

HQ H292848

February 1, 2018

OT:RR:CTF:VS H292848 EE

CATEGORY: Classification

Elise Shibles
Sandler, Travis & Rosenberg, P.A.
505 Sansome Street, Suite 1475
San Francisco, CA 94111

RE: NAFTA eligibility; pillows

Dear Ms. Shibles:

This is in response to your letter dated October 20, 2017, on behalf of your client, SF Home Décor LLC ("SF Home Décor"), concerning the eligibility of certain pillows for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA").

FACTS:

The merchandise subject to the ruling letter at issue are pillows classified under subheadings 9404.90.10 and 9404.90.20, Harmonized Tariff Schedule of the United States ("HTSUS"). You state that the outer zippered cover of the pillows will either be made of chief weight cotton or chief weight man-made fiber woven fabric. The pillow is stuffed with an internal pillow that is sewn closed. The internal pillow is filled with loose polyester staple fiber. The Mexican operations will be accumulated for the purposes of NAFTA qualification. You provide the following production scenarios for the cotton and the staple man-made fiber pillows.

Production Scenario Cotton Pillow:

Non-NAFTA chief weight cotton fabric cut and sewn into zippered pillow cover outside NAFTA territories (heading 6304, HTSUS);

Non-NAFTA nonwoven fabric cut and sewn outside NAFTA territories into internal pillow shell with three closed sides and one unfinished side (heading 6307, HTSUS);

Non-NAFTA loose polyester staple fiber filling (heading 5503, HTSUS);

Loose polyester staple fiber blown into internal pillow shell in Mexico;

Internal pillow shell sewn closed in Mexico;

Internal pillow shell stuffed into cushion cover and zipped closed in Mexico;

Pillow shipped directly from Mexico to the United States (subheading 9404.90.10, HTSUS).

Production Scenario Staple Man-Made Fiber Pillow:

Non-NAFTA chief weight man-made fiber fabric cut and sewn into zippered pillow cover outside NAFTA territories (heading 6304, HTSUS);

Non-NAFTA nonwoven fabric cut and sewn outside NAFTA territories into internal pillow shell with three closed sides and one unfinished side (heading 6307, HTSUS);

Non-NAFTA loose polyester staple fiber filling (heading 5503, HTSUS);

Loose polyester staple fiber blown into internal pillow shell in Mexico;

Internal pillow shell sewn closed in Mexico;
 Internal pillow shell stuffed into cushion cover and zipped closed in Mexico;
 Pillow shipped directly from Mexico to the United States (subheading 9404.90.20, HTSUS).

You provided representative samples of the two types of zippered pillow covers, internal finished pillow, unfinished pillow shell, and fill fibers. You state that the markings on the samples are from other supply chains and not representative of the scenarios proposed in the ruling. You state that the marking will be revised appropriately and SF Home Décor is not asking for any marking guidance under this ruling request.

ISSUE:

Whether the pillows classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

LAW AND ANALYSIS:

General Note ("GN") 12, HTSUS, incorporates Article 401 of the NAFTA into the HTSUS. GN 12(a)(ii), HTSUS, provides that goods are eligible for the NAFTA rate of duty if they originate in the territory of a NAFTA party and qualify to be marked as goods of Mexico. GN 12(b), HTSUS, sets forth the various methods for determining whether a good originates in the territory of a NAFTA party. Specifically, these provisions provide, in relevant part, as follows:

(a) Goods originating in the territory of a party to the North American Free Trade Agreement (NAFTA) are subject to duty as provided herein. For the purposes of this note--

* * * *

(ii) Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Mexico under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United States and are entered under a subheading for which a rate of duty appears in the "Special" subcolumn followed by the symbol "MX" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

(b) For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as "goods originating in the territory of a NAFTA party" only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that—

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or

(B) the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note; or

(iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials.

Since the pillows contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the pillows qualify under GN 12(b)(ii). As previously noted, you state that the imported pillows are classified under subheadings 9404.90.10 and 9404.90.20, HTSUS. The applicable rule of origin for pillows classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 of GN 12(t)/94.7, HTSUS, provides: “[f]or the purposes of the subdivisions pertaining to this chapter, whenever the subdivision designation is underscored, the provisions of subdivision (d) of this note may apply to goods for use in a motor vehicle of chapter 87.” Chapter rule 1 does not apply since the applicable tariff shift rule, GN 12(t)/94.7, HTSUS, is not underscored. Similarly, the subheading rule which provides that “[t]he underscoring of the designations in subdivision 1 pertains to goods provided for in subheading 9401.20 for use in a motor vehicle of chapter 87” does not apply since the applicable tariff shift rule is not underscored. GN 12(t)/94.7, HTSUS, provides: “[a] change to subheading 9404.90 from any other chapter, except from headings 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408 or 5512 through 5516.” You state that the non-originating components are classified as follows: the cotton and man-made fiber pillow covers are classified under heading 6304, HTSUS; the internal pillow shell is classified under heading 6307, HTSUS; the loose polyester staple fiber filling is classified under heading 5503, HTSUS; the zipper is classified under subheading 9607, HTSUS; and the sewing thread is classified under subheadings 5204, 5401, 5402, or 5508, HTSUS. Since these non-originating materials are classified in a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, the pillows classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, qualify as NAFTA originating goods.

