

HQ H293880

June 19, 2018

OT:RR:CTF:VS H293880 EE

CATEGORY: Classification

Ms. Jennifer Diaz

Becker & Poliakoff

121 Alhambra Plaza, 10th Floor

Coral Gables, FL 33134

RE: Modification of HQ [H265611](#); NAFTA country of origin marking; stuffed mattress covers

Dear Ms. Diaz:

This letter is to inform you of the reconsideration of Headquarters Ruling Letter ("HQ") [H265611](#) which was issued to you by U.S. Customs and Border Protection ("CBP") on October 21, 2015. HQ [H265611](#) concerns the tariff classification of certain stuffed mattress covers and eligibility for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA"). We have reviewed HQ [H265611](#) and determined that it is partially incorrect with respect to the country of origin marking analysis.

On May 9, 2018, pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1), as amended by section 623 of Title VI, notice of the proposed action was published in the Customs Bulletin Vol. 12, No. 19. No comments were received in response to that notice.

FACTS:

The subject merchandise consists of two styles of mattress covers. Each style comes in numerous sizes, (i.e. twin, long twin, double, queen, king, California king, and split c-king); however, the characteristics of both styles and all sizes are the same. The mattress covers have two separate compartments. The top, upper-most layer has polyester stuffing, permanently sewn into it akin to quilting. This layer is zippered on all sides and attaches to or detaches from the lower compartment and the remainder of the mattress cover. A separate removable pad (not included) could be inserted between the top, upper-most quilted layer, and the lower mattress cover. The lower compartment of the mattress cover is comprised of a polyester and spandex interlock, and a polyester sandman. It is completely sewn together, and has dual zippers that allow the insertion of the mattress (not included). Essentially, there are two zippered compartments: one for an optional pad and one for the mattress.

Upon importation into the United States, the mattress cover fully encloses a mattress in its lower compartment via the double zipper closure. The mattress is not imported with the subject mattress cover. Rather, the fabric and other materials or components are imported into Mexico where they are cut and sewn into the final finished good, that is, the padded mattress cover. Upon importation into the United States, the importer sells the mattress cover to certain mattress and bed manufacturers, which in turn, cover their own mattresses and sell the combined unit to consumers.

CBP determined the stuffed mattress covers were classified under subheading 9404.90.20, HTSUS,

which provides for “[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther.” Additionally, CBP determined that the stuffed mattress covers were eligible for preferential tariff treatment under NAFTA.

ISSUES:

Whether the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the stuffed mattress covers for purposes of country of origin marking?

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 stuffed mattress covers 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 stuffed mattress covers qualify under GN 12(b)(ii). There is no dispute as to the classification of the stuffed mattress covers in subheading 9404.90.20, HTSUS. The applicable rule of origin for the mattress covers classified under subheading 9404.90.20, HTSUS, is in GN 12(t)/94.7, HTSUS. Chapter rule 1 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 of the mattress covers, which are shipped into Mexico where they are cut and sewn into the finished good, are the stuffed knit fabric classified under subheading 6006.33.0040, HTSUS, the interlock material classified under subheading 6004.10.0085, HTSUS, the “sandman” classified under subheading 5801.36.0010, HTSUS, and zippers are slide fasteners classified under chapter 69, 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, we agree with HQ [H265611](#) that the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, qualify as NAFTA originating goods.

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. HQ [H265611](#) applied 19 C.F.R. § 102.20 to the stuffed mattress covers classified under subheading 9404.90.20, HTSUS, to determine their country of origin for marking purposes. However, we find that Section 102.21, Customs Regulations (19 C.F.R. § 102.21) which pertains to textile and apparel products, should have been applied.

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](#) 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 mattress covers comprised of textiles (of polyester or of polyester and spandex), 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 stuffed mattress covers 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 stuffed mattress covers are classified under subheading 9404.90.20, 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 subheading 9404.90.20, HTSUS. In the instant case, since the fabric comprising the stuffed mattress covers was formed by a fabric-making process in China, in accordance with 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the stuffed mattress covers is China.

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 stuffed mattress covers are originating goods under 19 C.F.R. § 181.1(q). Additionally, the mattress covers are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the stuffed mattress covers 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 stuffed mattress covers are products of Mexico.

HOLDING:

The stuffed mattress covers are classified under subheading 9404.90.20, HTSUS, which provides for "[m]attress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: [o]ther: [p]illows, cushions and similar furnishings: [o]ther."

The stuffed mattress covers classified under subheading 9404.90.20, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the mattress covers is Mexico for purposes of the marking requirements.

EFFECT ON OTHER RULINGS:

HQ [H265611](#), dated October 21, 2015, is hereby MODIFIED with respect to the country of origin of the stuffed mattress covers classified under 9404.90.20, HTSUS, for marking purposes.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Sincerely,

Myles B. Harmon, Director
Commercial and Trade Facilitation Division