

U.S. Customs and Border Protection



GENERAL NOTICE

MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF CERTAIN GARMENTS FOR PREFERENTIAL TREATMENT UNDER SUBHEADING 9822.05.10, HTSUS, (DR-CAFTA)

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of modification of three ruling letters and revocation of any treatment relating to the eligibility of certain garments for preferential tariff treatment under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA), sub-heading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying three ruling letters, New York Ruling Letter (NY) N242661, dated July 1, 2013; NY N018963, dated November 21, 2007; and NY N249027, dated January 21, 2014, relating to the eligibility of certain garments for preferential tariff treatment under subheading 9822.05.10, HTSUS, and General Note (GN) 29, HTSUS. Similarly, CBP is revoking any treatment previously accorded to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Volume 48, Number 51, dated December 24, 2014. Two comments were received in response to the notice

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 15, 2015.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, (202) 325–0046.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

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 proposing to modify three ruling letters, specifically, New York Ruling Letter (NY) N242661, dated July 1, 2013; NY N018963, dated November 21, 2007; and NY N249027, dated January 21, 2014; pertaining to the eligibility of certain garments for preferential tariff treatment under subheading 9822.05.10, HTSUS, and General Note (GN) 29, HTSUS, which implements the DR-CAFTA, specifically GN 29(d)(iv), was published in the *Customs Bulletin*, Volume 48, Number 51, dated December 24, 2014. Two comments were received in response to the notice. One commenter disagrees with CBP’s view that language in subheading 9822.05.10, HTSUS, and in a similarly worded provision in the CBTPA, *i.e.*, subheading 9820.11.06, HTSUS, should be subject to the same interpretation. The objection is based not on the language of the provisions, but in the duty effect provided by the provisions. The same commenter also argues against the modification of the decisions based on Congressional action to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement in Public Law 112–163, enacted on August 10, 2012. The commenter submits that as NY N018963, dated November 21, 2007, was issued prior to action by Congress to amend the tariff with regard to the DR-CAFTA textile

rules of origin, Congress in effect ratified the existing CBP interpretation given to subheading 9822.05.10, HTSUS, in NY N018963.

The second commenter misunderstands CBP's reason for modifying one of the rulings at issue, NY N249027. The commenter believes CBP's reason for viewing the garment at issue therein, style ST14398A, as not eligible for classification in subheading 9822.05.10, HTSUS, and thus not eligible for the partial duty exemption afforded merchandise classifiable therein, is a belief that "the Chinese overlay of sequin covered 100% polyester mesh fabric is not considered an ornamental trim (sequin overlay) as described in the requirements in the CBTPA Special Access program." The commenter submits that the overlay component is an ornamental trim, the value of which does not exceed 25 percent of the cost of the components of the assembled garment. Our responses to the comments are addressed in the modification decisions as applicable.

As stated in the original notice, dated December 24, 2014, this modification covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N242661, NY N018963, and NY N249027, in accordance with the analysis set forth in Headquarters Ruling Letters (HQ) H252907 (Attachment A); HQ H259698 (Attachment B); and HQ H259699 (Attachment C). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the Customs Bulletin.

Dated: February 24, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H252907

February 24, 2015

OT:RR:CTF:VS H252907 CMR

CATEGORY: Classification

ROBERT STACK, ESQ.
TOMPKINS & DAVIDSON, LLP
5 HANOVER SQUARE
15TH FLOOR
NEW YORK, NY 10004

RE: Modification of New York Ruling Letter (NY) N242661, dated July 1, 2013; Eligibility for preferential tariff treatment; Subheading 9822.05.10; HTSUS; DR-CAFTA

DEAR MR. STACK:

It has come to our attention that an error was made in New York Ruling Letter (NY) N242661, dated July 1, 2013, issued to you on behalf of your client, Macy's Merchandising Group, Inc., regarding the eligibility of certain women's sweaters for preferential tariff treatment under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA). The ruling indicated that the sweaters may be eligible for preferential tariff treatment under subheading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS). This is incorrect.

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 modification was published on December 24, 2014, in the *Customs Bulletin*, Volume 48, No. 51. CBP received two comments in response to this notice. The comments are addressed below.

FACTS:

The garment at issue, style D9750AF13, was described NY N242661 as follows:

The submitted sample, Style D9750AF13, is a woman's "Live Love Dream™" label cut and sewn sweater that is constructed from 56% polyester, 41% rayon, and 3% spandex finely knit jersey fabric. The outer surface of the garment measures nine or fewer stitches per two centimeters in the direction the stitches were formed. The garment features long raglan sleeves with self-fabric cuffs, a round neckline with self-fabric edging, and a self-fabric banded bottom with a heart shaped heat seal. The garment extends to below the waist.

The garment was classified in subheading 6110.30.3020, HTSUS, as a women's sweater of man-made fibers.

The manufacturing operations to produce the garment were described as:

The polyester/rayon/spandex fabric, for the body of the garment, is manufactured in U.S. from non-originating yarns.

The polyester twill neck tape is produced in China or another non-participating country from non-originating yarns.

The polyester twill ribbon fabric, for the hanger loops, is manufactured in China or another non-participating country from non-originating yarns.

The sewing thread is manufactured in U.S. from U.S. yarns.

The fabrics are cut, sewn and assembled in Guatemala.

The heart shaped plastic applique is produced in China or another non-participating country.

Your letter, dated May 28, 2013, requesting a ruling indicates that the garment is to be exported directly from Guatemala to the United States. You also indicated that your client was contemplating substituting a solid white neckband fabric formed in Guatemala for the current striped neckband fabric of U.S. origin.

ISSUE:

Whether the garment at issue, style D9750AF13, qualifies for preferential tariff treatment under the DR-CAFTA by classification in subheading 9822.05.10, HTSUS.

LAW AND ANALYSIS:

The DR-CAFTA was signed by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. It was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the Act), Pub. L. 109-53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*).

GN 29, HTSUS, implements the DR-CAFTA. GN 29(b), subject to the provisions of subdivisions (c), (d), (m) and (n) of GN 29, sets forth the criteria for determining whether a good (other than agricultural goods provided for in GN 29(a)(ii)) is an originating good for purposes of the DR-CAFTA.

GN 29(d)(iv) states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good and for which the duty treatment set forth in subheading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of the good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement or from components knit-to-shape in the United States, or both. For purposes of this subdivision—

- (1) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and
- (2) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or

sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

In your request of May 28, 2013, you acknowledged that style D9750AF13 was not an originating good under the DR-CAFTA, but you believed the garment to be eligible for a partial duty allowance under subheading 9822.05.10, HTSUS. Subheading 9822.05.10, HTSUS, provides for:

Textile and apparel goods of chapters 61 through 63 described in U.S. Note 22 to this subchapter and entered pursuant to its provisions

Note 22, Subchapter XXII, Chapter 98 restates the language of GN 29(d)(iv).

