

cords, FIP Cable Assembly and ST MM Epoxy Connector processed as described above?

LAW AND ANALYSIS:

Under 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.*), the Bureau of Customs and Border Protection (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.

In regard to determining the country of origin of goods intended for government procurement, section 177.22(a), Customs Regulations (19 CFR 177.22(a)), provides, in pertinent part, as follows:

For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) 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.

19 CFR 177.22(a)(1) does not apply in the instant case because the fiber optic cable products are not wholly produced in the United States. Therefore, 19 CFR 177.22(a)(2) is applicable.

An article that consists in whole or in part of materials from more than one country is a product of the last country in which it has been substantially transformed into a new and different article of commerce with a name, character, and use distinct from that of the article or articles from which it was so transformed. See *United States v. Gibson-Thomsen*, 27 C.C.P.A. 267 (1940); *Uniroyal Inc. v. United States*, 542 F. Supp. 1026 (Ct. Int'l Trade 1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983); *Koru North America v. United States*, 701 F. Supp. 229 (Ct. Int'l Trade 1988); *National Juice Products Ass'n v. United States*, 628 F. Supp. 978 (Ct. Int'l Trade 1986); *Coastal States Marketing Inc. v. United States*, 646 F. Supp. 255 (Ct. Int'l Trade 1986), *aff'd*, 818 F.2d 860 (Fed. Cir. 1987); *Ferrostaal Metals Corp. v. United States*, 664 F. Supp. 535 (Ct. Int'l Trade 1987).

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. See *Uniroyal Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which 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.

GGP Patch Cords

In the case of the patch cords, a foreign "seed" is used in the U.S. in the manufacture of optical fiber cable. The first issue is

whether the processing in the United States performed on this imported "seed" results in a substantial transformation. In Headquarters' Ruling Letter ("HRL") 561774 dated January 29, 2001, Customs addressed a similar situation. In HRL 561774, the issue involved the country of origin marking of imported glass rod ("cane") used in the production of optical fiber preforms in the U.S. The imported cane was subjected to a "overcladding" process to create the fiber preform. According to the facts in HRL 561774, [t]he fiber itself consists of two different types of glass—one making up the "core" [of the preform, *i.e.*, cane], and the other making up the "cladding" surrounded by a protective acrylate coating. The core is the light-guiding region of the fiber, while the cladding, which has a different index of refraction than the core, ensures that the light signal remains within the core as it is carried along the fiber's length.

Customs held that, as the optical properties are imparted at the preform stage of production, the "essence" or character of the preform does not derive from the cane, but from the added cladding and its interaction with the core (cane). Therefore, we found that the production of the fiber preform resulted in a substantial transformation of the imported cane.

In the present case, an imported multi-layered glass rod (referred to as a "seed") is subjected to a "cladding" process in the U.S., involving the addition of a glass "sleeve" to the core. The preform is then drawn into optical glass fiber which, in turn, is made into optical fiber cable. Consistent with the holding in HRL 561774, we find that the above processing in the U.S. (specifically, the operations resulting in the preform) substantially transforms the foreign-origin "seed" into a "product of" the United States.

The second issue involving this first product is whether the operations performed in China result in a substantial transformation of the U.S.-origin optical fiber cable into a "product of" China. The U.S.-origin optical fiber cables are sent to China. In China, the optical fiber cable is cut-to-length, two inches of sheathing is removed from each end of the cable, and plastic connectors of Chinese origin are attached to each end of the cable.

In C.S.D. 85-25 (HRL 561392) dated September 25, 1984, Customs held that an assembly does not constitute a substantial transformation unless the operation is "complex and meaningful." The Bureau of Customs and Border Protection (CBP) criteria for determining whether an operation is "complex and meaningful" depends upon the nature of the operation, including the number of components assembled and number of different operations involved. Prior CBP rulings raise additional considerations such as processing time, costs, visibility of the imported article after processing, and skill required by the assembly operation.

In HRL 561392 dated June 21, 1999, Customs considered the country of origin marking requirements of an insulated electric conductor which is an electrical cable with pin connectors at each end used to connect computers to printers or other peripheral

devices. The cable and connectors were made in Taiwan. In China, the cable was cut to length and connectors were attached to the cable. Customs held that the cutting of the cable to length and assembly of the cable to the connectors in China did not result in a substantial transformation. In HRL 560214 dated September 3, 1997, Customs held that where wire rope cable was cut to length, sliding hooks were put on the rope, and end ferrules were swaged on in the U.S., the wire rope cable was not substantially transformed. Customs concluded that the wire rope maintained its character and did not lose its identity and become an integral part of a new article when attached with the hardware. In HRL 555774 dated December 10, 1990, Customs held that Japanese wire cut to length and electrical connectors crimped onto the ends of the wire was not a substantial transformation.

In the case of the GGP patch cords in this case, it is our opinion that the cutting of the cable to length and assembly of the cable to the Chinese-origin connectors in China does not result in a substantial transformation of the cable. Therefore, as the connectors lose their separate identity when combined with the fiber optic cable, the country of origin of the imported optical fiber cable is the United States.

FIP Cable Assemblies

In the case of the FIP cable assembly, a Japanese-origin ceramic ferrule and fiber optic cable (purchased from an unrelated company in the U.S.), metal ring (purchased in the U.S.), and plastic parts (purchased in the U.S. or self-produced by 3M in the U.S.) are used during the assembly operation in China. First, the connectors are assembled using the ferrule, adhesive, plastic covers, and a metal ring. The ferrule gives the connector its form and function. The connectors are then attached to each end of the fiber optic cable. For purposes of this ruling, we are assuming that those components said to be purchased in the U.S. for use in making the FIP cable assembly are of U.S. origin.

In your submission, you state that the assembly operation for the FIP cable assembly is substantially similar to that described above for the GGP patch cord. You mention that the only major difference is that the FIP connectors include the Japanese-origin ferrule, which provides the structure and the enclosure for the cable at the point of connectivity. According to your submission, the ceramic ferrule is precisely designed to allow the joining of hair-thin fiber optic cables. The other parts of the connector are simply a means of affixing the ferrule in place. You assert that the assembly operation performed in China does not result in a substantial transformation of either the ferrule or the fiber optic cable. Therefore, you contend that the country of origin of the imported FIP cable assembly is the U.S. as the fiber optic cable imparts the essential character to the cable assembly or, alternatively, that the country of origin of the fiber optic portion of the assembly is the U.S. and the origin of the connector portion is Japan.

In HRL 556020 dated July 1, 1991, Customs addressed the issue of whether electrical