor that controls the retractable belt and allows the base unit to move laterally along the ceiling tracks. The base unit also has a display that shows the lift’s battery life. Depending on the model, the fixed lift can lift 286, 440, or 600 pounds.

Each fixed lift is comprised of 124 specifically designed component parts and 245 total component parts sourced from Canada, China, the United States, Italy, and Taiwan, as reflected in the bill of materials. Most of the parts are from Canada and China. Some of the significant

components of the fixed lift from Canada and China are: the lithium ion charger from China, the main printed circuit board assembly (“PCBA”) from China, the handset from China, the charging station assembly from Canada, the battery from China, and the carry bar assembly from Canada. In addition, the fixed lift is composed of subassemblies that contain the moving parts for the lifts which are manufactured in Greenville, South Carolina: the “mega motor” subassembly, comprised of two specifically designed parts and two total parts; the “high limit” subassembly, comprised of eight specifically designed parts and 18 total parts; the “motorized trolley” subassembly, comprised of 16 specifically designed parts and 25 total parts; the “manual trolley” subassembly, comprised of six specifically designed parts and nine total parts; and the “drum” subassembly, comprised of 11 specifically designed parts and 23 total parts. Specifically, for example, the “motorized trolley” subassembly consists of: a gear motor trolley from China, a bloc trolley from China, a shaft retaining ring from China, a motorized trolley wheel from China, a spacer idler from China, a gear wheel from China, a trolley idler gear from China, and a trolley motor gear from China. These components are assembled together in South Carolina to create the motorized trolley. The final assembly of the fixed lift in South Carolina then involves the combination of all subassemblies and component parts not already incorporated into a subassembly.

The portable lift is not permanently mounted to overhead tracks. Rather, it clips to and detaches from overhead locations of the user’s choice. The motor unit of the portable lift is located inside the spreader bar, and the belt is located inside the motor assembly. Depending on the model, the portable lift can lift 286 or 440 pounds. Each portable lift is comprised of 80 specifically designed component parts and 175 total component parts sourced from Canada, China, the United States, Italy, and Taiwan, as reflected in the bill of materials. Most of the parts are manufactured in Canada and China. The most significant components of the portable lift are: the portable handset from China, the bearing block from China, the portable battery from China, the main PCBA from China, the portable carry bar from China, and the worm gear from Canada.

Similar to the fixed lift, the portable lift has subassemblies that contain the moving parts for the lifts, which are manufactured in Greenville, South Carolina: the “spool” subassembly comprised of 12 specifically designed parts and 23 total parts; the “high limit” subassembly, comprised of nine specifically designed parts and 18 total parts; the “cabin port” subassembly comprised of seven specifically designed parts and seven total parts; and the “motor” subassembly containing two specifically designed parts and two total parts. Specifically, for example, the “spool” subassembly consists of: a strap from China, a pivot from China, a brake from China, a small disk from China, a spool from China, and a helical gear from Canada. As with the fixed lift, the final assembly of the portable lift involves the combination of all subassemblies and component parts not already incorporated into a subassembly.

ISSUE:

What is the country of origin of the subject and portable lifts for purposes of U.S. Government procurement?

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. 177.21-177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511-2518).

CBP’s authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

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.

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 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 C.F.R. 25.403(c)(1).

The Federal Acquisition Regulations, 48 C.F.R. 25.003, 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.

Section 25.003 defines “designated country end product” as:

a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines “WTO GPA country end product” as an article that:

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country 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. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Canada, Italy, and Taiwan are WTO GPA countries. China is not.

Most of the individual components of the fixed lift are manufactured in Canada while most of the components of the portable lift are manufactured in China. In addition, the parts of the “high limit,” “motorized trolley,” and “manual trolley” subassemblies of the fixed lift are predominantly of Chinese origin. The “mega motor” subassembly parts of the fixed lift are of Italian and Taiwanese origin and the “drum” subassembly parts of the fixed lift are predominantly of Canadian origin. The parts of the “high limit” and “cabin port” subassemblies of the portable lift are predominantly of Chinese origin, while the parts of the “motor” subassembly of the portable lift are entirely of Italian and Taiwanese origin, and the parts of the “spool” subassembly of the portable lift are predominantly of U.S. and Canadian origin. The subassemblies are assembled in the U.S. The final assembly in the U.S. fully integrates the subassemblies and the component parts not already incorporated into a subassembly. The final assembly performed in the U.S. as described is substantial and meaningful, and requires a good deal of skill, precision, and technical expertise as well as sophisticated testing and inspection of the products. The lift subassemblies and component parts are substantially transformed as a result of the assembly operations performed in the U.S. to produce the fully functional and operational fixed and portable lifts.

Therefore, the instant fixed and portable lifts would not be considered to be the products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1). As to whether the fixed and portable lifts assembled in the United States qualify as “U.S.-made end product,” we encourage you to review the recent court decision in *Acetris Health, LLC v. United States*, 949 F.3d 719 (Fed. Cir. 2020), and to consult with the relevant government procuring agency.

HOLDING:

The subject fixed and portable lifts would not be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1).

You should consult with the relevant government procuring agency to determine whether the lifts qualify as “U.S.-made end product” for purposes of the Federal Acquisition Regulations implementing the TAA.

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,

Joanne R. Stump
Acting Executive Director
Regulations and Rulings
Office of Trade

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