HQ H304677

April 21, 2023

OT:RR:CTF:VS H304677 RSD

CATEGORY: ORIGIN

George W. Thompson, Esq.
Thompson & Associates, PLLC
1050 Connecticut Avenue, NW
Suite 500
Washington, D.C. 20036

RE: Country of Origin of the Lexmark MS/MX and CS/CX Series Printers; Section 301 Trade Remedy Duties; Substantial Transformation; 19 C.F.R. Part 102

Dear Mr. Thompson:

This is in response to your correspondence dated June 20, 2019, on behalf of Lexmark International, Inc. (Lexmark) requesting a ruling concerning the country of origin of the Lexmark's MS/MX and CS/CX series printers for purposes of marking and whether the products would be subjection to Section 301 Trade Remedy Duties. On August 28, 2019, you made a supplemental submission via email, containing photographs and a description of the production process of the printers. A subsequent submission containing additional product information was received in an email on September 26, 2019. In another email you sent on June 21, 2021, further explanation regarding your position on the origin of the printers was provided.
FACTS:

The products at issue are the Lexmark MS/MX and CS/CX series of printers, which are imported into the United States from Mexico. The printers under consideration include both monochromatic and color multifunction and single-function machines.

To produce the printers, various components are assembled in China to create printer subassemblies, referred to as printer transports. A printer transport consists of the basic housings and the associated structures of the printers. They are made up of items such as mechanical frames, covers, and the structures containing the printer's contents such as the fuser (fuses toner to paper), laser scanning unit (LSU - forms the image to be printed), operator panel (OpPanel), scanner (imaging module used in multifunction devices only), power supply unit (PSU) and toner cartridges. After their assembly is complete, they will be exported to Mexico. You state that the printer transports have no functionality at the time they are imported into Mexico, in that they are unable to print, scan, copy, or do any of the other activities that will be performed by a finished printer without the installation of the Printed Circuit Board Assemblies (PCBAs). No information concerning the manufacture of the printer transports in China was provided.

Extensive information was presented on the manufacture of the PCBAs in Mexico. The PCBA is a complete assembly comprising a printed circuit board (PCB) that uses Surface Mount Technology (SMT) and Pin Through Hole Technology (PTH) to incorporate components, such as transistors, resistors, integrated circuits (ICs), and capacitors. To make the PCBA, a PCB, a thin board made of fiberglass, composite epoxy, or other laminate material is used to serve as a base for the various microelectronic components. Conductive pathways are "etched" and printed onto the board, and transistors, resistors, and integrated circuits from China, Taiwan, Korea, Malaysia, or Japan are connected onto the PCB. The PCBA includes a system-on-a-chip ("SOC") that interprets the requests from the operator panel ("OpPanel") or a network interface. The requests to perform functions are

translated by the firmware running on the SOC to a sequence of actions then commanded to each module.

Firmware stated to be architected and designed in the United States, with support from Lexmark's subsidiary in the Philippines is downloaded onto the PCBA in Mexico. In addition, between 20 to 25 cables, depending on the printer model, will be connected to the PCBA and the other components of the printers, including the fuser, LSU, OpPanel, scanner, power supply, as well as other fans, sensors, and motors. Toner cartridges for testing the print quality and the paper movement will thereafter be installed. To perform the function of printing onto paper, the printers use toner that is manufactured in either the United States or Mexico. Some of the higher end printers will also undergo mechanical calibration to precisely align the paper path. The printers will then be packaged and palletized for transportation.

ISSUES:

What is the country of origin of the above-described Lexmark printers imported from Mexico for purposes of the application of the section 301 trade remedy duties?

What is the proper country of origin marking under 19 U.S.C. 1304 for the Lexmark printers imported from Mexico?

LAW AND ANALYSIS:

Section 301 Duties

Effective July 6, 2018, the Office of the United States Trade Representative imposed an additional tariff on certain products of China classified in the subheadings enumerated in Section XXII, Chapter 99, Subchapter III U.S. Note 20(b), HTSUS. For additional information, see “Notice of Action and Request for Public Comment Concerning Proposed Determination of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation” (June 20, 2018, 83 F.R. 28710). Products of China that are classified in the subheadings enumerated in U.S. Note 20, HTSUS, continue to be subject to antidumping, countervailing, or other duties, fees and charges that apply to such products.

