

would hinder the vessel's ability to maneuver within close proximity of offshore platforms. The horizontal distance between the forward and aft masthead lights may be 35.645 meters. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations. In addition the sidelights may be placed 12.877 meters above the main deck. Placing the sidelights lower than 75% of the height of the forward masthead light as required by Annex I, paragraph 2(g) of 72 COLREGS would subject the sidelights to visual obstruction.

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulation, part 81, has been issued for the offshore supply vessel ROSS CANDIES, O.N. 1222260. The Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS. In addition the Certificate of Alternative Compliance allows for the placement of the sidelights to deviate from requirements set forth in Annex I, paragraph 2(g) of 72 COLREGS.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: May 24, 2010.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010-13803 Filed 6-8-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2010-0418]

Certificate of Alternative Compliance for the Offshore Supply Vessel JONCADE

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel JONCADE as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on May 11, 2010.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2010-0418 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504-671-2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulation, Parts 81 and 89, has been issued for the offshore supply vessel JONCADE, O.N. 1224528. Full compliance with 72 COLREGS and Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of offshore platforms. The forward masthead light may be located on the top forward portion of the pilothouse 18.92' above the hull. Placing the forward masthead light at the height as required by Annex I, paragraph 2(a) of the 72 COLREGS would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms. Furthermore the horizontal distance between the forward and aft masthead lights may be 16.1'. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations.

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulation, Parts 81 and 89, has been issued for the offshore supply vessel JONCADE, O.N. 1224528. The Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a) of 72 COLREGS. In addition the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft

masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: 17 MAY 2010.

J.W. Johnson,

Commander, U.S. Coast Guard, Chief, Inspections and Investigations Branch, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. 2010-13802 Filed 6-8-10; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning a GTX Mobile+ Hand Held Computer

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 a GTX Mobile+ hand held computer. Based upon the facts presented, CBP has concluded in the final determination that Canada is the country of origin of the GTX Mobile+ hand held computer for purposes of U.S. government procurement.

DATES: The final determination was issued on June 2, 2010. 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 until July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Valuation and Special Programs Branch: (202) 325-0132.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 2, 2010, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the GTX Mobile+ hand held computer which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H089762, was issued at the request of Psion Teklogix, 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 combination of the installation of Canadian developed software on the GTX Mobile+ hand held computer and the assembly of the device in Canada from parts made in several different countries, resulted in a substantial transformation in Canada, such that Canada is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations 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**.

Dated: June 2, 2010.

Sandra L. Bell,

*Executive Director, Regulations and Rulings,
Office of International Trade.*

Attachment—HQ H089762

June 2, 2010

MAR–2–05 OT:RR:CTF:VS H089762 RSD

Category: Marking

Robert T. Stack, Esq., Tompkins & Davidson, 5 Hanover Square, New York, NY 10004

RE: United States Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; GTX Mobile+ Hand Held Computer; substantial transformation

Dear Mr. Stack: This is in response to your letter dated July 18, 2008, requesting a final determination on behalf of Psion Teklogix, Inc., (Psion) pursuant to subpart B of Part 177, Customs and Border Protection (“CBP”) Regulations (19 CFR 177.21 *et seq.*). CBP issues country of origin advisory rulings and final determinations on 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. We have received a supplemental submission from your office dated March 15, 2010.

This final determination concerns the country of origin of the GTX Mobile+ hand held computers (GTX Mobile). We

note that Psion is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination. Your request for confidential treatment regarding all cost and price information contained in your request is granted and such information will not be disclosed to the public.

Facts:

The product at issue is the base model of the computer GTX Mobile. It is used to collect mobile data in the field, conduct emulation testing on site, and/or transmit data/test information to the user's home facilities. The GTX Mobile is used in mobile-intensive applications such as asset tracking, meter reading and mobile ticketing across a variety of industries. The approximate exterior physical dimensions of the GTX Mobile are 9 inches in length, with a width ranging from 3 inches at the grip area to approximately 3.9 inches at the display area, and a depth ranging from 1.2 inches at the grip to 1.7 inches at the display area. It is battery powered and the various sub-assemblies forming the computers are housed in a metal chassis and a plastic exterior.

You indicate that the federal government may want to purchase the GTX Mobile for various military initiatives and emergency operations where asset identification and inventory tracking are critical. An example of basic military use for the GTX Mobile may include tracking computers and peripherals that are sent overseas. Product literature was submitted with your request.

The GTX Mobile hand held computer consists of the following functional components:

1. A subassembly consisting of the main logic board and keyboard, each individually assembled in China, and joined to the metal chassis frame in China;
2. The LCD screen sub-assembly, assembled in Japan from primarily Japanese components, including a screen and a printed circuit board;
3. A data cable and speaker connector for the LCD display screen, of Japanese origin;
4. An imager sub-assembly assembled in Canada using two PCB boards (one is an interface board assembled in Canada, and the other is a decoder board that is assembled in the United States), a camera element (imager engine) manufactured in the United States, and various structural and connection components and plastic structural casing components;
5. An 802.11g radio modem assembled in Taiwan using components

from Japan, Israel, and the United States;

6. An RFID scanner made in Italy (currently an optional additional data gathering element).

In addition, construction of the unit requires a number of components, including;

1. A display bezel made in China, with a company logo added in the United States;
2. An end piece and battery cover from China;
3. A battery from Taiwan;
4. A stylus and stylus holder from China;
5. Optional accessories; and
6. A cover.