Unlike some of the preferential rules set forth in GN 29(n) which look to the formation of fiber or yarn, subheading 9822.05.10, HTSUS, liberalizes this requirement and looks to the formation of the fabric of the textile or apparel good but requires that the good be from fabrics wholly formed in the United States. The provision requires that all fabric and thread used in a qualifying textile or apparel article be wholly formed in the U.S.

Similar language to that in subheading 9822.05.10, HTSUS, is found in subheading 9820.11.06, HTSUS, one of the provisions implementing the United States – Caribbean Basin Trade Partnership Act (CBTPA). The provision provides, in relevant part, for preferential tariff treatment to textile apparel articles sewn or otherwise assembled in beneficiary countries “with thread formed in the United States from fabrics wholly formed in the United States.” In interpreting this provision, CBP has held that no foreign fabric may be used in the production of apparel, unless it falls within the findings or trimmings provision set forth in the CBTPA. See HQ 966703, dated December 9, 2003, wherein CBP stated that reflective tape and a rear rectangular patch comprising a large surface area of a coverall were not findings or trimmings and if made of foreign fabric would disqualify the coveralls from eligibility for preferential tariff treatment under the CBTPA.

The construction of style D9750AF13 includes not only fabrics which are wholly formed in the United States, but fabrics which have been formed outside the United States - specifically, the polyester twill neckband tape fabric and the polyester twill ribbon hanger fabric, in addition to the possibility of the solid white neckband fabric. The language of Note 22, Subchapter XXII, Chapter 98, is the same language found in GN 29(d)(iv) and requires that the good be produced from fabrics wholly formed in the United States. There is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS. Therefore, style D9750AF13, produced as described herein of fabrics wholly formed in the U.S. and fabrics formed outside the U.S., cut and sewn in Guatemala with thread wholly formed in the U.S., does not qualify for preferential tariff treatment under subheading 9822.05.10, HTSUS.

Two commenters argue against the modification of the decisions subject to the Notice of Proposed Action. One commenter disagrees with CBP's view that language in this provision and in a similarly worded provision in the CBTPA, *i.e.*, subheading 9820.11.06, HTSUS, should be subject to the same interpretation. The objection is based not on the language of the provisions, but in the duty effect provided by the provisions. Subheading 9820.11.06,

HTSUS, provides for duty-free treatment, while subheading 9822.05.10, HTSUS, provides for only a partial duty exemption.

When we compare the relevant language of subheading 9820.11.06, HTSUS, and Note 22, subheading 9822.05.10, HTSUS, we find the following: 9820.11.06, HTSUS:

Apparel articles **sewn or otherwise assembled** in one or more such countries **with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more** such countries from yarns wholly formed in the United States, **or from components knit-to-shape in the United States** from yarns wholly formed in the United States, **or both**

Note 22, Subchapter XXII, Chapter 98, HTSUS:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good under general note 29 and for which the duty treatment set forth in heading 9822.05.10 is claimed . . . **provided** that the good is **sewn or otherwise assembled** in the territory of a party to the Agreement (other than the United States) **with thread wholly formed in the United States , from fabrics wholly formed in the United States and cut in one or more** parties to the Agreement **or from components knit-to-shape in the United States, or both.**

Emphasis added.

In order to receive the partial duty exemption provided for in subheading 9822.05.10, HTSUS, the imported good must meet the proviso set forth in Note 22, Subchapter XXII, Chapter 98. The commenter would have us interpret substantially similar language in the tariff differently based upon the differences in the duty consequence. However, the interpretation of a tariff provision is based upon the language of the provision, not the duty consequence of that provision as set forth in the tariff. The tariff is a statute which must be read as a whole. The same or substantially similar language should be interpreted in the same manner, unless specifically limited. See *Acme Venetian Blind & Window Shade Corp. v. United States*, 56 Cust. Ct. 563 (June 8, 1966) at 568 (“Words used in the same act in two different places are presumed to mean the same in both. *Schooler v. United States*, 231 F. 2d 560.”) See also, *Schooler v. United States*, 231 F. 2d 560, 563, wherein the court cited 82 C.J.C., Statutes, § 348 (1953):

‘In the absence of anything in the statute clearly indicating an intention to the contrary, where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout; and, where its meaning in one instance is clear, this meaning will be attached to it elsewhere

* * *

While 9820.11.06, HTSUS, relates to the CBTPA and 9822.05.10, HTSUS, relates to DR-CAFTA, there is nothing in the tariff indicating the substantially similar language should not be interpreted in the same manner. The differences between the two provisions is the duty assessment on the merchandise entered under the provisions.

The same commenter also argues against the modification of the decisions subject to the Notice of Proposed Action based on Congressional action to

make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement in Public Law 112-163, enacted on August 10, 2012. The commenter submits that as NY N018963, dated November 21, 2007, was issued prior to action by Congress to amend the tariff with regard to the DR-CAFTA textile rules of origin, Congress in effect ratified the existing CBP interpretation given to subheading 9822.05.10, HTSUS, in NY N018963.

As stated in *Autolog Corporation v Regan*, 731 F.2d 25, (D.C. Cir. 1984), at 32:

When an agency interpretation has been officially published and consistently followed, “Congress is presumed to be aware of [the] administrative * * * interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change[.]” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66, 72 L. Ed. 2d 182, 102 S. Ct. 1825 (1982).

In *Autolog Corporation*, *supra*, the court noted in discussing Customs’ rulings interpreting 46 U.S.C. § 289, that “Congress has acquiesced in Customs’ interpretation for almost a century and has not acted to change it during several revisions of the coastwise laws.” In this case, one ruling interpreting subheading 9822.05.10, HTSUS, was issued by CBP prior to the technical amendments contained in Public Law 112-163. We do not believe the existence of this single ruling is sufficient to conclude that Congress acquiesced to the decision therein simply because it did not address the application of subheading 9822.05.10, HTSUS, in legislation making technical amendments to the DR-CAFTA.

The second commenter only addresses one ruling, NY N249027, of the three rulings set forth in the proposed modification. However, because it addresses findings and trimmings, we address it here. The commenter believes CBP’s reason for viewing the garment at issue in NY N249027, style ST14398A, as not eligible for classification in subheading 9822.05.10, HTSUS, and thus not eligible for the partial duty exemption afforded merchandise classifiable therein, is a belief that “the Chinese overlay of sequin covered 100% polyester mesh fabric is not considered an ornamental trim (sequin overlay) as described in the requirements in the CBTPA Special Access program.” The commenter submits that the overlay component is an ornamental trim, the value of which does not exceed 25 percent of the cost of the components of the assembled garment.