In addition, GN 12(a)(ii), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Mexico under the NAFTA Marking Rules to be eligible for preferential treatment. In this regard, 19 C.F.R. § 134.1(j) provides that “[t]he ‘NAFTA Marking Rules’ are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country.” 19 C.F.R. § 134.1(j) defines a “good of a NAFTA country” as “an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.”

Chapter 94 Note to 19 C.F.R. § 102.20 (NAFTA Marking Regulations) explicitly provides that the country of origin of goods classified in subheading 9404.90.10, HTSUS, will be determined under the provisions of 19 C.F.R. § 102.21. However, the Chapter Note does not address merchandise classified in subheading 9404.90.20, HTSUS, and a rule for subheading 9404.90.20, HTSUS, is provided for in 19 C.F.R. § 102.20.

Section 334, of the Uruguay Round Agreements Act, codified at 19 U.S.C. § 3592, provides rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. 19 C.F.R. § 102.21 implements section 334, and 19 C.F.R. § 102.0 refers to 19 C.F.R. § 102.21 for determining the country of origin of textile and apparel products. A “textile or apparel product” for purposes of these rules of origin is defined in 19 C.F.R. § 102.21(b)(5), in part, as any good classifiable in a number of headings including subheading 9404.90, HTSUS. As such, a good classifiable in subheading 9404.90, HTSUS, should be analyzed to determine if it is a “textile or apparel product” of 19 C.F.R. § 102.21 or other product of 19 C.F.R. § 102.20.

In Headquarters Ruling Letter (“HQ”) [962122](#), dated October 1, 1998, the importer claimed that

because cushions were classified under subheading 9404.90.20, HTSUS, they were not “textile products” as that term was defined in 19 C.F.R. § 102.21(b)(5), and thus were subject to different rules of origin. CBP stated that the statute pertaining to the rules of origin, 19 U.S.C. § 3592, explicitly includes subheading 9404.90, HTSUS, and that the statute takes precedence over the regulation. Accordingly, in determining the country of origin of cushions classified under subheading 9404.90.20, HTSUS, the 19 C.F.R. § 102.21 rules of origin were applicable. As HQ [962122](#), dated October 1, 1998, provides, a pillow classified under subheading 9404.90.20, HTSUS, with a polyester outershell would be considered a textile product which would require the application of 19 C.F.R. § 102.21 rules of origin; however, a pillow classified under subheading 9404.90.20, HTSUS, with a leather or plastic outershell would not be considered a textile product and therefore 19 C.F.R. § 102.20 rules of origin would apply. In the instant case, since the merchandise at issue are pillows with an outershell made of chief weight man-made fiber woven fabric, they are considered textile products and the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: “[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.” As the decorative pillows at issue are not wholly obtained or produced in a single country, territory, or insular possession, 19 C.F.R. § 102.21(c)(1) is not applicable.

19 C.F.R. § 102.21(c)(2) provides: “[w]here the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.”

As previously noted, the decorative pillows are classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS. The applicable tariff shift rule in 19 C.F.R. § 102.21(e) for merchandise classified under subheading 9404.90, HTSUS, is as follows:

9404.90 Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheadings 9404.90.10 and 9404.90.20, HTSUS. In the instant case, assuming it occurs in a single country, the fabric making process occurs where the fabric is formed. See 19 C.F.R. 102.21(b)(2). Therefore, according to 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the pillows is the same as the origin of the fabric, which you state is a non-NAFTA country.

However, 19 C.F.R. § 102.19(a) contains a “NAFTA preference override”.

Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin . . . has been completed and signed for the good.

19 C.F.R. § 102.19(a).

In HQ [960854](#), dated April 22, 1998, which involves similar facts as this case, CBP considered four

scenarios to determine whether a certain buckwheat hull filled neck pillow, classified under subheading 9404.90.1000, HTSUS, was eligible for preferential tariff treatment under NAFTA and the country of origin of the pillow. Under the first scenario, the buckwheat hulls were sourced in China, and the fabric for the pillow shell and the pillow case were woven, cut and assembled in China. In Mexico, the pillow was filled and packed. CBP found that the pillow shell and cover from China, classified under headings 6307 and 6304, HTSUS, underwent the requisite change in tariff classification and that the pillow was eligible for preferential tariff treatment under NAFTA. The country of origin analysis under 19 C.F.R. § 102.21(e), indicated that since the fabric comprising the merchandise was formed in a single country, China, the country of origin of the pillow would be China. However, in accordance with the NAFTA override (19 C.F.R. § 102.19), CBP determined that the country of origin of the buckwheat hull filled neck pillow was Mexico. See also HQ [H019439](#), dated September 5, 2008 (by virtue of the NAFTA override, the bed-in-bag set, classified under subheading 9404.90, HTSUS, must be marked country of origin Mexico in order to receive preferential tariff treatment under NAFTA as claimed).

In the instant case, the pillows are originating goods under 19 C.F.R. § 181.1(q). Additionally, the pillows are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the pillows are a product of Mexico under the "NAFTA preference override" since they undergo more than "minor processing." Pursuant to 19 C.F.R. § 102.19(a), the pillows are products of Mexico.

HOLDING:

Based on the information provided, the pillows classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, are eligible for preferential treatment under NAFTA. The country of origin of the pillows is Mexico for purposes of the marking requirements.

Please note that 19 C.F.R. § 177.9(b)(1) provides that "[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based."

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

Sincerely,

Monika R. Brenner, Chief
Valuation & Special Programs Branch