HQ H007668

June 20, 2007

OT:RR:CTF:VS H007668 GOB

CATEGORY: Classification

Bruce W. Murley

Area Port Director of Denver

U.S. Customs and Border Protection

24735 E. 75th Ave.

Suite 100

Denver, CO 80249

Attn.: Import Specialist Mitchell Fain

RE: Request for Internal Advice; Subheading 9801.00.10(EN), HTSUS;

Documentary Evidence

Dear Mr. Murley:

This is in response to your request for internal advice of February 27, 2007 with respect to **Advanced Energy Industries**, Inc. ("AE"). On April 18, 2007, representatives of AE and this office participated in an oral conference at this office. Subsequent to the conference, AE submitted a letter of May 3, 2007, addressing and confirming certain of the points its representatives made at the conference. AE also submitted additional information on May 24, 2007.

FACTS:

The heart of the matter at issue is AE's eligibility for subheading 9801.00.10(EN), Harmonized Tariff Schedule of the United States ("HTSUS") and the documentation required therefore.

AE, a United States corporation based in Fort Collins, Colorado, is a producer and importer of power conversion, control systems, and related products. Its products consist primarily of components for capital equipment used in connection with semiconductor fabrication and other manufacturing processes. The products are typically sold to equipment manufacturers in the United States who integrate AE's products with their own, and sell the final product to their customers in the United States and foreign countries. Because AE's products have a long life cycle, they periodically need to be repaired, refurbished, or recalibrated. Many of these products are returned to AE's Fort Collins, Colorado location from abroad from the ultimate customers of the semiconductor manufacturing equipment.

AE claims that the country of origin of all of its products can be established by records maintained in its SAP business systems software in that the manufacturing location is a required field in every SAP production order record. Once this location is entered, it cannot be changed. The SAP software also contains a unique serial number for each product manufactured. Thus, AE asserts that the information contained in its SAP software program should be permitted to assist in meeting the requirements of 19 CFR 10.1(a) because that information ties the manufacturing plant code to the serial number of each item manufactured.

The Customs and Border Protection ("CBP") Regulatory Audit report provides in pertinent part that AE was not able to provide the following required documentation: shipper's declaration (with one exception), owner's declaration (with one exception), export information, and proof of U.S. origin (with 2 exceptions).

AE advises that the total universe affected by the audit findings is approximately 4,900 entries over a five-year period. It states that it does not possess SAP information as to the location of manufacture with respect to a relatively small number of these entries (possibly ten percent) and that it plans to tender duties on these entries, *i.e.*, it does not claim eligibility under subheading 9801.00.10(EN) with respect to these entries. AE states that it has currently suspended its subheading 9801.00.10(EN) program. In the future, it is willing to meet with the port directors or their designees with respect to the documentation required for its subheading 9801.00.10(EN) program.

AE states that the goods it manufactures which are the subject of this request are complete and finished products. The only way they could be **advanced** in value or improved in condition would be through authorized field service; such work would be recorded in the SAP software records. Therefore, it claims, the software records can verify that a unit was or was not modified by an authorized field service provider. Further, any attempt to service the products by

an unauthorized party would probably render the products inoperable and would be apparent to AE upon its examination.

In a declaration of May 24, 2007, the senior vice president, Global Services, of AE stated in pertinent part as follows with respect to the entries which were the subject of the CBP audit and the issue as to whether a good has been "**advanced** in value or improved in condition" within the meaning of subheading 9801.00.10(EN), HTSUS, and 19 CFR 10.1:

a At the time of shipment to AE's customer, every item is a uniquely configured and finished product. AE's products are precision instruments that are not user serviceable, and it is highly unlikely than anyone other than AE service personnel would be capable of advancing the value of the product or improving its condition after it leaves AE's factory floor.

b Were AE's service personnel to have performed any field service or upgrade of the item that would constitute an advancement of value or improvement in condition, it would be noted in the Serial History Report of the item residing in AE's SAP business system software. My examination of the Serial History Report for each item of Exhibit 1 [entitled "9801 Exporter Identification Spreadsheet"] reveals that no such service or upgrades were performed on any of the subject items.