CBP agrees with the commenter that the Chinese sequined fabric is ornamental trim as used in style ST14398A. Unlike subheading 9820.11.06, HTSUS, from the CBTPA which provides an allowance for foreign findings and trimmings, but requires the U.S. formed fabric be formed from U.S.-formed yarns; subheading 9822.05.10, allows for the U.S.-formed fabric to be formed in the U.S. from yarns of any origin. Differences are apparent in the provisions, including the lack of a *de minimis* allowance for classification in subheading 9822.05.10, HTSUS. As stated above, there is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS, even if that fabric is used as a finding or trimming.

HOLDING:

Style D9750AF13 is not eligible for classification in subheading 9822.05.10, HTSUS, and therefore, not eligible for preferential tariff treatment under the DR-CAFTA. NY N242661, dated July 1, 2013, is hereby modified in accordance with the analysis set forth above. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H259698

February 24, 2015

OT:RR:CTF:VS H259698 CMR

CATEGORY: Classification

Ms. MATILDE GUTIERREZ
VANITY FAIR BRANDS, LP
4600 W. MILITARY HIGHWAY
SUITE 700
McALLEN, TX 78503

RE: Modification of New York Ruling Letter (NY) N018963, dated November 21, 2007;
Eligibility for preferential tariff treatment; Subheading 9822.05.10;
HTSUS; DR-CAFTA

DEAR Ms. GUTIERREZ:

It has come to our attention that an error was made in New York Ruling Letter (NY) N018963, dated November 21, 2007, issued to you regarding the eligibility of an underwear panty for preferential treatment under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA) by classification in subheading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS). The ruling indicated that the panty may be eligible for preferential tariff treatment under subheading 9822.05.10, HTSUS. This is incorrect.

Pursuant to section 625©(1), Tariff Act of 1930 (19 U.S.C. §1625©(1)), as amended by section 623 of Title VI, notice of the proposed modification was published on December 24, 2014, in the *Customs Bulletin*, Volume 48, No. 51. CBP received two comments in response to this notice.

FACTS:

The panty and the manufacturing process were described in NY N018963 as follows:

Style #13196 is a woman's panty that will be cut and assembled in Honduras with man-made fabric (s# 00457) knit in the U.S. using Mexican nylon (76%) and U.S. spandex yarns (24%) and is classified under heading 6004. You state that the Mexican nylon yarns used in fabric #00457 is classified under subheading 5402.41.90. Fabric #00457 is the fabric that makes up the base fabric used in the construction of the panty. You state that the panty will be sewn using U.S. origin thread; you have not stated its fiber content, however, for the purposes of this ruling we will assume the threads are extruded or spun in the U.S. Other U.S. components include a gusset crotch lining that you state is made of U.S. cotton and classified under subheading 6005.22; for the purposes of this ruling we will assume the lining is wholly formed in the U.S. Foreign materials used in this panty include the leg elastic (VF22010) that originates in Mexico made of 74% Mexican nylon and 26% U.S. spandex and classified under subheading 5806.20, and waist elastic (VF20199) that originates in China made of 88% nylon and 12% lycra and is also classified under subheading 5806.20.

ISSUE:

Whether the underwear panty, Style #13196, qualifies for preferential tariff treatment under the DR-CAFTA by classification in subheading 9822.05.10, HTSUS.

LAW AND ANALYSIS:

The DR-CAFTA was signed by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. It was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the Act), Pub. L. 109-53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*).

GN 29, HTSUS, implements the DR-CAFTA. GN 29(b), subject to the provisions of subdivisions (c), (d), (m) and (n) of GN 29, sets forth the criteria for determining whether a good (other than agricultural goods provided for in GN 29(a)(ii)) is an originating good for purposes of the DR-CAFTA.

GN 29(d)(iv) states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good and for which the duty treatment set forth in subheading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of the good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement or from components knit-to-shape in the United States, or both. For purposes of this subdivision—

- (2) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and
- (3) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

Subheading 9822.05.10, HTSUS, provides for:

Textile and apparel goods of chapters 61 through 63 described in U.S. Note 22 to this subchapter and entered pursuant to its provisions

Note 22, Subchapter XXII, Chapter 98 restates the language of GN 29(d)(iv).

Unlike some of the preferential rules set forth in GN 29(n) which look to the formation of fiber or yarn, subheading 9822.05.10, HTSUS, liberalizes this requirement and looks to the formation of the fabric of the textile or apparel good but requires that the good be from fabrics wholly formed in the United

States. The provision requires that all fabric and thread used in a qualifying textile or apparel article be wholly formed in the U.S.

Similar language to that in subheading 9822.05.10, HTSUS, is found in subheading 9820.11.06, HTSUS, one of the provisions implementing the United States – Caribbean Basin Trade Partnership Act (CBTPA). The provision provides, in relevant part, for preferential tariff treatment to textile apparel articles sewn or otherwise assembled in beneficiary countries “with thread formed in the United States from fabrics wholly formed in the United States.” In interpreting this provision, CBP has held that no foreign fabric may be used in the production of apparel, unless it falls within the findings or trimmings provision set forth in the CBTPA. *See* HQ 966703, dated December 9, 2003, wherein CBP stated that reflective tape and a rear rectangular patch comprising a large surface area of a coverall were not findings or trimmings and if made of foreign fabric would disqualify the coveralls from eligibility for preferential tariff treatment under the CBTPA.

Style #13196 is constructed of fabrics wholly formed in the United States, China and Mexico, *i.e.*, the leg elastic fabric and the waist elastic fabric are both classified in subheading 5806.20, HTSUS, which provides for, among other things, narrow woven fabrics, other than woven pile or chenille fabrics, containing by weight 5 percent or more of elastomeric yarn or rubber thread. The language of Note 22, Subchapter XXII, Chapter 98, is the same language found in GN 29(d)(iv), and requires that the good be produced from fabrics wholly formed in the United States. There is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS. Therefore, the inclusion of Chinese and Mexican fabric in the construction of Style #13196 precludes the garment from qualifying for preferential tariff treatment under subheading 9822.05.10, HTSUS.

Two commenters argue against the modification of the decisions subject to the Notice of Proposed Action. One commenter disagrees with CBP’s view that language in this provision and in a similarly worded provision in the CBTPA, *i.e.*, subheading 9820.11.06, HTSUS, should be subject to the same interpretation. The objection is based not on the language of the provisions, but in the duty effect provided by the provisions. Subheading 9820.11.06, HTSUS, provides for duty-free treatment, while subheading 9822.05.10, HTSUS, provides for only a partial duty exemption.

When we compare the relevant language of subheading 9820.11.06, HTSUS, and Note 22, subheading 9822.05.10, HTSUS, we find the following: 9820.11.06, HTSUS:

Apparel articles **sewn or otherwise assembled** in one or more such countries **with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more** such countries from yarns wholly formed in the United States, **or from components knit-to-shape in the United States** from yarns wholly formed in the United States, **or both**

Note 22, Subchapter XXII, Chapter 98, HTSUS:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good under general note 29 and for which the duty treatment set forth in heading 9822.05.10 is claimed .

