

HQ H302358  
January 23, 2020

OT:RR:CTF:VS H302358 AP

CATEGORY: Origin

U.S. Customs and Border Protection  
Automotive and Aerospace Center for Excellence  
Team 023-1, Partnership Branch  
Port of Newark/New York  
1100 Raymond Blvd.  
Newark, NJ 07102

Attn: Ms. Denise Basilio, Supervisory Import Specialist

RE: Internal advice; Country of origin of [ ] bicycles; Substantial transformation

Dear Ms. Basilio:

This is in response to the October 5, 2018 request for an internal advice and December 7, 2018 submission, which were filed on behalf of [ ],<sup>1</sup> regarding the country of origin of [ ] brand bicycles that are manufactured in Taiwan from frames produced in China and parts sourced from China, Japan, Taiwan, and the United States.

You have asked that certain information submitted in connection with this internal advice request be treated as confidential. Inasmuch as this request conforms to the requirements of 19 C.F.R. § 177.2(b)(7), the request for confidentiality is approved. The information contained within brackets and all attachments to this internal advice request, forwarded to our office, will not be released to the public and will be withheld from published versions of this decision.

**FACTS:**

[ ] is a manufacturer, importer, and distributor of bicycle-related product brands encompassing approximately 40,000 different products, including bicycles for [ ]'s bicycle brands [ ], [ ] and [ ]. The company has distribution centers in the United States and a branch office in Taiwan that sources the products that [ ] imports and distributes.

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<sup>1</sup> [ ] advises that the [ ] models at issue are [ ], [ ], [ ], and [ ].

[ ] describes the subject merchandise as complete non-mass market high-end bicycles of various types that are manufactured in Taiwan by third-party suppliers and exported to the United States. The bicycles at issue are [ ] brand bicycles with carbon frames manufactured in China. The remaining bicycle components, *i.e.*, the wheels, drive train components, and control components such as handlebars and stems, are mainly sourced from Taiwan but also from China, Japan, and the United States. The final manufacturing and assembly occurs in Taiwan prior to exportation to the United States.

[ ] states that the frame accounts for approximately 30-40 percent of the cost of the finished bicycle and up to 70 percent of the value of the bicycle is added from the predominantly Taiwanese-origin components attached to the frame. [ ] describes the final product as primarily carbon fiber framed performance bicycles, with prices differentiated based on the different types of components, such as suspension forks, drive train components, cranks and seats, and the quality and type of wheels and wheel specifications. [ ] states that the cost of the frame originating from China is a small part of the cost of the complete bicycle.

## **ISSUE:**

What is the country of origin for the subject bicycles?

## **LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. By enacting 19 U.S.C. § 1304, Congress intended to ensure “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (1940).

The country of origin marking requirements and the exceptions of 19 U.S.C. § 1304 are set forth in Part 134, Customs Regulations (19 C.F.R. Part 134). Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of the marking laws and regulations. A substantial transformation occurs when an article emerges from a manufacturing process with a name, character, or use which differs from the original material subjected to the process. *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267, C.A.D. 98 (1940); *Texas Instruments, Inc. v. United States*, 681 F.2d 778, 782 (1982).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, U.S. Customs and Border Protection

(“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, or 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 may be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

Substantial transformation, including the “name, character and use” test, was at issue in *Nat’l Hand Tool Corp. v. United States*, 16 CIT 308, *aff’d*, 989 F.2d 1201 (Fed. Cir. 1993). The Court of International Trade (“CIT”) determined that the mechanics’ tools in *Nat’l Hand Tool* did not undergo substantial transformation in the United States and were not exempt from the marking requirements in 19 U.S.C. § 1304. The court found that there was no change in name because each article in its condition as imported had the same name in the completed tool. There was no change in character because the articles, which were either hot-forged or cold-formed into their final shape in Taiwan, remained the same after heat treatment, electroplating, and assembly in the United States. The use of the imported articles was predetermined at the time of entry as each component was intended to be incorporated in a particular finished mechanics’ hand tool, except for one exhibit. The court rejected the importer’s claim that the value added in the United States was relatively significant to the operation in Taiwan so that substantial transformation should be found, noting such a finding could lead to inconsistent marking requirements for importers who perform exactly the same processes on imported merchandise, but sell at different prices. *Id.*

In *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the CIT interpreted the meaning of “substantial transformation.” *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight. All of the components of the flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States and assembled into the finished flashlight. The *Energizer* court reviewed the “name, character and use” test utilized in determining whether a substantial transformation had occurred and noted, citing *Uniroyal*, 3 CIT at 226, that when “the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change.” *Energizer* at 1318. The court noted that “when the end-use was predetermined at the time of importation, courts have generally not found a change in use.” *Energizer* at 1319, citing *Nat’l Hand Tool Corp.*, 16 CIT at 311-12. Courts have also considered the nature of the assembly, *i.e.*, whether it is a simple assembly or more complex, such that individual parts lose their separate identities and become integral parts of a new article.

