information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 50, No. 20, on May 18, 2016, proposing to modify one ruling letter pertaining to the country of origin for marking purposes of orthodontic brackets. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), 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 comment 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 notice.

In NY B89079, dated September 26, 1997, CBP determined that the country of origin of the subject orthodontic brackets for marking purposes is Mexico. CBP has reviewed NY B89079 and has determined the ruling letter to be in error. It is now CBP's position that the country of origin for *marking purposes* is the United States (emphasis added). For CBP *duty purposes*, the country of origin of the subject orthodontic brackets is Mexico (emphasis added).

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY B89079 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H274096, set forth as an attachment to this notice. 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 ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: January 26, 2018

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H274096
January 26, 2018
CLA-2 OT:RR:CTF:TCM H274096 TSM
CATEGORY: Classification; Marking
TARIFF NO: 9021.19.8500; 9802.00.50

MR. DAVID M. MURPHY
GRUNFELD, DESIDEIRO, LEBOWITZ & SILVERMAN LLP
399 PARK AVENUE 25TH FLOOR
NEW YORK, NY 10022–4877

RE: Modification of NY B89079; Tariff classification, country of origin marking and status under the NAFTA of orthodontic brackets from Mexico; Article 509; NAFTA Marking Rules (Final).

DEAR MR. MURPHY:

In NY B89079, dated September 26, 1997, the National Commodity Specialist Division of U.S. Customs and Border Protection ("CBP") responded to your ruling request on behalf of Ormco Corporation, on the status of orthodontic brackets from Mexico under the North American Free Trade Agreement ("NAFTA"). We have reexamined NY B89079 and have determined that it needs to be modified with respect to the country of origin marking determination. The classification of the orthodontic brackets is not at issue. For the reasons set forth below we hereby modify NY B89079.

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 50, No. 20, on May 18, 2016, proposing to modify NY B89079 and revoke any treatment accorded to substantially identical transactions. One comment supporting the proposed action was received on June 17, 2016.

FACTS:

NY B89079, issued to Ormco Corporation on September 26, 1997, describes the subject merchandise as follows:

> The articles to be imported are orthodontic brackets for use as parts of orthodontic braces. You state that the brackets are produced by a process in which acrylic is poured over the wire base and that each bracket is designed for a specific tooth. The brackets are manufactured in the U.S. and sent to Mexico to be color coded with a variety of colors. Each color designates a specific tooth for which the bracket is designed. The color coded brackets are returned to the U.S. in unmarked tubular containers and repacked in small plastic boxes for sale to the ultimate purchaser.
>
> With respect to the country of origin marking, NY B89079 concludes as follows:
>
> We agree that the country of origin marking of the finished brackets is controlled by 19 C.F.R. Section 102.19(b) which states the following:
>
> If, under any other provision of this part, the country of origin of a good which is originating within the meaning of Section 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in

value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

For marking purposes therefore the country of origin of the color coded brackets is Mexico. Since your client plans to repackage the brackets after importation, the certification procedure of 19 C.F.R. Section 134.26 will have to be followed. You did not furnish a sample of the repackaged brackets destined for sale in the U.S., we therefore cannot state if the marking your client intends to use will be in compliance with the Regulations.

We believe that the country of origin marking determination is incorrect.

ISSUE:

What is the country of origin for marking purposes of the orthodontic brackets under consideration?

LAW AND ANALYSIS:

Article 401 of the NAFTA, is incorporated into General Note 12, HTSUS. General Note 12(b)(iii) provides in pertinent part that:

12. North American Free Trade Agreement.

(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—

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

In NY B89079, CBP concluded:

The orthodontic brackets, being made entirely in the territory of the United States and Mexico using materials which themselves were originating, will satisfy the requirements of HTSUSA General Note 12(b)(iii). The merchandise will therefore be entitled to a free rate of duty under the NAFTA upon compliance with all applicable laws, regulations and agreements.

NY B89079 found that the country of origin marking of the finished brackets was controlled by 19 CFR 102.19(b), and applied the NAFTA preference override set forth therein, as required by General Note 12(a)(ii), HTSUS, which requires an origin determination to be made under the NAFTA marking rules of Mexico for a good to be eligible for NAFTA duty preference:

(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 .... 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....

We agree that the NAFTA Preference Override set forth in 19 CFR 102.19 is applicable to the subject merchandise. Specifically, 19 CFR 102.19(b) states:

> (b) If, under any other provision of this part, the country of origin of a good which is originating ..... is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

Therefore, we find that the orthodontic brackets are an originating good under NAFTA and because they were returned to the U.S. after having been advanced in value or improved in condition in Mexico, the country of origin of the orthodontic brackets for CBP *duty purposes* is Mexico, pursuant to 19 CFR 102.19(b) (emphasis added). Accordingly, the "MX" NAFTA rate will be applicable to the orthodontic brackets. However, the country of origin for CBP *marking purposes* is the U.S. (emphasis added) and the brackets are not subject to the repackaging certification procedures of 19 C.F.R. § 134.26.

