

# U.S. Customs and Border Protection



## **NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING THE FAIRPLAY HOSS AND THE FAIRPLAY EVE ELECTRIC VEHICLES**

**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 the Fairplay Hoss and the Fairplay Eve lines of electric vehicles. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the Fairplay Hoss and Eve lines of electric vehicles for purposes of U.S. Government procurement.

**DATES:** The final determination was issued on December 9, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of this final determination on or before January 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Heather K. Pinnock, Valuation and Special Programs Branch: (202) 325-0034.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on December 9, 2010, pursuant to subpart B of part 177, Customs and Border Protection Regulations (19 C.F.R. Part 177, subpart B), CBP issued a final determination concerning the country of origin of the Fairplay Hoss and Eve lines of electric vehicles which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in HQ H133455, was issued at the request of Fairplay Electric Cars, LLC (“Fairplay”), under procedures set forth at 19 C.F.R. 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 concluded that, based upon the facts presented, the Fairplay Hoss and Eve lines of electric vehicles, assembled to completion in the United States from parts made in non-TAA countries and TAA countries and/or the

United States, are substantially transformed in the United States, such that the United States is the country of origin of the finished articles for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 C.F.R. § 177.29), provides that a notice of final determination shall be published in the *Federal Register* within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 C.F.R. § 177.30), provides that any party-at-interest, as defined in 19 C.F.R. § 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the *Federal Register*.

Dated: December 9, 2010

HAROLD SINGER  
*Acting Executive Director*  
*Regulations and Rulings*  
*Office of International Trade*

Attachment

HQ H133455

December 9, 2010

CLA-2 OT:RR:CT:VS H133455 HkP

CATEGORY: Marking

MR. KEITH ANDREWS, PRESIDENT  
FAIRPLAY ELECTRIC CARS  
743 HORIZON CT., SUITE 333  
GRAND JUNCTION, CO 81506

RE: Government Procurement; Country of Origin of Fairplay “Hoss” and “Eve” Electric Vehicles; Substantial Transformation

DEAR MR. ANDREWS:

This is in response to your letter dated July 20, 2010, requesting a final determination on behalf of Fairplay Electric Cars, LLC (“Fairplay”), pursuant to subpart B of part 177 of the U.S. Customs and Border Protection Regulations (19 C.F.R. Part 177).

Under these regulations, which implement Title III of the Trade Agreements Act of 1979 (TAA), as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to 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.

This final determination concerns the country of origin of the Fairplay Hoss line of industrial and commercial vehicles and the Fairplay Eve line of low speed vehicles. We note that as a U.S. importer and manufacturer, Fairplay is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. In reaching our decision, we have taken into account additional information submitted to this office on August 31, 2010.

FACTS:

For the Hoss line, the models of vehicles at issue are the following: Hoss LD, Hoss XD, and Hoss Quad. For the Eve line, the models of vehicles at issue are the Eve Deluxe 2P, Eve Deluxe XR 2P, Eve Deluxe LTD 2P, Eve Deluxe 4P, Eve Eco 2P, and the Eve Eco XR 2P.

According to the information submitted, Fairplay imports parts for both these lines of vehicles from China. These include chassis, plastic body parts and various miscellaneous pieces of plastic trim, which are assembled together in the United States with U.S.-made battery packs, motors, electronics, wiring assemblies, seats, and chargers.

For the Hoss line of vehicles, the bill of materials (BOM) submitted with the request indicates that, depending on the model, a vehicle may have between approximately 50 and 72 inputs, when items such as logos/decals, and warranty registration cards are counted along with the parts. Of these, between 11 and 15 inputs are of U.S. origin or are performed in the U.S. Between 48.1% and 58.9% of actual manufacturing costs are attributed to U.S. or TAA country manufacturing operations.

For the Eve line of vehicles, the bill of materials (BOM) submitted with the request indicates that, depending on the model, a vehicle may have between approximately 67 and 78 inputs, when items such as logos/decals, and warranty registration cards are counted along with the parts. Of these, between

21 and 27 inputs are of U.S. origin or are performed in the U.S. Between 52.2% and 64.8% of actual manufacturing costs are attributed to U.S. or TAA country manufacturing operations.

