

N303499

April 10, 2019

CLA-2-84:OT:RR:NC:N2:206

CATEGORY: Classification; Country of Origin; NAFTA

TARIFF NO.: [8412.31.0080](#)

John F. Cowen  
Roser & J. Cowen Logistical Services Ltd.  
4695 Towerwood Drive  
Brownsville, Texas 78521

RE: The tariff classification of air cylinders from Mexico

Dear Mr. Cowen:

In your letter, dated March 18, 2019, you requested a tariff classification ruling on behalf of your client, Polygon Company. Descriptive literature and pictures were provided with your request.

The items under consideration have been identified as Air Cylinders, which are to be ultimately installed in the fifth wheel hitch of a tractor trailer. They serve to allow the operator to uncouple the hitch or slide the fifth wheel hitch back and forth, without getting out of the cab of the truck. The air cylinders are energized by the air compressor that is a part of the air brake system. You state that the air cylinders are imported in different sizes according to the customer's specifications, depending on the weight, diameter and length requirements. The use and function of the different sizes of cylinders are the same for each final product.

The applicable subheading for the Air Cylinders will be [8412.31.0080](#), Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Other engines and motors, and parts thereof: Pneumatic power engines and motors: Linear acting (cylinders): Other" The general rate of duty will be Free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at <https://hts.usitc.gov/current>.

You also requested this office to make a determination on the country of origin of the air cylinders and whether they are eligible for the preferential treatment under the North American Free Trade Agreement (NAFTA).

Article 401 of the NAFTA provides, in relevant part, that a good shall originate in the territory of a Party where: (b) each of the non-originating goods used in the production of the good undergoes an applicable change in tariff classification set out in Annex 401 as a result of production occurring entirely in the territory of one or more of the Parties, or the good otherwise satisfies the requirements of that Annex where no change in tariff classification is required.

General Note (GN) 12, Harmonized Tariff Schedule of the United States (HTSUS), incorporates Article 401 of NAFTA into the HTSUS. GN 12(b) provides, in pertinent part: 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 (emphasis added), 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.

Based on the information you provided, the air cylinders are made up of components from China, U.S.A. and Mexico. As a result, they will not be eligible for NAFTA originating treatment as goods wholly obtained or produced entirely in a NAFTA territory pursuant to GN 12(b)(i). Therefore production of the parts must satisfy tariff shift rules and meet other applicable requirements as prescribed in GN 12(b)(ii).

For goods classified in subheading 8412.31, the specific rule of origin under GN 12(b)(ii) requires: "(A) A change to subheadings 8412.10 through 8412.80 from any other heading;" or "(B) A change to subheadings 8412.10 through 8412.80 from subheading 8412.90, whether or not there is also a change from any other heading, provided there is a regional value content of not less than: (1) 60 percent where the transaction value method is used, or (2) 50 percent where the net cost method is used."

You state in your request that the piston rod, rod guide, piston, and rear head, which are made in China are classified in heading 8708.30, HTSUS as parts of motor vehicles' brakes; thus, the foreign components would meet the tariff shift. This office disagrees.

It is a well-established rule that a "...subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole." C.F. Liebert v. United States, 60 Cust. Ct. 677, 686-87, 287 F. Supp. 1008, 1014 (1968). The diagrams of the cylinders, which you submitted, show that the piston rod, rod guide, piston, and rear head are all components of the air cylinder. As a result, they are more specifically provided for as parts of the cylinder, in subheading 8412.90, HTSUS, than as parts of brakes.

According to the price list submitted, it appears that the value of the non-originating materials is approximately 69 percent of the transaction value. Therefore, the applicable tariff shift is not met. Thus, the air cylinders are not eligible for the preferential duty treatment under NAFTA.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement, as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.1(b) of the regulations, defines "country of origin" as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within this part; however, for a good of a NAFTA country, the NAFTA Marking Rules will determine the country of origin. Part 102 of the regulations, sets forth the "NAFTA

Marking Rules" for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes. Applied in sequential order, the required hierarchy establishes that the country of origin of a good is the country in which: (a)(1) The good is wholly obtained or produced; (a)(2) The good is produced exclusively from domestic materials; or (a)(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in Section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied. Sections 102.11(a)(1) and 102.11(a)(2) do not apply to the facts presented in this case because the imported rims are neither wholly obtained nor produced exclusively from "domestic" (Mexican, in this case) materials. Because the analysis of sections 102.11(a) (1) and 102.11(a) (2) does not yield a country of origin determination, we look to section 102.11(a) (3). "Foreign material" is defined in 19 C.F.R. § 102.1(e) as "a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced." The applicable rule for subheading 8412.31, HTSUS, in section 102.20 requires, "A change to subheading 8412.10 through 8412.80 from any other subheading, including another subheading within that group."

The components of the air cylinders are classified outside of subheadings 8412.10 through 8412.80, HTSUS. As a result, the tariff shift requirement is met, and the country of origin of the air cylinders for marking purposes is Mexico.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, please contact National Import Specialist Liana Alvarez at [liana.alvarez@cbp.dhs.gov](mailto:liana.alvarez@cbp.dhs.gov).

Sincerely,

Steven A. Mack  
Director  
National Commodity Specialist Division