DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning a Gearmotor


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 gearmotors known as the R47DRE90M4 gearmotor.

DATES: The final determination was issued on March 16, 2017. A copy of the final determination is attached.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 16, 2017, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of a certain gearmotor known as the R47DRE90M4 gearmotor, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H282391, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended.

Therefore, the finding of the determination, made after considering all issues, as provided by 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 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552(b)(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel NIAID; Clinical Trial Planning Grants (R34).

Date: April 17, 2017.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fisher Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Nancy Vazquez-Maldonado, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F52B, National Institutes of Health/NIAID, 5601 Fisher Lane, MSC 9834, Bethesda, MD 20892–9834, (240) 669–5044, nvazquez@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.385, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)


Natasha M. Copeland, Program Analyst, Office of Federal Advisory Committee Policy.

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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.

This final determination concerns the country of origin of the R47DRE90M4 gearmotor (‘‘R47DRE90M4’’). We note that SEW USA is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and is entitled to request this final determination.

FACTS:

SEW-Eurodrive is a group of worldwide companies that provide drive solutions for various applications in the automotive, building materials, and metal processing industry, among others. SEW-Eurodrive Gmbh & Co. KG (‘‘SEW Germany’’) is the parent company of SEW USA and other SEW-Eurodrive manufacturing plants around the world. SEW USA produces drive solution products, such as gearmotors, in the United States, incorporating SEW-Eurodrive-produced parts acquired from SEW Germany and other parts acquired from third-party vendors.

Gearmotors, such as the R47DRE90M4, are mainly comprised of two subassemblies: A gear box and a motor. Because SEW-Eurodrive applies a modular design to its products, certain components are interchangeable and customizable as necessary to meet specifications. As a result, SEW-Eurodrive gearmotors have over 2.1 million configurations, with the average gearmotor consisting of approximately 100 to 120 individual unique components, such as gears, shafts, housings, stators, rotors, and end-shields.

SEW USA seeks to sell the R47DRE90M4 to the U.S. Government. According to SEW USA, because the configurations may vary, it provides the following representative illustration of the R47DRE90M4 production process.1

Procurement of Materials:

SEW USA uses over 100 separate parts to assemble the R47DRE90M4. According to SEW USA, many of these parts are acquired from SEW Germany (‘‘SEW Parts’’). These parts include gears, housings, stators, rotors, shafts, and end shields that are produced at SEW-Eurodrive manufacturing plants in Brazil, China, France, Germany, and the United States, among other designated and non-designated countries. SEW USA states while the majority of the SEW Parts are produced in countries designated and approved pursuant to the TAA, SEW-Eurodrive’s ‘‘current system of inventory distribution to assembly centers makes it impossible to determine with specificity the country of origin for all component parts.’’ For this reason, many of these SEW Parts are shipped to SEW Germany as inventory and then redistributed according to need.

Additionally, SEW USA acquires other parts from third-party vendors (‘‘Other Parts’’). These parts include screws, nuts, bolts, shims, and rings. SEW USA considers the SEW Parts ‘‘essential’’ because they are the parts that SEW-Eurodrive must produce themselves, while the Other Parts are ubiquitous and can be purchased on the open market.

For the gear box subassembly, SEW USA procurses the following materials: One pinion; three gears (three types); two pinion shafts (two types); three output shafts (three types); six keys (six types); three oil seals (three types); at least six deep groove ball bearings (six types); eight circlips (eight types); two space tubes (two types); two breather valves (two types); one gear housing; one supporting disc; one eye bolt; one sealing compound; one cylindrical roller bearing; five screw plugs (one type); one gearcase cover; six hex head screws (one type); one gasket; two closing caps (two types); and, at least seven shims (seven types).

For the motor subassembly, SEW USA procurses the following materials: One rotor; one snap ring; five retaining rings (five types); four keys (four types); seven flanges (seven types); seven screw plugs (six types); two deep groove ball bearings (two types); eight machine screws (two types); one stator; four hex head screws (one type); four oil seals (four types); four fan guards (four types); two fans (two types); two aluminum fans (two types); one high inertia flywheel; one equalizing ring; one B-side bearing end shield; 20 hexagon nuts (five types); 28 studs (seven types); one oil finger; one nameplate; two grooved pins (one type); one gasket for lower part; two terminal boxes for lower part (two types); ten screws (four types); one terminal block; three terminal clips (two types); one lock washer; one gasket for cover; one terminal box cover; one identification; one gasket; one drain hole plug; one protection canopy; four distance supports (one type); four pan head screws (one type); synthetic grease (quantity as needed); two bed plate kits (two types); and, one earth/ground terminal kit.

