

**DEPARTMENT OF HOMELAND SECURITY****U.S. Customs and Border Protection****Notice of Issuance of Final Determination Concerning FLY Server**

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 the FLY Server. Based upon the facts presented, CBP has concluded that the last substantial transformation of the FLY Server occurs in the United States.

DATES: The final determination was issued on August 27, 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 FROM PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Anna Hedstrom, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325-0227.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 27, 2025, CBP issued a final determination concerning the country of origin of the FLY Server for purposes of Title III of the Trade Agreements Act of 1979. This final determination, Headquarters Ruling Letter (HQ) H349776, was issued at the request of AvePoint Public Sector, 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 the last substantial transformation of the FLY Server occurs in the United States. The final determination also finds that the FLY Server is exempt from the country of origin marking requirements of 19 U.S.C. 1304.

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

90 K Street NE – 10th Floor
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**U.S. Customs and
Border Protection**

HQ H349776

August 27, 2025

OT:RR:CTF:VS H349776 ACH

CATEGORY: Origin

Hilary Cooper

AvePoint Public Sector, Inc.
2101 Wilson Blvd.
Arlington, VA 22201

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 FLY Server

Dear Ms. Cooper:

This is in response to your March 10, 2025 request, on behalf of AvePoint Public Sector, Inc. ("AvePoint"), for a final determination concerning the country of origin of the FLY Server, 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.*). AvePoint 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:

AvePoint manufactures the FLY Server, an application for Microsoft SharePoint and Microsoft 365. SharePoint and Microsoft 365 are a multipurpose set of web technologies backed by a common technical infrastructure that is used to provide intranet portals, document and file management, collaboration, social networks, extranets, websites, enterprise search, and business intelligence. They also have system integration, process integration, and workflow automation capabilities.

The FLY Server product simplifies the migration of content from legacy systems into SharePoint and/or Microsoft 365. The FLY Server has a browser-based interface and a fully distributed architecture that offers data transfer capabilities into SharePoint and Microsoft 365. Its migration sources can be executed separately, but they function within a unified platform and are provided as an integrated package.

The development process is as follows:

- (1) Research: A list of ideas and potential features to be included in the software is compiled. A product roadmap is developed, and test cases are written to govern and ensure that all the requirements of the application and software design are met. Twenty percent of total product development hours is allocated to this step (18 percent of which is performed in the United States and two percent in China).
- (2) Development of Graphic User Interface ("GUI"): A prototype GUI based on designs created in Step 1 is developed and tested. Ten percent of total product development hours is allocated to this step, all of which is performed in the United States.
- (3) Development/Writing of Software Specifications and Architecture: The chief architects create a detailed software design in order to modularize the software so that its development can be easily distributed and managed by different development teams. Ten percent of total product development hours is allocated to this step, all of which is performed in the United States.
- (4) Programming of Source Code: Software modules are distributed to different development teams in the United States and China. Each module is self-contained and can be developed separately but cannot run independently and is not executable code. Twenty-five percent of total product development hours is

allocated to this step (five percent of which is performed in the United States and 20 percent in China).

- (5) Software Build: Separate source code modules are transferred to the repository server hosted in the United States, which is the only place where a development team has access to the entire source code. The team integrates the modules with each other by compiling the source code into object code (a sequence of statements or instructions in a computer language); works out incompatibilities or bugs by re-writing or correcting source code, as needed; makes the software into executable files; and constructs an installation package that is easily installed. The U.S. team creates all the lines of the object code and makes the software executable files in various versions and languages. This step may be performed multiple times if testing indicates the need for correction. Fifteen percent of total product development hours is allocated to this step, all of which is performed in the United States.
- (6) Testing and Validation: The software package is tested based on functional specifications defined in Step 1. Once the test case pass rate is met, the software is ready for release. Fifteen percent of total product development hours is allocated to this step (five percent of which is performed in the United States and 10 percent in China).
- (7) Preparing Software/Burning Media for Distribution: The U.S. project management team coordinates with marketing and sales teams to make the software publicly available. Five percent of total product development hours is allocated to this step, all of which is performed in the United States

ISSUE:

What is the country of origin of the FLY Server for the purposes of U.S. Government procurement?

LAW AND ANALYSIS:

Country of Origin Determination

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 177.21-177.31, 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 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 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.

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 Procurement 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.

CBP has consistently held that conducting a software build—compiling source code into object code—results in a substantial transformation. In Headquarters Ruling Letter ("HQ") H301776, dated August 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.

In HQ H268858, dated February 12, 2016, CBP held 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 December 4, 2013 (source code programmed in China and then compiled into object code in the United States was a substantial transformation).

As in HQ H301776, HQ H268858, and HQ H243606, AvePoint also conducts a software build in the United States. This process is sufficient to create a new article with a new name, character, and use: the name of the product changes from source code to object code, the character changes from computer code to finished software, and the use changes from instructions to an executable program. Accordingly, we find that the last substantial transformation occurs in the United, and therefore, the FLY Server is not a product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b). As to whether the FLY Server 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 provided, for purposes of U.S. Government procurement, the FLY Server 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 and Rulings
Office of Trade