



DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Battery-Electric Semi-Trucks

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 Nikola's Tre Bev, class 8, battery-electric semi-truck. Based upon the facts presented, CBP has concluded that various imported components do undergo a substantial transformation in the United States when assembled into the battery-electric semi-truck.

DATES: The final determination was issued on May 8, 2024. 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 within 30 days of publication of this determination in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ani Mard, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0737.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 8, 2024, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of Nikola's Tre Bev, class 8, battery-electric semi-truck for purposes of title III of the Trade Agreements Act of 1979. This final determination, HQ H335387, was issued at the request of Carter Machinery Co., 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, the various imported components do undergo a substantial transformation in the United States when assembled into the battery-electric semi-truck.

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**.

Alice A. Kipel,
Executive Director,
Regulations and Rulings,
Office of Trade.

HQ H335387

May 8, 2024

OT:RR:CTF:VS H335387 AM

CATEGORY: Origin

Aaron Sullivan
Carter Machinery Co., Inc.
1330 Lynchburg Turnpike
Salem, VA 24153

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 Battery-Electric Semi-Truck

Dear Mr. Sullivan:

This is in response to your request, dated November 1, 2023, on behalf of Carter Machinery Co., Inc. (“Carter Machinery”), for a final determination concerning the country of origin of Nikola’s Tre Bev, class 8, battery-electric semi-truck pursuant to Title III of the Trade Agreements Act of 1979 (“TAA”), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of part 177, U.S. Customs and Border Protection (“CBP”) Regulations (19 CFR 177.21, *et seq.*). Carter Machinery is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination.

FACTS:

The merchandise at issue is Nikola’s Tre Bev, class 8, battery-electric semi-truck (“Tre Bev”). The Tre Bev is a battery-electric, zero emission, heavy duty truck, with a 330-mile range. It is described as a 6x2 cab over style truck designed for short-haul regional-metro applications.

In response to a request from this office for a more detailed breakdown of components, Carter Machinery submitted a bill of materials (BOM) containing the country of origin of the Tre Bev components, as well as documents illustrating the assembly process. According to the submission, the Tre Bev is comprised of 1,349 individual parts. The total cost of the parts was provided, and it is indicated that 67% of that cost is represented by U.S.-made products. The trucks are built in Coolidge, AZ.

The U.S. assembly process is described as follows:

Station 0: The chassis¹ (product of Mexico) is brought inside the manufacturing plant. Based on the photograph submitted, the chassis is a black rectangular base metal structure/frame. It is imported in its “bare” form, and the mechanical components are incorporated into the frame in subsequent stations. Each chassis is loaded in the upside position onto a set of automatic guided vehicles (“AGV”).

Station 1: AGVs are moved from station zero to station one. Several major components and brackets are installed, including suspension brackets, cab tilt pump, rear axle alignment, air spring brackets, high voltage routing brackets, and the steering gear (product of USA).

Station 2: Pre-cut pneumatic lines (product of USA) are transported from the subassembly station to the mainline. These lines control air flow to help with steering, turning, and braking functions. The low voltage harnesses (product of Spain) are installed, which help route power from the batteries to areas that require a lower voltage to operate.

Station 3: High voltage cables are bundled and assembled. These cables are directly connected to the batteries (product of USA) and e-axle. E-motor hoses, inverter pipes, and air spring suspension are also installed. Additionally, the DCDC converter (product of USA) is installed.

¹ The term “chassis” refers to the frame of the vehicle. The chassis is the main supporting structure of the vehicle and is also described as the “skeleton.” Carter Machinery uses the terms “frame” and “chassis” interchangeably.

Station 4: The front axle (product of USA), tag axle (product of Italy), and e-axles (product of Italy) are installed. The e-axle houses twin motors that power the vehicle.

Station 5: Station five focuses on the final preparation of the chassis. The last of the major internal support brackets, battery brackets, radiator support brackets, front under rider protection assembly, high voltage compressor, and HVAC are installed.

Station 6: The vehicle gets flipped in the truck position. The AGV is moved out of the station and the AGVs for the second half of the assembly process move into the station. The flip equipment releases the chassis back down onto the new AGV in truck position.

Station 7: The high voltage cable bundles are routed. The rear Power Distribution Unit (“PDU”) (product of Malta) is installed and connected to the rear inverter (product of USA). Simultaneously, the front PDU is installed and connected to the high voltage lines that will be connected to the batteries. The heat compressor, fuse box, and expansion tanks are connected to brake resistor lines. Thermal lines are also connected in the front.

Station 8: The high voltage batteries are installed using a lift assist into the individual housing units created by the battery brackets. Additionally, two low voltage batteries are installed in a small housing under the cab to power cab functions such as instrument panel, doors, lights, etc.

Station 9: The cab is prepared to be mounted in the next station. This includes installing and securing the brackets onto which the cab will slide. Radiators, rear cargo lights, rear cameras, quick exhaust, and Tire Pressure Monitoring System (TPMS) fuse boxes are also installed.

Station 10: The cab is lifted using an overhead lift assist. The cab is married onto the support brackets installed in the previous station. The electrical harness and pneumatic connections between the cab and chassis are made. The tilt pin that allows the cab to lift is also installed here.

Station 11: The cab steps, lower side plates for batteries, fifth wheel, and mud flaps are all installed. The horn and speakers are installed to the cab. The rear inverter is also routed and connected.