In reaching its decision in *Energizer*, the court considered whether the imported components retained their names after they were assembled into the finished flashlights. The court found “[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly.” The court also found that the components had a predetermined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation

assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. The court determined that the imported components did not undergo a change in name, character, or use as a result of their post-importation assembly into a finished Generation II flashlight. Virtually all of the components of the military flashlight, including the most important component, the LED, were of Chinese origin. Thus, the court determined that China was the correct country of origin of the finished flashlights for purposes of government procurement.

The CIT has also looked at the essential character of an article to determine whether its identity has been substantially transformed through assembly or processing. For example, in *Uniroyal*, 3 CIT at 225, the court held that imported shoe uppers added to an outer sole in the United States were the “very essence of the finished shoe” and thus the character of the product remained unchanged and did not undergo substantial transformation in the United States. Similarly, in *Nat’l Juice Prod. Assoc. v. United States*, 10 CIT 48, 61, 628 F. Supp. 978, 991 (1986), the court held that imported orange juice concentrate “imparts the essential character” to the completed orange juice and was not substantially transformed into a product of the United States.

[ ] asserts that the manufacturing operations and the value added by the additional components in Taiwan resulted in a substantial transformation of the frame originating from China into a finished, complete bicycle with a country of origin of Taiwan. [ ] claims that the frame, while essential, must be combined with the other components in a complex assembly process that creates a new and different article of commerce, a complete bicycle, and that the value added beyond the frame significantly outweighs the value of the frame alone.

CBP has consistently found that a bicycle frame is an essential component of a finished bicycle imparting its overall shape, size, and character. When assembled together, the other components lost their separate identity and became an integral part of the finished bicycle. In Headquarters Ruling Letter (“HQ”) 735368, dated June 30, 1994, CBP considered the country of origin of bicycles, which were assembled in Taiwan and contained components from various countries. The bicycle tubes and frame were manufactured in Taiwan while the rims were made in France and the seat was made in Italy. All of the components were shipped to Taiwan to be assembled into a finished bicycle. CBP found that the country of origin of the bicycle was Taiwan because the bicycle’s frame made in Taiwan was an essential component of the finished bicycle. CBP noted that even though the other components came from several different countries, they lost their separate identity when they were attached to the frame and became an integral part of the bicycle.

In HQ H253522, dated Feb. 5, 2015, CBP determined that bicycle parts manufactured in China were substantially transformed into articles with a new name, character, or use when incorporated with U.S. manufactured bicycle frames to produce the finished bicycles. The country of origin of the bicycle frames was the country of origin of the finished bicycles.

In New York Ruling Letter (“NY”) N302992, dated Mar. 27, 2019, the components of bicycles were produced in a variety of countries, such as China, Malaysia, Indonesia and Taiwan, and the bicycles were assembled in Taiwan. The bicycle frames were cut, formed, and welded in

China. CBP determined that the component assembly operation, the inspection, and the packaging performed in Taiwan did not result in a substantial transformation of the bicycle frames, and that China was the country of origin of the bicycles.

As in HQ 735368, HQ H253522, and NY N302992, the bicycle frame here is the most essential component and imparts the bicycle its overall shape, size, and character. The other individual components, such as the suspension forks, drive train components, cranks and seats, and the wheels, lost their separate identity when they were attached to the frame and became part of the new article of commerce, the finished bicycle, possessing a new name, character, and use. The assembly operations of the various parts in Taiwan did not result in a substantial transformation of the bicycle frames. As a result, the completed bicycles will be considered a product of China, the country of origin of the bicycle frames.

**HOLDING:**

Based on the facts provided, the country of origin of the subject bicycles is China.

This decision should be mailed by your office to [ ], through its counsel, no later than 60 days from the date of this letter. On that date, Regulations and Rulings, Office of Trade, will make the decision available to CBP personnel and the public at [www.cbp.gov](http://www.cbp.gov), by means of the Freedom of Information Act and other methods of public distribution.

Sincerely,

Monika R. Brenner, Chief  
Valuation & Special Programs Branch