. . . **provided** that the good is **sewn or otherwise assembled** in the territory of a party to the Agreement (other than the United States) **with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more** parties to the Agreement **or from components knit-to-shape in the United States, or both.**

Emphasis added.

In order to receive the partial duty exemption provided for in subheading 9822.05.10, HTSUS, the imported good must meet the proviso set forth in Note 22, Subchapter XXII, Chapter 98. The commenter would have us interpret substantially similar language in the tariff differently based upon the differences in the duty consequence. However, the interpretation of a tariff provision is based upon the language of the provision, not the duty consequence of that provision as set forth in the tariff. The tariff is a statute which must be read as a whole. The same or substantially similar language should be interpreted in the same manner, unless specifically limited. See *Acme Venetian Blind & Window Shade Corp. v. United States*, 56 Cust. Ct. 563 (June 8, 1966) at 568 (“Words used in the same act in two different places are presumed to mean the same in both. *Schooler v. United States*, 231 F. 2d 560.”) See also, *Schooler v. United States*, 231 F. 2d 560, 563, wherein the court cited 82 C.J.C., Statutes, § 348 (1953):

‘In the absence of anything in the statute clearly indicating an intention to the contrary, where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout; and, where its meaning in one instance is clear, this meaning will be attached to it elsewhere

* * *.’

While 9820.11.06, HTSUS, relates to the CBTPA and 9822.05.10, HTSUS, relates to DR-CAFTA, there is nothing in the tariff indicating the substantially similar language should not be interpreted in the same manner. The differences between the two provisions is the duty assessment on the merchandise entered under the provisions.

The same commenter also argues against the modification of the decisions subject to the Notice of Proposed Action based on Congressional action to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement in Public Law 112–163, enacted on August 10, 2012. The commenter submits that as NY N018963, dated November 21, 2007, was issued prior to action by Congress to amend the tariff with regard to the DR-CAFTA textile rules of origin, Congress in effect ratified the existing CBP interpretation given to subheading 9822.05.10, HTSUS, in NY N018963.

As stated in *Autolog Corporation v Regan*, 731 F.2d 25, (D.C. Cir. 1984), at 32:

When an agency interpretation has been officially published and consistently followed, “Congress is presumed to be aware of [the] administrative * * * interpretation of a statute and to adopt that interpretation when it

re-enacts a statute without change[.]” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66, 72 L. Ed. 2d 182, 102 S. Ct. 1825 (1982).

In *Autolog Corporation, supra*, the court noted in discussing Customs’ rulings interpreting 46 U.S.C. § 289, that “Congress has acquiesced in Customs’ interpretation for almost a century and has not acted to change it during several revisions of the coastwise laws.” In this case, one ruling interpreting subheading 9822.05.10, HTSUS, was issued by CBP prior to the technical amendments contained in Public Law 112–163. We do not believe the existence of this single ruling is sufficient to conclude that Congress acquiesced to the decision therein simply because it did not address the application of subheading 9822.05.10, HTSUS, in legislation making technical amendments to the DR-CAFTA. There is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS. Accordingly, style #13196 is not eligible for classification in subheading 9822.05.10, HTSUS.

HOLDING:

Style #13196 is not eligible for classification in subheading 9822.05.10, HTSUS, and therefore, not eligible for preferential tariff treatment under the DR-CAFTA. N018963, dated November 21, 2007, is hereby modified in accordance with the analysis set forth above. In accordance with 19 U.S.C. § 1625©, this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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,

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H259699

February 24, 2015

OT:RR:CTF:VS H259699 CMR

CATEGORY: Classification

Ms. EMILIA MACIAS
JERRY LEIGH
7860 NELSON ROAD
VAN NUYS, CA 91402

RE: Modification of New York Ruling Letter (NY) N249027, dated January 21, 2014;

Eligibility for preferential tariff treatment; Subheading 9822.05.10; HTSUS; DR-CAFTA

DEAR Ms. MACIAS:

It has come to our attention that an error was made in New York Ruling Letter (NY) N249027, dated January 21, 2014, issued to you regarding the eligibility of a girl's short sleeve knit pullover for preferential tariff treatment under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA). The ruling indicated that the pullover may be eligible for preferential tariff treatment under subheading 9822.05.10, Harmonized Tariff Schedule of the United States (HTSUS). This is incorrect.

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 modification was published on December 24, 2014, in the *Customs Bulletin*, Volume 48, No. 51. CBP received two comments in response to this notice. The comments are addressed below.

FACTS:

The garment at issue, style ST14398, was described NY N249027 as:

. . . a girl's pullover with short cap sleeves constructed of 100% cotton knitted fabric. The item has a round rib knit neckline and a hemmed bottom. The pullover body has a prominent screen print design. The garment's waistband has an overlay of sequin covered 100% polyester mesh fabric.

The garment was classified in subheading 6110.20.2079, HTSUS, as a girl's knit pullover of cotton. Two manufacturing operations to produce the garment were described in the ruling as follows:

In the first scenario, which you refer to as style ST14398B, the cotton knitted fabric and the rib knit capping fabric are produced in the United States from U.S. yarns. The sewing thread is wholly formed and finished in Guatemala. The sequined fabric is made in China. In Guatemala, the fabrics are cut, sewn and assembled into the finished garment and a screen print is applied to the front panel. The garments are exported directly from Guatemala to the U.S.

In the second scenario, which you refer to as style ST14398A, the cotton knitted fabric and the rib knit capping fabric are produced in the United States from imported yarns of Korea and Pakistan. The sewing thread is wholly formed and finished in the United States. The sequined fabric is

made in China. In Guatemala, the fabrics are cut, sewn and assembled into the finished garment and a heat transfer print is applied to the front panel. The garments are exported directly from Guatemala to the U.S.

In your letter of December 30, 2013, you requested a ruling as to the eligibility of style ST14398B for preferential treatment under the DR-CAFTA as an originating good and the eligibility of ST14398A for preferential tariff treatment as a non-originating good classified in subheading 9822.05.10, HTSUS.

In NY N249027, style ST14398B was properly found to be an originating good under GN 29 qualifying for preferential tariff treatment under the DR-CAFTA. However, it was stated in NY N249027 that style ST14398A may be eligible for preferential tariff treatment under subheading 9822.05.10, HTSUS. This was incorrect for the reasons set forth below.

ISSUE:

Whether the garment at issue, style ST14398A, qualifies for preferential tariff treatment under the DR-CAFTA by classification in subheading 9822.05.10, HTSUS.

LAW AND ANALYSIS:

The DR-CAFTA was signed by the governments of Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, and the United States on August 5, 2004. It was approved by the U.S. Congress with the enactment on August 2, 2005, of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the Act), Pub. L. 109-53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*).

GN 29, HTSUS, implements the DR-CAFTA. GN 29(b), subject to the provisions of subdivisions (c), (d), (m) and (n) of GN 29, sets forth the criteria for determining whether a good (other than agricultural goods provided for in GN 29(a)(ii)) is an originating good for purposes of the DR-CAFTA.