For both the Hoss and Eve lines of vehicles, assembly in the U.S. takes place at five different stations, the operations performed at each station being described as follows:

Station 0: The electronic controller plate is assembled and tested.

Station 1: The chassis is unloaded and given a vehicle identification number. Wheels, tires, and the steering column are installed on the chassis using rivets, nuts, bolts, screws, and plastic push-ins.

Station 2: The batteries, motor, controller, solenoid, wiring harness and other crucial electronic parts are installed using rivets, nuts, bolts, and screws or special Molex connectors and plastic push-ins that must be soldered.

Station 3: The plastic front and rear body, bumpers and dashboard are installed over the chassis and electronic assembly, which gives the vehicle its finished appearance. Parts are attached with rivets, nuts and bolts. The vehicle is then removed from the assembly rack.

Station 4: The deep cycle batteries, upright canopy supports, canopy top, seat bottom and back, seat belts, lights, reflectors, decals, logos and final wiring are installed and tested. The parts are installed using rivets, Molex connectors, nuts, bolts, screws, and/or plastic push-ins, as required.

Testing of the fully assembled vehicle lasts between 90 and 195 minutes, depending on the vehicle. In addition, quality control inspections are performed at each station as well as randomly. Packing and shipping operations last between 30 and 45 minutes. The Standard Operating Procedures to assemble the vehicles are designed by staff engineers, who also select, approve and advise on the appropriate parts to be used for the manufacture of the vehicles.

#### ISSUE:

What is the country of origin of the Fairplay Hoss line of industrial and commercial electric vehicles and of the Eve line of low speed vehicles 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 as to 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 C.F.R. § 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 C.F.R. § 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 C.F.R. § 25.403(c)(1). The Federal Procurement Regulations define "U.S.-made end product" as:

[A]n article that is mined, produces, 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.

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*, 573 F. Supp. 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. See C.S.D. 80-111, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. By contrast, in C.S.D. 85-25, 19 Cust. Bull. 844 (1985), CBP held that for purposes of the Generalized System of Preferences ("GSP"), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled. Whether an operation is complex and meaningful depends on the nature of the operation, including the number of components assembled, number of different operations, time, skill level required, attention to detail, quality control, the value added to the article, and the overall employment generated by the manufacturing process.

In order to determine whether a substantial transformation occurs when components of various origins 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, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process will be considered when determining whether a substantial transformation has occurred. No one factor is determinative.

You believe that the assembly operations that take place in the U.S. result in a substantial transformation of the imported parts. You note that these parts, by themselves, cannot function and must be assembled with the U.S.-made parts to constitute a working electric self-propelled vehicle. Given these considerations, you argue that the U.S. content along with the fact that 100% of the assembly operations takes place in the U.S. warrants a determination

that the U.S. is the country of origin of the vehicles. In support of your argument, you cite Headquarters Ruling Letter (“HQ”) H022169 (May 2, 2008) and HQ 558919 (Mar. 20, 1995).

In HQ H022169, CBP found that an imported mini-truck glider was substantially transformed as a result of assembly operations performed in the United States to produce an electric mini-truck. Our decision was based on the fact that, under the described assembly process, the imported glider lost its individual identity and became an integral part of a new article possessing a new name, character and use. In addition, a substantial number of the components added to the imported glider were of U.S. origin.

In HQ 558919, a country of origin marking case relied upon in HQ H022169, U.S. Customs (now CBP) held that an extruder assembly manufactured in England was substantially transformed in the United States when it was wired and combined with U.S. components (motor, electric controls and extruder screw) to create a vertical extruder. In reaching that decision, Customs emphasized that the imported extruder subassembly and the U.S. components each had important attributes that were functionally necessary to the operation of the extruder. Consequently, we found that the imported subassemblies should be excepted from individual marking, provided that the cartons in which the U.S. manufacturer received them were properly marked with their country of origin.