c Were anyone other than AE to have attempted a service or upgrade of the subject items, it would constitute tampering that would void the product warranty and be immediately discernable upon inspection by AE and noted in the Serial History Report of the item. In every instance, the subject items were returned to AE for service and were inspected upon receipt. I have examined the Serial History report for each item of Exhibit 1 and have determined that no product tampering was reported with respect to any of the subject items. From this, I conclude that no one other than AE attempted to perform any service or upgrades on any of the subject items.

d As a result, I conclude that the subject items were not **advanced** in value or improved in condition while abroad.

ISSUE:

Whether the documentation provided by AE is adequate to support its claim under subheading 9801.00.10(EN), HTSUS?

LAW AND ANALYSIS:

Subheading 9801.00.10(EN), HTSUS, provides for the free entry of products of the United States that have been exported and returned without having been **advanced** in value or

improved in condition by any process of manufacture or other means while abroad, provided the documentary requirements of section 10.1, CBP Regulations (19 CFR 10.1), are met. Some change in the condition of the product while it is abroad is permissible. However, operations which either advance the value or improve the condition of the exported product render it ineligible for duty-free entry upon return to the United States. *Border Brokerage Company, Inc. v. United States*, 314 F. Supp. 788 (1970, appeal dismissed, 58 CCPA 165 (1970).

Section 10.1(a), CBP Regulations (19 CFR 10.1(a)) provides in part that a declaration by the foreign shipper and a declaration by the owner, importer, consignee, or agent shall be filed in connection with the entry or articles in a shipment valued over $2,000 and claimed to be free under subheading 9801.00.10(EN) or 9801.00.20(EN), HTSUS.

Section 10.1(b), CBP Regulations (19 CFR 10.1(b) provides:

In any case in which the value of the returned articles exceeds $2,000 and the articles are not clearly marked with the name and address of the U.S. manufacturer, the port director may require, in addition to the declarations required in paragraph (a) of this section, such other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment. Such other documentation or evidence may include a statement from the U.S. manufacturer verifying that the articles were made in the United States, or a U.S. export invoice, bill of lading or airway bill evidencing the U.S. origin of the articles and/or the reason for the exportation of the articles.

Section 10.1(d), CBP Regulations (19 CFR 10.1(d) provides:

If the port director is reasonably satisfied, because of the nature of the articles or production of other evidence, that the articles are imported in circumstances meeting the requirements of subheading 9801.00.10(EN) or 9802.00.20(EN), HTSUS, and related section and additional U.S. notes, he may waive the requirements for producing the documents specified in paragraph (a) of this section.

Counsel for the protestant has cited HQ 563394 , dated October 11, 2006, which involved a claim under subheading 9801.00.10(EN), HTSUS, wherein CBP stated:

In order for a good to qualify for duty free treatment under subheading 9801.00.10(EN), HTSUS, the importer must satisfy CBP that the conditions of this subheading are met through documentation. The word "only" does not appear in 19 CFR 10.1(a). The regulatory language of 19 CFR 10.1 is clear that the port director must be satisfied that the requirements of subheading 9801.00.10(EN) are met and may require additional information as ... necessary to substantiate the claim. An export invoice is listed in 19 CFR 10.1(b) as an example of documentation that may be requested. We find that the Port Director may require any documentation that would reasonably substantiate a claim under subheading 9801.00.10(EN),

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HTSUS, including export invoices.

We understand that the merchandise involved was being returned to Varian under warranty from overseas. If Varian has a database that lists the serial number of the good and the U.S. location where it was originally produced, this information could be considered as evidence of the U.S. origin of the merchandise. Further, Varian should also be able to establish that the good was shipped to an overseas customer. If Varian could establish that the good was made in the U.S. and shipped overseas prior to being imported, the original export documents would not be required to establish that the goods were eligible for duty-free entry under subheading 9801.00.10(EN), HTSUS.