GN 29(d)(iv) states:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good and for which the duty treatment set forth in subheading 9822.05.10 is claimed, the rate of duty set forth in the general subcolumn of rate of duty column 1 shall apply only on the value of the assembled good minus the value of fabrics formed in the United States, components knit-to-shape in the United States and any other materials of U.S. origin used in the production of the good, provided that the good is sewn or otherwise assembled in the territory of a party to the Agreement (other than the United States) with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more parties to the Agreement or from components knit-to-shape in the United States, or both. For purposes of this subdivision—

- (1) a fabric is wholly formed in the United States if all the production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling or other process, and ending with a fabric ready for cutting or assembly without further processing, took place in the United States; and

- (2) a thread is wholly formed in the United States if all the production processes, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into thread, or both, and ending with thread, took place in the United States.

Subheading 9822.05.10, HTSUS, provides for:

Textile and apparel goods of chapters 61 through 63 described in U.S. Note 22 to this subchapter and entered pursuant to its provisions

Note 22, Subchapter XXII, Chapter 98 restates the language of GN 29(d)(iv).

Unlike some of the preferential rules set forth in GN 29(n) which look to the formation of fiber or yarn, subheading 9822.05.10, HTSUS, liberalizes this requirement and looks to the formation of the fabric of the textile or apparel good but requires that the good be from fabrics wholly formed in the United States. The provision requires that all fabric and thread used in a qualifying textile or apparel article be wholly formed in the U.S.

Similar language to that in subheading 9822.05.10, HTSUS, is found in subheading 9820.11.06, HTSUS, one of the provisions implementing the United States – Caribbean Basin Trade Partnership Act (CBTPA). The provision provides, in relevant part, for preferential tariff treatment to textile apparel articles sewn or otherwise assembled in beneficiary countries “with thread formed in the United States from fabrics wholly formed in the United States.” In interpreting this provision, CBP has held that no foreign fabric may be used in the production of apparel, unless it falls within the findings or trimmings provision set forth in the CBTPA. *See* HQ 966703, dated December 9, 2003, wherein CBP stated that reflective tape and a rear rectangular patch comprising a large surface area of a coverall were not findings or trimmings and if made of foreign fabric would disqualify the coveralls from eligibility for preferential tariff treatment under the CBTPA.

Style ST14398A is constructed of fabrics which are wholly formed in the United States and a fabric which is made in China, *i.e.*, the sequined polyester mesh fabric waistband overlay. The language of Note 22, Subchapter XXII, Chapter 98, which is the same language found in GN 29(d)(iv) requires that the good be produced from fabrics wholly formed in the United States. There is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS. Therefore, the inclusion of Chinese made fabric in the construction of style ST14398A precludes the garment from qualifying for preferential tariff treatment under subheading 9822.05.10, HTSUS.

Two commenters argue against the modification of the decisions subject to the Notice of Proposed Action. One commenter disagrees with CBP’s view that language in this provision and in a similarly worded provision in the CBTPA, *i.e.*, subheading 9820.11.06, HTSUS, should be subject to the same interpretation. The objection is based not on the language of the provisions, but in the duty effect provided by the provisions. Subheading 9820.11.06, HTSUS, provides for duty-free treatment, while subheading 9822.05.10, HTSUS, provides for only a partial duty exemption.

When we compare the relevant language of subheading 9820.11.06, HTSUS, and Note 22, subheading 9822.05.10, HTSUS, we find the following:
9820.11.06, HTSUS:

Apparel articles **sewn or otherwise assembled** in one or more such countries **with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more** such countries from yarns wholly formed in the United States, **or from components knit-to-shape in the United States** from yarns wholly formed in the United States, **or both**

Note 22, Subchapter XXII, Chapter 98, HTSUS:

For a textile or apparel good provided for in chapters 61 through 63 of the tariff schedule that is not an originating good under general note 29 and for which the duty treatment set forth in heading 9822.05.10 is claimed . . . **provided** that the good is **sewn or otherwise assembled** in the territory of a party to the Agreement (other than the United States) **with thread wholly formed in the United States, from fabrics wholly formed in the United States and cut in one or more** parties to the Agreement **or from components knit-to-shape in the United States, or both**.

Emphasis added.

In order to receive the partial duty exemption provided for in subheading 9822.05.10, HTSUS, the imported good must meet the proviso set forth in Note 22, Subchapter XXII, Chapter 98. The commenter would have us interpret substantially similar language in the tariff differently based upon the differences in the duty consequence. However, the interpretation of a tariff provision is based upon the language of the provision, not the duty consequence of that provision as set forth in the tariff. The tariff is a statute which must be read as a whole. The same or substantially similar language should be interpreted in the same manner, unless specifically limited. See *Acme Venetian Blind & Window Shade Corp. v. United States*, 56 Cust. Ct. 563 (June 8, 1966) at 568 (“Words used in the same act in two different places are presumed to mean the same in both. *Schooler v. United States*, 231 F. 2d 560.”) See also, *Schooler v. United States*, 231 F. 2d 560, 563, wherein the court cited 82 C.J.C., Statutes, § 348 (1953):

‘In the absence of anything in the statute clearly indicating an intention to the contrary, where the same word or phrase is used in different parts of a statute, it will be presumed to be used in the same sense throughout; and, where its meaning in one instance is clear, this meaning will be attached to it elsewhere

* * *

While 9820.11.06, HTSUS, relates to the CBTPA and 9822.05.10, HTSUS, relates to DR-CAFTA, there is nothing in the tariff indicating the substantially similar language should not be interpreted in the same manner. The differences between the two provisions is the duty assessment on the merchandise entered under the provisions.

The same commenter also argues against the modification of the decisions subject to the Notice of Proposed Action based on Congressional action to make technical corrections to the Harmonized Tariff Schedule of the United States relating to the textile and apparel rules of origin for the Dominican Republic-Central America-United States Free Trade Agreement in Public Law 112-163, enacted on August 10, 2012. The commenter submits that as NY N0189613 dated November 21, 2007, was issued prior to action by Congress to amend the tariff with regard to the DR-CAFTA textile rules of origin,

Congress in effect ratified the existing CBP interpretation given to subheading 9822.05.10, HTSUS, in NY N018963.

As stated in *Autolog Corporation v Regan*, 731 F.2d 25, (D.C. Cir. 1984), at 32:

When an agency interpretation has been officially published and consistently followed, “Congress is presumed to be aware of [the] administrative * * * interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change[.]” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66, 72 L. Ed. 2d 182, 102 S. Ct. 1825 (1982).