When determining the country of origin for purposes of applying current trade remedies under Section 301, Section 232, and Section 201, the substantial transformation analysis is applicable. The test is whether an article emerges from a process with a new name, character, or use, different from that possessed by the article prior to processing. Texas Instruments, Inc. v. United States, 69 CCPA 151, 681 F.2d 778 (1982). U.S. Customs and Border Protection (“CBP”) considers the totality of the circumstances and makes substantial transformation determinations on a case-by-case basis. CBP has stated that a new and different article of commerce is an article that has undergone a change in commercial designation or identity, fundamental character, or commercial use. A determinative issue is the extent of the operations performed and whether the materials lose their identity and become an integral part of the new article. See Nat’l Hand Tool Corp. v. United States, 16 CIT 308 (1992), aff’d, 989 F.2d 1201 (Fed. Cir. 1993).
Minimal or simple assembly operations 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, 542 F. Supp. 1026 (1982), aff’d, 702 F.2d 1022 (Fed. Cir. 1983) (imported shoe uppers added to an outer sole in the United States were the “very essence of the finished shoe” and the character of the product remained unchanged and did not undergo substantial transformation in the United States).

In Energizer Battery, Inc. v. United States, 190 F. Supp. 3d 1308 (2016), the Court of International Trade ("CIT") interpreted the meaning of the term "substantial transformation" as used in the Trade Agreements Act of 1979 ("TAA") for purposes of government procurement. Energizer involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight, under the TAA. All the components of the Generation II flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States where they were assembled into the finished Generation II flashlight.
The court reviewed the "name, character and use" test in determining whether a substantial transformation had occurred and reviewed various court decisions involving substantial transformation determinations. The court noted, citing Uniroyal, 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. In addition, the court noted that "when the end-use was pre-determined at the time of importation, courts have generally not found a change in use." Energizer at 1319, citing as an example, National Hand Tool. Furthermore, courts have 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 the Energizer case, the court expressed the question as one of whether the imported components retained their names after they were assembled into the finished Generation II 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 pre-determined 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. Thus, the court found that Energizer's imported components did not undergo a change in name, character, or use because of the post-importation assembly of the components into a finished Generation II flashlight. The court determined that China, the source of all but two components, was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

In Headquarters Ruling Letter (HQ) H018467, dated January 4, 2008, CBP was asked to consider two manufacturing scenarios for multi-functional printers. In one scenario, manufacturing took place in two countries. In the other scenario, manufacturing took place in three countries. In the two-country scenario, eighteen units were manufactured in the Philippines from components produced in various countries. The units were sent to Japan where the system control board, engine control board, OPC drum unit, and the toner reservoir were manufactured and incorporated into the units. The control boards were programmed in Japan with Japanese firmware that controlled the user interface, imaging, memories, and the mechanics of the machines. The machines were then inspected and adjusted as necessary. CBP found that the manufacturing operations in Japan substantially transformed the Philippines units such that it was determined that Japan was the country of origin of the multifunctional machines. In making the determination (and in addition to the finding that operations performed in Japan were meaningful and complex and resulted in an article of commerce with a new name, character, and use), CBP found it very significant that the system control board, the engine control board, and the firmware, which were very important to the functionality of the machines, were manufactured in Japan.

In HQ H219519, dated April 3, 2013, CBP addressed the substantial transformation of a laser jet printer and fax machine that included parts which were produced in China and where the final assembly of all component parts occurred in Mexico. The laser jet printer/fax machine was composed of a print engine, motors, control board (with firmware), paper trays, rollers, transfer belt, a formatted printed circuit board, and other components. CBP determined that the assembly in Mexico was not complex or significant enough to result in a substantial transformation. CBP explained that the assembly in Mexico did not change or define the use of the finished laser jet printer/fax machine.
In HQ H287548, dated March 23, 2018, CBP considered the country of origin of a monochrome laser printer. The main PCB and firmware were produced in Japan, while the feeder unit, fuser unit, photo conductor, toner cartridge and operation panel were all produced in Vietnam. The final manufacturing operations took place in the United

States by soldering and wiring the ten subassemblies together and programming the units with the Japanese firmware. Given the operations in three different countries, CBP determined that the PCB and firmware, both manufactured in Japan, embodied the primary essence of the laser printer because the firmware provided the control program for the printer and enabled the main PCB assembly to function as the electronic "brains" of the printer by controlling all printer functions. Compared to less complex operations performed in Vietnam and the United States, the country of origin was determined to be Japan.

The rulings, cited above, demonstrate that the component (or components) which impart the character of a product will be a significant factor in determining the country of origin of a product. In this case, unlike HQ H287547, we do not find that the Mexican PCBA serves as the only fundamental functioning component of the printers. While it is true that the PCBA together with the firmware allows the operator panel to perform its function, the other subassemblies/printer transports are critical to allow the printer to feed the paper and to accomplish the goal of printing copies. While there is more contribution in Mexico in this case than HQ H219519, in that the PCBA is made in Mexico, there is less occurring in Mexico than HQ H018467 where the machine in that case also used firmware from the same country where the PCBA was made. This case is more akin to HQ H287548, except again, the PCBA and firmware are not from the same country. Moreover, we note that the creation of firmware itself, as here, may involve more than one country. Here we find that the situation is similar to Uniroyal and Energizer where the imported material did not undergo a substantial transformation. While Uniroyal did not go into much detail concerning the manufacture and contribution of the sole to the shoe, the decision recognized that it was the manufacture of the upper, just like the many Chinese printer transports here, that provided the character to the finished article. Similarly, we find that all of the mechanical printing functions are imparted by the Chinese printer transports.
Accordingly, we find that the country of origin of the finished Lexmark series of printers for the purposes of applying current trade remedies under Section 301 is China.