In its written submission and at the oral conference AE provided the following information. The country of origin of all of its manufactured products can be established by records maintained in its SAP business systems software. In using that software, AE generates production work orders and assigns manufacturing/production locations. The latter are required fields in each production order record and cannot be changed once entered. The system will only permit the production planner to select plant codes which are designated manufacturing locations for the product at issue. A unique serial number is also assigned for each unit scheduled to be manufactured. AE submits that records generated by its software system are adequate to establish that certain imported goods were manufactured in the U.S. It states that it was not able to make a full demonstration of this capability during the audit.

It is clear from the regulatory language of 19 CFR 10.1 that in certain circumstances1 the port director may require additional information to substantiate a subheading 9801.00.10(EN) claim. 19 CFR 10.1(b). It is also clear that the port director may waive the requirements for producing the documents specified in 19 CFR 10.1(a) if he is reasonably satisfied that the articles meet the requirements of subheading 9801.00.10(EN), HTSUS. 19 CFR 10.1(d). Neither of these provisions is mandatory, *i.e.*, the action described in these provisions is at the discretion of the port director.

AE claims that the information provided in its software system with respect to the serial number of each item and its plant code, which shows the location of manufacture of each item, is sufficient to establish that its articles were made in the United States. We have reviewed this claim via AE's written submission and via AE's presentation at the oral conference held in this office. We agree with this claim provided that: (a) representatives of AE demonstrate to the appropriate port officials how this information is provided; and (b) the pertinent information in the software system is provided in a clear and intelligible manner. It is our view that the demonstration at the oral conference was sufficient for this purpose. With the explanation provided by AE's representatives, the information with respect to the place of manufacture of the goods was adequately conveyed, *i.e.*, AE demonstrated how its software record could link a specific serial number with a plant code indicating the place of manufacture. Information as to the location of manufacture of the goods is relevant to the requirement in subheading

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9801.00.10(EN), HTSUS that eligible goods have been exported from the United States. This requirement is reflected in the two declarations required by 19 CFR 10.1(a) and the additional information which the port director may request under 19 CFR 10.1(b).

Therefore, we recommend that you and other port directors accept the location of manufacture information provided by AE's software program, subject to the provisos in the previous paragraph. Under these circumstances, we believe that this location of manufacture information may be used to partially satisfy the requirements of 19 CFR 10.1(a) (*i.e.*, insofar as the requirements in 19 CFR 10.1(a) pertain to the place of manufacture of the goods), in addition to our belief that it may be used in with respect to a request made by a port director under 19 CFR 10.1(b). This recommendation applies with respect to the entries which were the subject of the audit and with respect to future entries where subheading 9801.00.10(EN), HTSUS is claimed by AE.

The affidavit provided by the senior executive of AE is directly relevant to the subheading 9801.00.10(EN), HTSUS, issue as to whether goods were "**advanced** in value or improved in condition by any process of manufacture or other means while abroad." We determine that you and other affected port directors may accept the affidavit, or a substantially similar affidavit,2 with respect to that issue, *e.g.*, if you, in your discretion, require information pursuant to 19 CFR 10.1(b), such an affidavit may be considered probative to the issue as to whether the goods were **advanced** in value or improved in condition by any process of manufacture or other means while abroad. As noted by AE,

HOLDING:

We recommend that you and other port directors accept the location of manufacture information provided by AE's software program, provided that (a) representatives of AE demonstrate to the appropriate port officials how this information is provided and (b) the pertinent information in the software system is provided to CBP in a clear and intelligible manner. This recommendation applies with respect to the entries which were the subject of the audit and with respect to future entries where subheading 9801.00.10(EN), HTSUS is claimed by AE.

You and other port directors may accept the affidavit provided by the senior official of AE, or a substantially similar affidavit, with respect to the issue as to whether the goods were **advanced** in value or improved in condition by any process of manufacture or other means while abroad.

Please provide a copy of this ruling to counsel for AE. Sixty days from the date of this ruling the office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

Monika R. Brenner

Chief

Valuation and Special Programs Branch