In *Autolog Corporation*, *supra*, the court noted in discussing Customs’ rulings interpreting 46 U.S.C. § 289, that “Congress has acquiesced in Customs’ interpretation for almost a century and has not acted to change it during several revisions of the coastwise laws.” In this case, one ruling interpreting subheading 9822.05.10, HTSUS, was issued by CBP prior to the technical amendments contained in Public Law 112–163. We do not believe the existence of this single ruling is sufficient to conclude that Congress acquiesced to the decision therein simply because it did not address the application of subheading 9822.05.10, HTSUS, in legislation making technical amendments to the DR-CAFTA.

The second commenter misunderstands CBP’s reason for modifying NY N249027. The commenter believes CBP’s reason for viewing the garment at issue therein, style ST14398A, as not eligible for classification in subheading 9822.05.10, HTSUS, and thus not eligible for the partial duty exemption afforded merchandise classifiable therein, is a belief that “the Chinese overlay of sequin covered 100% polyester mesh fabric is not considered an ornamental trim (sequin overlay) as described in the requirements in the CBTPA Special Access program.” The commenter submits that the overlay component is an ornamental trim, the value of which does not exceed 25 percent of the cost of the components of the assembled garment.

CBP agrees with the commenter that the Chinese sequined fabric is ornamental trim as used in style ST14398A. Unlike subheading 9820.11.06, HTSUS, from the CBTPA which provides an allowance for foreign findings and trimmings, but requires the U.S. formed fabric be formed from U.S.-formed yarns; subheading 9822.05.10, allows for the U.S.-formed fabric to be formed in the U.S. from yarns of any origin. Differences are apparent in the provisions, including the lack of a *de minimis* allowance for classification in subheading 9822.05.10, HTSUS. As stated above, there is no allowance, or *de minimis*, for fabrics formed outside the U.S. to be used in the production of garments qualifying for classification in subheading 9822.05.10, HTSUS, even if that fabric is used as a finding or trimming.

HOLDING:

Style ST14398A is not eligible for classification in subheading 9822.05.10, HTSUS, and therefore, not eligible for preferential tariff treatment under the DR-CAFTA. N249027, dated January 21, 2014, is hereby modified in accordance with the analysis set forth above. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division



GENERAL NOTICE

MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE ELIGIBILITY OF CERTAIN GARMENTS FOR PREFERENTIAL TREATMENT UNDER THE DR-CAFTA, PERU TRADE PROMOTION ACT AND COLOMBIA TRADE PROMOTION ACT

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of modification of three ruling letters and revocation of any treatment relating to the eligibility of certain garments for preferential tariff treatment under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA), the United States – Peru Trade Promotion Agreement (PETPA) or the United States – Colombia Trade Promotion Agreement (CTPA).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying three ruling letters, New York Ruling Letter (NY) N251778, dated April 16, 2014; NY N242940, dated July 10, 2013; and NY N248184, dated December 13, 2013; relating to the eligibility of certain garments for preferential tariff treatment under the DR-CAFTA, PETPA, or CTPA. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Volume 48, Number 50, dated December 17, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 18, 2015.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, (202) 325-0046.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

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 proposing to modify three ruling letters pertaining to the eligibility of certain garments to preferential tariff treatment under the DR-CAFTA, PETPA, or CTPA, that is, New York Ruling Letter (NY) N251778, dated April 16, 2014; NY N242940, dated July 10, 2013; and NY N248184, dated December 13, 2013; was published in the *Customs Bulletin*, Volume 48, Number 50, dated December 17, 2014. No comments were received in response to the notice. As stated in the proposed notice, this modification covers any rulings on this merchandise which may exist, but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially

identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N251778, dated April 16, 2014; NY N242940, dated July 10, 2013; and NY N248184, dated December 13, 2013; in accordance with the analysis set forth in Headquarters Ruling Letters (HQ) H256780 (Attachment A); HQ H255492 (Attachment B); and HQ H259359 (Attachment C). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the *Customs Bulletin*.

Dated: February 24, 2015

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachments

[ATTACHMENT A]

HQ H256780

February 19, 2015

OT:RR:CTF:VS H256780 CMR

CATEGORY: Classification

Ms. KAY MORRELL
CUSTOMS MANAGER
JCPENNEY PURCHASING CORPORATION
6501 LEGACY DRIVE, MS 2216
PLANO, TX 75024

RE: Request for Reconsideration of New York Ruling Letter (NY) N251778, dated April 16, 2014; eligibility of garments for preferential treatment under the DR-CAFTA

DEAR Ms. MORRELL:

This is in response to your request of July 23, 2014, wherein you requested this office reconsider the decision in New York Ruling Letter (NY) N251778, dated April 16, 2014, denying preferential tariff treatment to a garment, item PPK 101673, produced under two different scenarios through processing in the U.S. or beneficiary countries under the Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA) or the United States – Peru Trade Promotion Agreement (PETPA). We have considered your request and agree the ruling should be modified with regard to the garment's eligibility for preferential tariff treatment under the DR-CAFTA and the PETPA.

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 modification was published on December 17, 2014, in the *Customs Bulletin*, Volume 48, No. 50. CBP received no comments in response to this notice.

FACTS:

The garment at issue is, item PPK 101673 is a woman's pullover garment constructed of 100% rayon jersey knit fabric with a woven polyester dobby insert in the center back extending from the neckline to the garment bottom. The knit fabric is constructed with more than nine stitches per two centimeters in the direction in which the stitches were formed. The garment features a capped round neckline, short capped sleeves¹, and a hemmed garment bottom. The garment extends from the shoulders to below the waist.

The garment was classified in NY N251778 in subheading 6110.30.3059, Harmonized Tariff Schedule of the United States (HTSUS), which provides for Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other: Women's or girls': Other.

In your March 20, 2014, request for a ruling you described the two scenarios for manufacturing the garment as follows:

Option 1: Yarn, knit and woven body fabrics and sewing thread will be formed and finished in the U.S. or a beneficiary CAFTA country. Cut and sew will occur in Guatemala. Fibers for the rayon yarn and for the polyester yarn will be formed and/or finished in India or Asia.

¹ We note you described the garment as sleeveless in your ruling request of March 20, 2014.

Labels will be made and printed in China with ink from unknown sources.

Option 2: Yarn, knit and woven body fabrics and sewing thread will be formed and finished in the U.S. or Peru. Cut and sew will occur in Peru. Fibers for the rayon yarn and for the polyester yarn will be formed and/or finished in India or Asia.

Labels will be formed and finished in Peru or the U.S. and printed in the U.S. or Peru with ink from unknown sources.

The garments will be imported directly to the U.S. from the country of production, *i.e.*, Guatemala or Peru.

NY N251778 determined that the garment did not qualify for preferential treatment under the DR-CAFTA nor the PETPA. That determination was in error. Therefore, we are modifying NY N251778 regarding the eligibility of item PPK 101673 for preferential treatment under the DR-CAFTA and the PETPA.

ISSUE:

Whether item PPK 101673 qualifies for preferential tariff treatment under the DR-CAFTA and the PETPA.