As noted above, the imager is assembled at a Psion subsidiary in Canada. The final assembly for the GTX Mobile takes place at Psion's Canadian headquarters facility. Assembly of the imager per unit involves fifteen steps to assemble twelve components. The most important components are two PCB's and engine.

The assembly process of the GTX Mobile in Canada involves internally developed product software applications to allow functionality of the main board, imager and radio. The parts are sent to the assembly cell units where the required assembly steps are completed. The physical assembly takes longer if alternative devices such as the RFID scanner with connection devices or other customer add-ons are included in the configuration.

The assembly includes attaching the keyboard bezel to the imported sub-assembly of the keyboard and main logic board, installing the data cable and speaker connector cable to both the LCD screen and the main logic board PCB in the chassis, assembling the LCD display screen to the chassis, installing the display bezel over the LCD portion of the chassis, pressing the display bezel into the housing, securing the bezel to the chassis with two screws, attaching the flex cable for the scanner imager to the 2D imager and the computer chassis, attaching the scanner console to the chassis, installing the radio card into the CF card slot, sliding the radio antenna for the radio into the housing slot, adding a stylus holder in the case housing, installing the end cap component, and installing the main battery.

Personnel begin software loading using internally developed fixtures and automated remote configuration software (variables affecting software versions loaded to particular computers include radio modem display version keyboard configuration, added devices such as RFID or other customer

specifications), which involves the installation of: (a) The Microsoft license for the Microsoft CE operation system; (b) Psion self-developed upgraded version of the Microsoft operating system; (c) Psion "Opentekterm" proprietary software package that renders the device operational; (d) security software for the device; (e) Fortress Technologies Secure Client security software; and Juniper Networks Odyssey Access Client FIPS and (f) Mobile Control Center Psion Tekogix's proprietary device management software. The software download takes approximately four minutes. You indicate that in Canada, Psion has expended in excess of 150,000 hours in the development of its proprietary software code for its line of mobile hand held computers, at a considerable cost. It continues to expend significant sums annually in upgrading versions of the terminal emulation software of communication software to enhance performance of the product and to assure compatibility with component improvements.

After the software is loaded, final functional testing is done for functional compatibility. These tests are managed by the internally developed Automated Remote Configuration software application. After testing, the unit is subject to a variable lot control reporting process which records all the configuration and software elements for the unit with the product serial code into a company record system.

The testing and assembly line operation involves two Active Remote Configuration (ACR) test experts, four manufacturing engineering and sixteen assembly technicians. The four manufacturing engineering and two ARC testing experts are responsible for the assembly guides and software download configuration required for each individual product line. It generally involves somewhere between 200 and 300 hours of personnel time per product line.

Issue:

What is the country of origin of the GTX Mobile hand computer for purposes of U.S. Government procurement?

Law and Analysis:

Pursuant to Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law

or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

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 Regulations. *See* 19 CFR 177.21. In this regard, CBP recognizes that the Federal Procurement Regulations restrict 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).

Therefore, the question presented in this final determination is whether, as a result of the operations performed in Canada, the GTX Mobile computer will be substantially transformed into a product of Canada.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 Ct. Int'l Trade 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal Inc. v. United States*, 3 Ct. Int'l Trade 220, 542 F. Supp. 1026 (1982). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

In order to determine whether a substantial transformation occurs when components of various origins are assembled to form completed articles, CBP considers the totality of the circumstances and makes such decisions on a case-by-case basis. The country of origin of the article's components, the extent of the processing that occurs within a given

country, and whether such processing renders a product with a new name, character, or use are primary considerations in such cases.

Additionally, facts such as resources expended on product design and development, extent and nature of post-assembly inspection procedures, and worker skill required during the actual manufacturing process will be considered when analyzing whether a substantial transformation has occurred; however, no one such factor is determinative.

In several rulings, CBP has analyzed whether the assembly of electronic equipment such as computers and related devices from various components resulted in a substantial transformation of those components. For example, in Headquarters Ruling Letter (HQ) 735541 dated September 15, 1994, one of the two types of assembly operations described in the ruling involved inserting a floppy disk drive, VGA docking station board, keyboard, DC/DC converter, as well as a CPU, RAM, and a hard disk drive into an imported unfinished computer. In addition, a LCD display assembly and a plastic battery cover were attached into the computer. We noted that the assembly process involved several components and also included the assembly of the CPU, which allowed the computers to function. Consequently, we concluded that in combining these components in the production of a notebook computer, a new article of commerce was created that was separate and distinct from the individual components of which it was composed.