Station 12: The electrical side panels, storage boxes, and side steps are installed. The wheel trim is installed on the cab tires and are then mounted to the axles. Air conditioning coolant, battery coolant, windshield wiper, and power steering fluids are filled. The chassis steps are also installed.

Station 13: Bonding checks on high voltage components like batteries, compressors, DCDC converters are done to ensure they are grounded. Unified Diagnostic Services (UDS) routines are completed. Manual service disconnects are installed, completing the battery circuits. Skid plates are installed under the batteries. Electronic Braking Software (EBS) is flashed before high voltage is brought up.

Station 14: The truck is powered on at this point in the assembly process. The e-axle and controllers are paired to the accelerator through resolver learning. Air conditioning is activated, and the odometer is reset. Additionally, the lane departure warning system is programmed.

Alignment: The front axle alignment is adjusted. Rear axle alignment and thrust angle are measured. Headlamps are adjusted. Lane departure warning and autonomous emergency brake systems are also calibrated.

Dyno: The Dyno² confirms vehicle propulsion including acceleration/deceleration, braking, and vehicle speed sensors. The vehicle function lights, windshield wipers, and cruise control are also tested.

ISSUE:

Whether the imported components are substantially transformed when made into the Tre Bev, class 8, battery-electric semi-truck in the United States.

LAW & 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 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, pursuant to subpart B of part 177, 19 CFR 177.21 *et seq.*, which implements title III, Trade Agreements Act of 1979, 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.**

Emphasis added.

The Secretary of the Treasury’s authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19 CFR part 0 - Treasury Department Order No. 100-16, 68 FR 28,322 (May 23, 2003).

The rule of origin set forth in 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.

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 Regulation (“FAR”). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts 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 FAR, 48 CFR 25.003, defines “U.S.-made end product” as:

² A dynamometer, also known as a “dyno”, is a device that measures force, torque, or power.

. . . 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.

Therefore, the question presented in this final determination is whether, as a result of the operations performed in the United States, the Tre Bev is substantially transformed into a product of the United States.

In deciding whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *See Belcrest Linens v. United States*, 6 CIT 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. 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. *See Uniroyal, Inc. v. United States*, 3 CIT 220 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983).

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

In Headquarters Ruling Letter ("HQ") H155115, dated May 24, 2011, CBP found that assembly in the United States of an imported glider, and other imported and U.S.-origin parts, constituted a substantial transformation into the electric vehicle, an article with a new name, character, and use. The electric vehicle was composed of 31 components, of which 14 were of U.S. origin. The assembly process in the United States was complex and time-consuming and involved a significant U.S. contribution in both parts and labor. CBP determined that the country of origin of the electric vehicles for purposes of U.S. Government procurement was the United States. *See also* HQ H229157, dated November 16, 2012.

In HQ H118435, dated October 13, 2010, CBP determined the United States to be the country of origin for purposes of U.S. Government procurement for a line of electric golf and recreational vehicles. In this case, CBP found that a Chinese-origin chassis, plastic body parts and pieces of plastic trim were substantially transformed when they were assembled with U.S.-origin battery packs, motors, electronics, wiring assemblies, seats, and chargers in the United States. The vehicles were composed of approximately 53 and 62 inputs, of which between 12 and 17 inputs were U.S. components and critical in making the electric vehicle. The imported parts lost their individual identities and became integral parts of a new article possessing a new name, character, and use.

In HQ H022169, dated May 2, 2008, CBP held that a mini-truck glider from India was substantially transformed when assembled in the United States with approximately 87 different components, 68 of which were of U.S. origin, to produce an electric mini-truck. CBP found that the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character and use. Accordingly, CBP determined the assembly process was complex and time-consuming and involved a significant U.S. contribution, in both parts and labor. The components used to power the vehicle were assembled in the United States, and then incorporated into the vehicle in the United States.

In the case at hand, various imported components such as the chassis, e-axle, and PDU cannot independently function and operate as an electric vehicle. These components need to be assembled in the United States with other necessary components of U.S. origin, such as the batteries, converter, wheels, and front axle. Furthermore, given the complexity and duration of the U.S. manufacturing process, such as installation, calibration, mounting, and preparation of the product, we consider these operations to be more than mere assembly. Importantly, 67% of the total cost of the truck is comprised of U.S.-made products.

This case is distinguishable from HQ H302821, dated July 26, 2021, in which we held that the assembly of Volvo vehicles in Sweden as part of a “knockdown operation” did not result in a substantial transformation. Unlike in that case, where the Chinese subassemblies had pre-determined end uses and did not undergo a change in character and use during the assembly process in Sweden, here, applying the name, character and use test, the imported components lose their individual identities and will become an integral part of a new article possessing a new name, character, and use. The assembly of the Tre Bev in the United States constitutes a substantial transformation resulting in an article with a new name, character, and use.

Based on the foregoing, we find that the last substantial transformation occurs in the United States, and therefore, the Tre Bev battery-electric semi-truck is not a product of a foreign country or instrumentality designated pursuant to 25 U.S.C. 2511(b). As to whether the Tre Bev produced in the United States qualifies as a “U.S.-made end product,” you may wish to consult with the relevant government procuring agency and review *Acetris Health, LLC v. United States*, 949 F.3d 719 (Fed. Cir. 2020).

HOLDING:

Based on the information outlined above, we determine that the components imported into the United States undergo a substantial transformation when made into Nikola’s Tre Bev, class 8, battery-electric semi-truck.

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 of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel, Executive Director
Regulations & Rulings

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