In both HQ 558919 and HQ H022169, CBP found that assembly of the imported parts together with the U.S. made components were “functionally necessary” to the operation of the finished product. The same is true in this situation. None of the imported parts, on their own, can function as an electric vehicle but must be assembled with other necessary U.S. components, such as the battery pack, motor, electronics, wiring assemblies and charger. Moreover, given the complexity and duration of the U.S. manufacturing process, we consider those operations to be more than mere assembly.

Based on the information before us, and consistent with the CBP rulings cited above, we find that the Chinese-origin chassis, plastic body parts and plastic pieces of trim are substantially transformed by the assembly operations performed in the United States to produce both the Hoss and Eve lines of electric vehicles. Under the described assembly process, the imported parts lose their individual identities and become integral parts of a new article possessing a new name, character and use. Further, components crucial to the making of an electric vehicle (the battery pack, motor, electronics, wiring assemblies, and charger) are of U.S. origin. We conclude, based upon these specific facts, that the country of origin of the Fairplay Hoss and Eve lines of electric vehicles for purposes of U.S. Government procurement is the United States.

#### HOLDING:

The chassis, plastic body parts and plastic pieces of trim imported from China are substantially transformed when they are assembled in the United States with domestic components. As a result, the country of origin of Fairplay’s Hoss line of industrial and commercial electric vehicles, specifically the Hoss LD, Hoss XD, and Hoss Quad, for purposes of U.S. Government procurement is the United States. The country of origin of Fairplay’s Eve line of low speed electric vehicles, specifically the Eve Deluxe 2P, Eve Deluxe XR 2P, Eve Deluxe LTD 2P, Eve Deluxe 4P, Eve Eco 2P, and the Eve Eco XR 2P, for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

*Sincerely,*

HAROLD SINGER

*Acting Executive Director*

*Regulations and Rulings*

*Office of International Trade*

[Published in the Federal Register, December 16, 2010 (75 FR 78726)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:****North American Free Trade Agreement Duty Deferral**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security

**ACTION:** 60-Day Notice and request for comments; Extension of an existing collection of information: 1651-0071

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the North American Free Trade Agreement (NAFTA) Duty Deferral. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

**DATES:** Written comments should be received on or before February 14, 2011, to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9<sup>th</sup> Street, NW, 5<sup>th</sup> Floor, Washington, DC. 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9<sup>th</sup> Street, NW, 5<sup>th</sup> Floor, Washington, DC. 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The



comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

**Title:** NAFTA Duty Deferral

**OMB Number:** 1651-0071

**Abstract:** The provisions of North American Free Trade Agreement (NAFTA) were adopted by the U.S. with the enactment of the North American Free Trade Agreement Implementation Act of 1993 (PL. 103-182). The objectives of NAFTA are to eliminate barriers between countries, to facilitate conditions of fair competition within the free trade area, and to liberalize conditions for investments with the free trade area. 19 CFR 181.53 sets forth procedures and documentation required for those seeking a reduction in duties when merchandise is withdrawn from a U.S. duty deferral program for exportation to another NAFTA country. Claimants must provide this information to CBP so a determination can be made to reduce or waive duties on imported merchandise. Information on how to file claims under NAFTA duty deferral can be found at: [http://www.cbp.gov/xp/cgov/trade/trade\\_programs/international\\_agreements/free\\_trade/nafta/duty\\_deferral/](http://www.cbp.gov/xp/cgov/trade/trade_programs/international_agreements/free_trade/nafta/duty_deferral/)

**Current Actions:** CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

**Type of Review:** Extension (without change)

**Affected Public:** Businesses

**Estimated Number of Respondents:** 50

**Estimated Number of**

**Annual Responses per Respondent:** 28

**Estimated Number of Total Annual Responses:** 1,400

**Estimated Time per Response:** 12 minutes

**Estimated Total Annual Burden Hours:** 280

Dated: December 13, 2010

TRACEY DENNING  
*Agency Clearance Officer*  
*U.S. Customs and Border Protection*