Country of Origin Marking

You also seek a determination regarding the country of origin marking requirements of the Lexmark printers. 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 its 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 would be able to know by inspecting the marking on the imported goods the country of which the goods are the product. "The evident purpose is to mark the goods so that at the time of purchaser 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 C.A.D. 104 (1940).

Part 134 of the U.S. Customs and Border Protection ("CBP") Regulations (19 C.F.R. Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. § 1304. Title 19, Section 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 this part; …."

Pursuant to section 102.0, interim regulations, related to the marking rules, tariff-rate quotas, and other USMCA provisions, published in the Federal Register on July 6, 2021 (86 FR 35566), the rules set forth in §§ 102.1 through 102.18 and 102.20 determine the country of origin for marking purposes with respect to goods imported from Canada and Mexico. Section 102.11 provides a hierarchy for determining the country of origin of a good for marking purposes. See 19 C.F.R. § 102.11. Applied in sequential order, the hierarchy establishes that the country of origin of a good is the country in which:
(a)(1) The good is wholly obtained or produced.

(a)(2) The good is produced exclusively from domestic materials; or

(a)(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in Section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

Here, sections 102.11(a)(1) and 102.11(a)(2) do not apply because the product will neither be wholly obtained or produced nor produced exclusively from "domestic" (in this case Mexican) materials. Accordingly, each foreign material must meet the applicable change in tariff classification set out in Section 102.20 in order for the product to qualify to be marked as a product of Mexico.

"Foreign material" is defined in 19 C.F.R. § 102.1(e) as "a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced." You indicate that the printers are classified in subheadings 8443.31 and 8443.32, Harmonized Tariff Schedule of the United States (HTSUS). The tariff shift requirement in § 102.20 for a good of subheadings 8443.31 and 8443.32, HTSUS, requires:

A change to printer units of ADP machines of subheading 8443.31 through 8443.32 from any other good of subheading 8443.31 through 8443.32 or from any other subheading, except from parts and accessories suitable for use solely or principally with the machines of subheading 8443.31 through 8443.32 of subheading 8443.99 when that change is the result of simple assembly, or from subheading 8504.90 or heading 8473, when that change is the result of simple assembly, and except from other units of ADP machines of subheading 8517.62 through 8517.69 or heading 8528 or from subheading 8471.60 through 8472.90 HTSUS.

You indicate that this rule will not be satisfied regardless of whether the foreign (Chinese) transports are classified under subheading 8443.31 or 8443.32, HTSUS, or as parts of subheading 8443.99, HTSUS. Accordingly, you proposed under 19 CFR 102.11(b), that although the firmware is not developed in Mexico, that the PCBA imparts the essential character to the finished printers and that, therefore, the country of origin is Mexico.

Section 102.11(b) provides as follows:

(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section: The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or…

"Material" means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components. 19 CFR 102.1(m).

The rule of interpretation set forth in 19 C.F.R. § 102.18(b) states, in pertinent part, the following:

For purposes of identifying the material that imparts the essential character to a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good. . . .

In this case, based on the information provided, the PCBAs are manufactured in Mexico and are considered domestic materials. Further, they would be considered to have undergone the requisite tariff shift rule, and therefore, pursuant to 19 CFR 102.18 would not be materials to be considered in taking into consideration the material that imparts the essential character to the good. Even if they were, we find that the Chinese transporters are the components that impart the essential character to the printers. See HQ 558656, dated March 15, 1995 (the countries of origin of the flower bouquet are the U.S., Colombia, Bolivia and Mexico, the countries of origin of

the cut flower stems (classified in subheading 0603.10, HTSUS) which we find constitutes the single material imparting the essential character to the bouquet). Therefore, the country of origin marking of the printers will be China.

HOLDING:

The country of origin of the Lexmark MS/MX and CS/CX series of printers imported from Mexico for the purposes of the application of the Section 301 trade remedy duties for goods under subheading 9903.88.03, HTSUS will be China. The country of origin of the Lexmark MS/MX and CS/CX series of printers for the purposes of country of origin marking under 19 U.S.C. 1304 will be China.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are entered. If the documents have been filed without a copy of this ruling, it should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

Monika R. Brenner, Chief
Valuation and Special Programs Branch