DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Platform Software

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 platform software. Based upon the facts presented, CBP has concluded that the last substantial transformation occurs in the United States.

DATES: The final determination was issued on May 15, 2025. 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 DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jordan Higgins, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-1134.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on May 15, 2025, CBP issued a final determination concerning the country of origin of Unifyia platform software for purposes of title III of the Trade Agreements Act of 1979. This final determination, Headquarters Ruling Letter ("HQ") H342822, was issued at the request of Unifyia, 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 platform software is substantially transformed in the United States.

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 H342822

May 15, 2025

OT:RR:CTF:VS H342822 JH

CATEGORY: Origin

David M. Verhey, Principal
FLG Counsel
1717 K Street NW, Suite 900
Washington, DC 20006

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 Unifyia Platform Software; Substantial Transformation

Dear Mr. Verhey:

This is in response to your request, dated October 31, 2024, on behalf of Unifyia, Inc. ("Unifyia"), for a final determination concerning the country of origin of Unifyia Platform Software, 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*.). Unifyia, Inc. 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 under consideration is Unifyia Platform Software, described as software that provides identity and credential management, and high assurance authentication solutions for the United States Government. Unifyia's software is built using a four-step process with the assistance of a subsidiary in India. The first step is design and engineering efforts conducted by the Unifyia team in the United States; the second step is source code development by the Unifyia team in India; the third step is the compilation of source code into executable object code by the same team in the United States; and the last step is to secure the finished software in storage on Amazon Web Services ("AWS") for deployment to government customers.

Step 1:

The beginning stages of the development process start in the United States. The company's U.S.-based engineers design the software functionality and service model for the development process.

Step 2:

In this step, the Indian-based team, in coordination with the U.S. team during the development process, produces 80 percent of the source code, while the remaining 20 percent is developed in the United States. The code is made to meet the requirements of the U.S. design architecture plan. The software programmers write the computer code using Java, C++, and Swift languages, while the user-interface designers design and write the computer code for a

graphical layout using Typescript, HTML, FreeMarker, React Native, and JavaScript. Once completed, the India-based team uploads the source code to Bitbucket, a secure U.S.-based code repository.

Before step 3 can begin, the U.S. team initiates code cleansing and debugging. This must be performed before the source code can be transformed into executable code. This process is done in the United States under the direction of the U.S. engineering team which ensures that all issues are addressed. During the process, the source code is modified by deleting or modifying one or more portions of the original source code to produce new source code.

Step 3:

Once cleansing and debugging are complete, the U.S. team initiates the continuous integration/continuous deployment (CI/CD) process. At this stage, the U.S. team authorizes the movement of the source code from Bitbucket to Bitbucket Pipeline (a U.S.-based platform) or to the server (U.S.-based machine), that automatically converts the source code to executable object code. In the same process, the object code is released with version control for easier maintenance.

Step 4:

Stated as the end of the CI/CD process, Unifyia in the United States sends the executable object code to DockerHub, Dropbox, the App Store, and/or the Play Store, all U.S.-based platforms, for secure storage. The U.S. team then delivers the new object code to the purchaser through AWS, a U.S.-based platform located in Ashburn, Virginia, that allows customers to access applications or that provides secure storage for its customers.

ISSUE:

What is the country of origin of the platform software for purposes of U.S. Government procurement?

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 stems from 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 the Secretary of Homeland Security via Treasury Department Order (TO) 100-20 "Delegation of Customs revenue functions to Homeland Security," dated October 30, 2024, and are subject to further delegations to CBP (*see also* 19 CFR Part 177, subpart B).

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:

> . . . 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.

Additionally, the FAR, 48 C.F.R. 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.

CBP has consistently held that conducting a software build, compiling source code into object code, results in a substantial transformation. In a final determination that CBP issued, Headquarters Ruling Letter ("HQ") H301776, dated Aug. 7, 2019, two software products were

produced using a four-step process: (1) writing original source code, or modifying open source software code in the United States; (2) writing or modifying source code in Canada; (3) compiling the source code into executable object code in the United States; and (4) delivering the finished software to the purchaser. In the final determination, CBP cited to two secondary sources to highlight how "source code" and "object code" differ in several important ways. Source code is a "computer program written in a high level human readable language." *See, e.g.*, Daniel S. Lin, Matthew Sag, and Ronald S. Laurie, *Source Code versus Object Code: Patent Implications for the Open Source Community*, 18 Santa Clara High Tech. L.J. 235, 238 (2001). While it is easier for humans to read and write programs in "high level human readable languages," computers cannot execute these programs. *See* Note, *Copyright Protection of Computer Program Object Code*, 96 Harv. L. Rev. 1723, 1724 (1983). Computers can execute only "object code," which is a program consisting of clusters of "0" and "1" symbols. *Id.* Programmers create object code from source code by feeding it into a program known as a "compiler." *Id*. CBP held that the name, character, and use of the source code were changed as a result of its compilation into executable object code and its completion into finished software in the United States.

CBP also held in another final determination, HQ H268858, dated Feb. 12, 2016, that conducting a software build resulted in a substantial transformation. In that decision, four software products were produced using a similar multi-stage process: (1) writing the source code in Malaysia; (2) compiling the source code into usable object code in the United States; and (3) installing the finished software on U.S.-origin discs in the United States. CBP held that all four software products were substantially transformed in the United States, finding that the software build conducted in the United States created a new and different article with a new name, character, and use. *See also* HQ H243606, dated Dec. 4, 2013 (source code programmed in China and then compiled into object code in the United States was a substantial transformation).

In this case, the writing of source code in India (and the United States) involves the creation of computer instructions in a high level human readable language, whereas the software build performed in the United States involves the compilation of those instructions into a format that computers can execute. Based on the information provided, and consistent with the rulings cited above, we find that as a result of the software build that occurs when the source code is transformed into executable code when moved through either of the two U.S.-based platforms, Bitbucket Pipeline or the U.S.-based server, the last substantial transformation occurs in the United States. Through this process, the character changes from computer code to finished software, and the use changes from instructions to an executable program. Therefore, Unifyia's software is not a product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b). As to whether Unifyia's software 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 facts and analysis set forth above, the subject Unifyia, Inc. platform software is last substantially transformed in the United States.

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
Office of Trade

[FR Doc. 2025-09321 Filed: 5/22/2025 8:45 am; Publication Date: 5/23/2025]