LAW AND ANALYSIS:

The Dominican Republic – Central America – United States Free Trade Agreement (DR-CAFTA) and the United States – Peru Trade Promotion Agreement (PETPA) were approved by the U.S. Congress and enacted into law pursuant to the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act, Public Law 109–53, 119 Stat. 462 (19 U.S.C. 4001 et seq.) and the U.S.-Peru Trade Promotion Agreement Implementation Act, Public Law 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note). These laws are implemented in the Harmonized Tariff Schedule of the United States at General Notes (GNs) 29 and 32, respectively.

GN 29(b) provides in relevant part:

- (b) For the purposes of this note, subject to the provisions of subdivisions (c), (d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if –

* * *

- (ii) the good was produced entirely in the territory of one or more of the parties to the Agreement, and –
 (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

* * *

and the good satisfies all other applicable requirements of this note. . . .

GN 32(b) provides in relevant part:

- (b) For the purposes of this note, subject to the provisions of subdivisions (c),

(d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if –

* * *

- (ii) the good was produced entirely in the territory of Peru, the United States, or both, and –
 - (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

* * *

and the good satisfies all other applicable requirements of this note.

As the garment at issue contains non-originating material, it is appropriate to look to GN 29(b)(ii)(A) and GN 32(b)(ii)(A). As the garment is classified in subheading 6110.30, HTSUS, the applicable tariff shift rules in each GN are: GN 29(n) –

25. A change to headings 6105 through 6111 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties.

GN 32(n) –

20. A change to headings 6105 through 6111 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

Additionally, Chapter Rule 4, Chapter 61, GN 29(n) and Chapter Rule 4, Chapter 61, GN 32(n), each require sewing thread of heading 5201 or 5401 contained in a good of the chapter to be both formed and finished in the territory of a Party or Parties to the Agreement for a good of the chapter to be considered an originating good.

The fibers in both scenarios will be formed and/or finished in India or Asia. As indicated in NY N251778, if not carded, combed or otherwise processed for spinning, the rayon staple fibers are classified under heading 5504 and the polyester staple fibers are classified under heading 5503. If carded, combed or otherwise processed for spinning, the rayon staple fibers are classified under heading 5507 and the polyester staple fibers are classified under heading 5506. The sewing thread is classified under heading 5401.

A review of the tariff shift rules cited above reveals that a change to heading 6110 from the non-originating rayon and polyester fibers, whether classifiable in headings 5503, 5504, 5506 or 5507, is allowed. Therefore, the garment meets the tariff shift rules for both GN 29 and GN 32. In addition,

as the sewing thread was formed and finished in the U.S. or a beneficiary country, in option 1, and the U.S. or Peru, in option 2, Chapter Note 4, Chapter 61 in both GNs is met.

HOLDING:

The pullover garment at issue, item PPK 101673, qualifies for preferential tariff treatment under the DR-CAFTA and the PETPA. NY N251778, dated April 16, 2014, is hereby modified in accordance with the analysis set forth above. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are 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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT B]

HQ H255492

February 19, 2015

OT:RR:CTF:VS H255492 CMR

CATEGORY: Classification

MR. RICKY VILLENA
NEUTRALOGISTICS CHB
8578 NW 23RD STREET
MIAMI, FL 33122

RE: Reconsideration of New York Ruling Letter (NY) N242940, dated July 10, 2013; eligibility of garments for preferential treatment under the PETPA

DEAR MR. VILLENA:

It has come to our attention that an error was made in New York Ruling Letter (NY) N242940, dated July 10, 2013, issued to you on behalf of your client, Peace Love World, regarding the eligibility of three garments for preferential tariff treatment under the United States – Peru Trade Promotion Agreement (PETPA). The classifications provided in the ruling letter are correct. However, we are modifying NY N242940 as to the determination of eligibility under the PETPA.

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 modification was published on December 17, 2014, in the *Customs Bulletin*, Volume 48, No. 50. CBP received no comments in response to this notice.

FACTS:

The garments are described in the ruling as follows:

The submitted sample, Style LS2013, Peace, is a woman's top constructed of 52.2% cotton and 47.8% modal rayon knit fabric. The sleeveless garment features a deep and revealing V-shaped front; short hemmed sleeves; screen print designs on the front, back and right sleeve; embroidered designs on the lower left side of the front panel, lower right side of the back panel and both sleeves; an applique on the upper back panel; and a hemmed bottom.

The submitted sample, Style LS2113, Happy, is a woman's cut and sewn pullover that is constructed from 52.2% cotton and 47.8% modal rayon jersey knit fabric. The outer surface of the garment measures more than nine stitches per two centimeters in the direction that the stitches were formed. The garment features a rib knit crew neck; short hemmed sleeves; a screen print design on the front panel with contrast color embroidery thread; a screen print of the words "i am happiness" on the lower front panel; a screen print of the words "Love 2 Love" with contrast color embroidery thread on one sleeve component; a heart design embroidered on one sleeve component; a contrast color embroidered design on the lower front panel; an applique on the upper rear panel; and a straight hemmed flared garment bottom. The garment extends to below the waist.

The submitted sample, Style LS1012, Happy, is a woman's tank top constructed of 52.2% cotton and 47.8% modal rayon knit fabric. The sleeveless garment features a U-shaped front; a racer style back neckline; 2 inch wide shoulder straps; shoulder straps and armholes finished with

textile trim; screen printing on front and rear panels; embroidered designs on the front and rear panels; an applique on the upper rear panel; and a hemmed bottom.

In NY N242940, Style LS2013 was classified as a women's top under the provision for women's knitted or crocheted other garments of cotton, *i.e.*, subheading 6114.20.0010, Harmonized Tariff Schedule of the United States (HTSUS). Style LS2113 was classified as a women's cotton knitted pullover in subheading 6110.20.2079, HTSUS; and, Style LS1012 was classified as a women's cotton knitted tank top in subheading 6109.10.0060, HTSUS.

The ruling describes the manufacturing process for the garments as:

The fabric is knitted in Peru from yarn spun in Peru. The fabric is cut, sewn and assembled in Peru.

The sewing thread is made in Peru from Peruvian fibers and yarns.

The appliques are produced in Peru from U.S. fibers and yarns. The embroidery is done in Peru using U.S. fibers and yarns.

The screen printing is done in Peru using U.S. ink.

The goods are imported directly into the U.S. from Peru.

In your response of May 21, 2103 to our New York office's request for information, you indicate that the rayon fiber used in the production of the garments is staple rayon fiber from Australia.

ISSUE:

Whether the subject garments, manufactured as described above, qualify for preferential tariff treatment under the PETPA.

LAW AND ANALYSIS:

The U.S.-Peru Trade Promotion Agreement Implementation Act, Public Law 110-138, 121 Stat. 1455 (19 U.S.C. 3805 note) is implemented in the Harmonized Tariff Schedule of the United States at General Note (GN) 32.