Assembly of the Gearmotor

Once SEW USA receives the materials for the R47DRE90M4 assembly, the parts are placed into stock locations at the facility in the United States. From there, the parts needed to build the motor subassembly are gathered and taken to the assembly cell. SEW USA then assembles the motor subassembly in accordance with the following standard:

1. The A-side end shield is heated;
2. The rotor is cleared and inspected;
3. Two bearings are pressed onto the rotor shaft, and secured with hardware;
4. An oil drain is screwed into the A-side end shield;
5. The rotor is pressed into the A-side end shield;
6. The stator is placed on top of the rotor and into the end shield;
7. The B-side end shield is added along with the mounting hardware;
8. The two end shields and the stator are bolted together;
9. An oil seal is installed around the shaft and into the B-side end shield;
10. A fan is attached to the rotor shaft extension on the B-side and secured with hardware;
11. A fan cover is placed over the fan and secured to the stator;
12. A terminal box is assembled and attached to the stator with hardware;
13. An oil seal is placed in the A-side end shield;
14. An oil finger is placed on the A-side shaft extension and;
15. A pinion gear is placed onto the shaft with hardware to hold it in place.

The completed motor subassembly is visually inspected, and then it is moved to the next assembly location in SEW USA’s facility, along with the remaining parts needed to build the gear box subassembly. SEW USA then assembles the gear box subassembly in accordance with the following standard:

1. The pinion shaft has a bearing pressed onto it and hardware is then used to ensure accurate placement;
2. A spacer is added and then a key;
3. The shaft is placed into the housing along with the gear wheel that mates to the motor pinion;
4. Another bearing is added and the whole input assembly is pressed together in the gear housing;
5. The output oil seal is prepared for further assembly;
6. The output shaft has a bearing pressed onto it;
7. A bearing is pressed into the housing and the output gear wheel is placed on top of it, with hardware holding both parts in place;
8. The output shaft is slid into the wheel, bearing, and housing and is then pressed into place;
9. Hardware and shims are added to both the pinion and output shafts to ensure proper placement within the housing;

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1 SEW USA notes that other models and combinations are assembled similarly to this representative process.
the growth, product, or manufacture of
under 19 U.S.C. 2518(4)(B):

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

is or would be a product of a designated
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 Regulations. See 19 CFR
177.21. In this regard, CBP recognizes
that the Federal Acquisition 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). The Federal Acquisition
Regulations define “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.

48 CFR § 25.003.

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
1149 (Ct. Int’l Trade 1983), aff’d, 741 F.2d 1368 (Fed. Cir. 1984). Assembly
operations that are minimal or simple,
as opposed to complex or meaningful,
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–
manufacturing or combining process is
a minor one which leaves the identity
of the article intact, a substantial
transformation has not occurred.

Uniroyal, Inc. v. United States, 3 CIT

In order to determine whether a
substantial transformation occurs when
components of various origin are
assembled into completed products,
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,
and use are primary considerations in
such cases. Additionally, factors such as
the resources expended on product
design and development, extent and
nature of post-assembly inspection and
testing procedures, and the degree of
skill required during the actual
manufacturing process may be relevant
when determining whether a substantial
transformation has occurred. No one
factor is determinative.

In a number of rulings (e.g.,
Headquarters Ruling Letter (“HRL”)
735608, dated April 27, 1995, and HRL
559089, dated August 24, 1995), CBP
has stated: “in our experience these
inquiries are highly fact and product
specific; generalizations are troublesome
and potentially misleading. The
determination is in this instance ‘a
mixed question of technology and
Customs law, mostly the latter.’” Texas
Instruments, Inc. v. United States, 681
F.2d 778, 783 (CCA 1982).