HQ 735608 dated April 27, 1995, involved various scenarios pertaining to the assembly of a desktop computer in the U.S. and the Netherlands. In one of the scenarios, foreign components assembled in the U.S. were the case assembly (including the computer case, system power supply and floppy disk drive), partially completed motherboard, CPU (which controls the interpretation and execution of instructions and included the arithmetic-logic unit and control unit), hard disc drive, slot board, keyboard BIOS and system BIOS (basic input and output system). Additional components manufactured in the U.S. or the Netherlands were assembled into the finished desktop computers depending on the model included an additional floppy drive, CD ROM disk, and memory boards. In that case, CBP found that the foreign case assemblies, partially completed motherboards, hard disk drives and slot boards underwent a change in name, character and use as a result of the operations done in the

U.S. and that the components lost their separate identities in becoming an integral part of a desktop computer. CBP noted that the finished article, a desktop computer, was visibly different from any of the individual foreign components, acquiring a new use, processing and displaying information. Accordingly, CBP held that the individual components underwent a substantial transformation as a result of the operations performed in the U.S. See also HQ 559336 dated March 13, 1996, in which CBP also determined that foreign components, such as clamshell base, LCD video display, hard disk drive, floppy disk drive, AC power adapter were substantially transformed by the processing and assembly operations performed in the United States; and HQ 560633, dated November 17, 1997.

In this case, in addition to the components and parts being assembled in Canada, the GTX Mobile hand computers are programmed in Canada by the installation of Canadian developed software onto the devices. In *Data General v. United States*, 4 Ct. Int'l Trade 182 (1982), the Court of International Trade found that for purposes of determining eligibility under item 807.00, Tariff Schedules of the United States (the predecessor provision to subheading 9802.00.80, Harmonized Tariff Schedule of the United States), the programming of a foreign Programmable Read-Only Memory ("PROM") chip, substantially transformed the PROM into a U.S. article. The court noted that it was undisputed that programming altered the character of a PROM, effecting a physical change. The essence of the article, its interconnections or stored memory, was established by programming. The court concluded that altering the non-functioning circuitry comprising a PROM through technological expertise in order to produce a functioning read-only memory device possessing a desired distinctive circuit pattern constituted "substantial transformation." After the *Data General* decision, in a number of previous rulings, CBP has considered whether the programming devices and electronic equipment constitutes a substantial transformation of such devices.

In HQ 735027, dated September 7, 1993, CBP considered a "MemoPlug," used to protect software from piracy. It was assembled in Israel from Taiwanese parts (such as various connectors and an Electronically Erasable Programmable Read Only Memory, or "EEPROM") and Israeli parts (such as an internal circuit board). After assembly, the EEPROM

was programmed in the U.S. with special software. Such processing in the United States accounted for approximately 50 percent of the final selling price of the MemoPlugs. In finding that the foreign-origin components were substantially transformed in the United States, CBP noted that the U.S. processing transformed a blank media, the EEPROM, into a device that performed functions necessary to the prevention of software piracy.

HQ H034843, dated May 5, 2009, concerned encrypted USB flash devices ("UFD"), used to protect data when a UF is lost or stolen. The key hardware component of the UFD was a Japanese origin flash memory chip. Other components were shipped to China where they were assembled. In one scenario, the UFD's were shipped to Israel where firmware application software developed in Israel was installed and customized into the device. Without application software, the UFD did not exhibit its security features. CBP held that the country origin of the encrypted UFD was Israel.

In this instance, we note that the building of the GTX Mobile requires the assembly of components in Canada, together with an imager of Canadian origin using subassemblies of various origins. Taking into account the Canadian assembly of the imager, the total assembly process requires a number of discrete steps that permit the individual components to function together as a single unit able to gather, process, display and transmit information from field operations to office locations. We, moreover, take note that a complex software program is loaded onto the GTX Mobile which has been designed and written entirely in Canada. This software has been designed so that the customer may centrally manage and troubleshoot remote computer applications, allowing for communication between computers in distant locations. We find the creation and installation of the software to be a crucial element that permits the functioning of the hand held computers. Therefore, we find that the assembly processes that will occur in Canada, coupled with the configuration operations also performed in Canada that require the installation of Canadian-origin software, will substantially transform the components of non-Canadian origin into a product with a new name, character, and use.

Accordingly, we find that the country of origin of the GTX Mobile is Canada.

Holding:

The non-Canadian component parts and subassemblies are substantially

transformed in Canada, the location where the subassemblies and components from various countries are assembled together to make the GTX Mobile, and where the complex software is developed and installed onto the device. Therefore, we find that the country of origin of the GTX Mobile for government procurement purposes is Canada.

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

Sincerely,

Sandra L. Bell,
Executive Director, Office of Regulations and Rulings, Office of International Trade.

[FR Doc. 2010-13845 Filed 6-8-10; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Upright and Recumbent Exercise Bikes

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 certain upright and recumbent exercise bikes. Based upon the facts presented, CBP has concluded in the final determination that the U.S. is the country of origin of the upright and recumbent exercise bikes for purposes of U.S. government procurement.

DATES: The final determination was issued on June 2, 2010. 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 until July 9, 2010.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325-0277.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on June 2, 2010,