GN 32(b) provides in relevant part:

(b) For the purposes of this note, subject to the provisions of subdivisions (c),

(d), (m) and (n) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good under the terms of this note if –

* * *

(ii) the good was produced entirely in the territory of Peru, the United States, or both, and –

(A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (n) of this note; or

* * *

and the good satisfies all other applicable requirements of this note. . . .

As the garments at issue contain non-originating material, it is appropriate to look to GN 32(b)(ii)(A). As the garments are classified in headings 6109, 6110 and 6114, HTSUS, the applicable tariff shift rules in GN 32 are:

GN 32(n) –

20. A change to headings 6105 through 6111 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

* * *

24. A change to headings 6113 through 6117 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, 5401 through 5402, subheading 5403.20, 5403.33 through 5403.39, 5403.42 through 5403.49, headings 5404 through 5408, 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both and sewn or otherwise assembled in the territory of Peru, the United States, or both.

Additionally, Chapter Rule 4, Chapter 61, GN 32(n), requires sewing thread of heading 5201 or 5401 contained in a good of the chapter to be both formed and finished in the territory of Peru, the United States, or both, for a good of the chapter to be considered an originating good.

The rayon staple fibers are classifiable as either staple fibers of heading 5504, HTSUS, if not carded, combed or otherwise processed for spinning, or of heading 5507, HTSUS, if carded, combed or otherwise processed for spinning.

A review of the tariff shift rules cited above reveals that a change to headings 6109, 6110 or 6114 from the non-originating rayon fibers, whether classifiable in headings 5504 or 5507, is allowed. Therefore, the garments meet the applicable tariff shift rules set forth in GN 32(n). In addition, as the sewing thread was formed and finished in Peru, Chapter Note 4, Chapter 61 is met.

HOLDING:

The garments at issue, Styles LS2013, LS2113 and LS1012 qualify for preferential tariff treatment under the PETPA. NY N242940, dated July 10, 2013, is hereby modified in accordance with the analysis set forth above. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are 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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

[ATTACHMENT C]

HQ H259359

February 19, 2015

OT:RR:CTF:VS H259359 CMR

CATEGORY: Classification

MR. RICKY VILLENA
NEUTRALOGISTICS CHB
8578 NW 23RD STREET
MIAMI, FL 33122

RE: Reconsideration of New York Ruling Letter (NY) N248184, dated December 13, 2013; eligibility of garments for preferential treatment under the CTPA

DEAR MR. VILLENA:

It has come to our attention that an error was made in New York Ruling Letter (NY) N248184, dated December 13, 2013, issued to you on behalf of your client, Top Secret Society, regarding the eligibility of four garments for preferential tariff treatment under the United States – Colombia Trade Promotion Agreement (CTPA). The classifications provided in the ruling letter are correct. However, we are modifying NY N248184 as to the determination of eligibility under the CTPA.

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 modification was published on December 17, 2014, in the *Customs Bulletin*, Volume 48, No. 50. CBP received no comments in response to this notice.

FACTS:

The garments are described in the ruling as follows:

Style 0113 is a woman's bralette constructed of two-ply 90% polyamide and 10% elastane knit fabric. The bralette features elasticized shoulder straps, elasticized neck and arm openings, and an elasticized bottom band.

Style 0213 is a woman's strapless bra constructed of two-ply 90% polyamide and 10% elastane knit fabric. The bra features elasticized top and bottom bands.

Style 1313 is a woman's strapless bra constructed with an outer ply of 87% polyamide and 13% elastane lace-like knit fabric and an inner ply of 85% polyamide and 15% elastane knit fabric. The garment features elasticized top and bottom bands.

Style 2113 is a woman's bralette constructed of an outer ply of 87% polyamide and 13% elastane lace-like knit fabric and an inner ply of 85% polyamide and 15% elastane knit fabric. The bralette features a V-neckline, elasticized shoulder straps, elasticized neck and arm openings, and an elasticized bottom band.

In NY N248184, all four garments were classified in subheading 6121.10.9020, Harmonized Tariff Schedule of the United States (HTSUS), which provides for brassieres of man-made fibers, not containing lace, net or embroidery, and not containing 70 percent or more by weight of silk or silk waste.

The ruling describes the manufacturing process for the garments as:

All fabric is manufactured in Colombia. All fabric is cut, sewn and assembled in Colombia.

The sewing thread is produced in Colombia.

The heat transfer is produced in Colombia.

The goods are imported directly into the U.S. from Colombia

ISSUE:

Whether the subject garments, manufactured as described above, qualify for preferential tariff treatment under the CTPA.

LAW AND ANALYSIS:

The U.S.- Colombia Trade Promotion Agreement Implementation Act, Public Law 112-42, 125 Stat. 462, is implemented in the Harmonized Tariff Schedule of the United States at General Note (GN) 34.

GN 34(b) provides in relevant part:

- (b) For the purposes of this note, subject to the provisions of subdivisions (c), (d), (n) and (o) thereof, a good imported into the customs territory of the United States is eligible for treatment as an originating good of Colombia or of the United States under the terms of this note if—

* * *

- (ii) the good is produced entirely in the territory of Colombia or of the United States, or both, and--
- (A) each of the nonoriginating materials used in the production of the good undergoes an applicable change in tariff classification specified in subdivision (o) of this note; or
- (B) the good otherwise satisfies any applicable regional value-content or other requirements set forth in such subdivision (o); and

satisfies all other applicable requirements of this note and of applicable regulations; or

For the purposes of subdivision (b)(ii)(A), the term “used” means utilized or consumed in the production of the goods.

The ruling indicates that all fabric is manufactured in Colombia and that the fabrics contain yarns produced in Mexico. Therefore, as the garments at issue contain non-originating material, it is appropriate to look to GN 34(b)(ii)(A). As the garments are classified in subheading 6112.10.9020, HTSUS, the applicable tariff shift rule in GN 34 is:

GN 34(o) –

34. A change to subheading 6212.10 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Colombia or of the United States, or both.

Additionally, Chapter Rule 4, Chapter 62, GN 34(o), requires sewing thread of heading 5201 or 5401 contained in a good of the chapter to be both formed and finished in the territory of Colombia, the United States, or both, for a good of the chapter to be considered an originating good.

A review of the tariff shift rule cited above reveals that the production of the goods from fabric which is cut and assembled into the garments meets the requirements of the tariff shift rule. In addition, as the sewing thread was produced in Colombia, *i.e.*, formed and finished there, Chapter Note 4, Chapter 62 is met.

HOLDING:

The garments at issue, Styles 0113, 0213, 1313, and 2113 qualify for preferential tariff treatment under the CTPA. NY N248184, dated December 13, 2013, is hereby modified in accordance with the analysis set forth above. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

A copy of this ruling letter should be attached to the entry documents filed at the time the goods are 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,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