SEW USA contends that the various
components, imported into the United
States for assembly of the R47DRE90M4,
are substantially transformed during the
processing which occurs in the United
States. SEW USA notes that the
assembly process is complex, requiring
skilled workers, and that the various
components cannot function until
assembled into the completed
gearmotor. In support, SEW USA cites
to HRL 563236, dated July 6, 2005; HRL
557208, dated July 24, 1993; HRL
734979, dated September 3, 1993; HRL
73046, dated May 10, 1991; HRL
734560, dated July 20, 1992; HRL
559067, dated September 19, 1995; and,
New York Ruling (“NY”) 872132, dated
April 9, 1992.

While the cases cited by SEW USA
consider whether imported parts were
substantially transformed due to
assembly operations in the United
States, the assembled products in these
cited cases were telephones, except for
NY 872132 (holding that Japanese
gear boxes were substantially transformed
in the United States when assembled with
electronic motors to create a
gearmotor). Similar to NY 872132, we note
the following rulings, which we find are
more analogous to the situation in this
case.

In HRL 559703, dated August 23,
1996, numerous parts were sourced
from vendors located in the United
States and/or other countries. These
parts were then assembled into various
subassemblies, and then these subassemblies were assembled into aircraft engines, ultimately involving thousands of individual parts and a complex operation requiring specialized skill and expertise. It was held that these parts were substantially transformed as a result of the operations performed in the United States, leading to the production of an aircraft engine.

In HRL H075667, dated May 2, 2008, a glider (consisting of a frame, finished cab, axels, and wheels) was imported into the United States and assembled with approximately 87 different component parts (including the essential parts: a motor, controller, and charger of Canadian origin; a gear box and axel of U.S. origin; and brakes of Indian origin) into an electric mini-truck. The process consisted of eight assembly work stations involving attachment and installation operations, as well as quality control and testing of the product. It was held that the imported glider and other foreign components were substantially transformed into an electric mini-truck by the assembly operations that took place in the United States. See also HRL 558919, dated March 20, 1995 (holding that an extruder subassembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electrical controls and extruder screw) to create a vertical extruder, particularly noting that the imported extruder and U.S. components were functionally necessary to the operation of the vertical extruder); HRL H075667, dated January 21, 2010 (holding that 53 components were substantially transformed into an alternator by the assembly operations in the United States, noting the 169 minute, 31 step process involving skilled workers and the U.S.-origin of the regulator component); and, HRL 734292, dated May 26, 1992 (holding that imported components and subassemblies were substantially transformed into electronic motors in the United States, noting the U.S. origin of the stator component because of the extensive experience required for production of the stator).

In this case, we find that the imported parts are substantially transformed as a result of the assembly operations in the United States. We note that building the R47DRE90M4 in the United States consists of assembling together 131 unique parts, and at least a total of 200 parts. Similarly to HRL 5589703 and HRL H022169, production of the R47DRE90M4 requires importing numerous parts of various origins, which are used to first assemble the gear box and motor subassemblies, and then to assemble the complete gearmotor, through a complex operation with specialized skill and expertise. As noted in HRL H075667 and HRL 734292, the complex operation in this case involves at least 27 steps that take approximately two hours. We note that SEW USA’s workers are hired with previous experience in mechanical fields, and undergo additional training by SEW USA, which may endure several weeks to a few months, in order to reach the proficiency in the assembly operations that is required by the company. Under the described assembly process, the foreign components lose their individual identities and become an integral part of a new article, the R47DRE90M4, possessing a new name, character and use. Based upon the information before us, we find that the components that are used to manufacture the R47DRE90M4 are substantially transformed as a result of the assembly operations performed in the United States, and that the country of origin of the R47DRE90M4 for government procurement purposes is the United States.

**HOLDING:**

The components that are used to manufacture the R47DRE90M4 are substantially transformed as a result of the assembly operations performed in the United States. Therefore, the country of origin of the R47DRE90M4 for government procurement purposes is 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 other than the party which requested this final determination may request CBP to reconsider this decision. A party-at-interest other than the party which requested this final determination may request the agency to reconsider its final determination, pursuant to 19 CFR 177.30, if such party believes the final determination is incorrect. A petition for reconsideration must be filed with the agency in accordance with 19 CFR 177.30(b). Pursuant to 19 CFR 177.30(c), a party-at-interest may, within 30 days of the date of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,
Alice A. Kipel,
Executive Director, Regulations and Rulings, Office of Trade.

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