HOLDING:

For country of origin marking purposes, the country of origin of the orthodontic brackets manufactured in the U.S. and exported to Mexico for color coding operations prior to importation into the United States is the U.S. Therefore, the imported orthodontic brackets are not subject to the marking requirements of 19 U.S.C. 1304.

The orthodontic brackets of U.S. origin which undergo additional processing in Mexico prior to importation into the U.S. will be considered of Mexican origin for purposes of CBP duty pursuant to 19 CFR 102.19(b), inasmuch as the orthodontic brackets qualify as an originating good pursuant to General Note 12, HTSUS, and may be assessed duties at the "MX" NAFTA rate.

EFFECT ON OTHER RULINGS:

NY B89079, dated September 26, 1997, is MODIFIED.

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

Sincerely,

IEVA K. O'ROURKE
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN COMMEMORATIVE GOLD ROUNDS

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

ACTION: Notice of revocation of two ruling letters and of revocation of treatment relating to the tariff classification of certain commemorative gold rounds.

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 revoking two ruling letters concerning tariff classification of certain commemorative gold rounds under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 50, No. 24, on June 15, 2016. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 9, 2018.

FOR FURTHER INFORMATION CONTACT: Lindsay Heebner, Chemicals, Petroleum, Metals, and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0266.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public 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 to 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 19 U.S.C. §1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 50, No. 24, on June 15, 2016, proposing to revoke two ruling letters pertaining to the tariff classification of certain commemorative gold rounds. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. §1625(c)(2), 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 comment 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 notice.

In New York Ruling Letter ("NY") NY N260757, dated February 2, 2015, CBP classified certain commemorative gold rounds in heading 7115, HTSUS, specifically in subheading 7115.90.30, HTSUS, which provides for "Other articles of precious metal or of metal clad with precious metal: Other: Other: Of gold, including metal clad with gold."

Similarly, in NY N260343, dated January 16, 2015, CBP classified a gold round from Switzerland in subheading 7115.90.30, HTSUS. CBP has reviewed NY N260757 and NY 260343 and has determined the ruling letters to be in error. It is now CBP's position that the commemorative gold rounds are properly classified, in heading 7114, HTSUS, specifically in subheading 7114.19.00, HTSUS, which provides for "Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal: Of other precious metal whether or not plated or clad with precious metal."

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N260757 and NY 260343 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H266605, set forth as an attachment to this notice. 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 ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: April 9, 2018

CLAUDIA K. GARVER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H266605
April 9, 2018
OT:RR:CTF:CPMM:ERB/LMH
CATEGORY: Classification
TARIFF NO.: 7114.19.0000

MS. SHELLEY M. HOOKER
INTERNATIONAL LOGISTICS MANAGER
APMEX, INC.
226 DEAN A. MCGEE AVENUE
OKLAHOMA CITY, OK 73102

RE: Revocation of NY N206343, Revocation of NY N260757; Tariff classification of gold rounds

DEAR MS. HOOKER:

U.S. Customs and Border Protection (CBP) issued you New York Ruling Letter (NY) N206343, dated January 16, 2015 and NY N260757, dated January 29, 2015. Both rulings pertain to the tariff classification under the Harmonized Tariff Schedule of the United States, (HTSUS) of gold rounds, from Switzerland and New Zealand, respectively. We have since reviewed these rulings and find them to be in error, which is described in detail herein.

On June 15, 2016, 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. 50, No. 24. No comments were received in response to that notice.

FACTS:

NY N260757 states the following, in relevant part:

> The item is identified as the New Zealand Mint, "1 oz. Gold Kiwi." Present on the obverse surface of the round are the four stars of the Southern Cross, the word in all capitalized letters "AOTEAROA" – the traditional Maori name for New Zealand, and the words in all capitalized letters 1 OUNCE FINE GOLD .9999. Present on the reverse side of the round is the [sic] New Zealand's iconic flightless bird (the Kiwi) with head held high to reflect the nation's optimistic and proud spirit, NZ representing the New Zealand Mint, 1 oz, and the words in all capitalized letters NEW ZEALAND GOLD KIWI. This round is not legal tender, has no engraved nominal value, and the purchasing and selling price are determined by the current spot price for its metal content.
>
> The applicable subheading for the 1oz. Gold Kiwi will be 7115.90.3000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for, "Other articles of precious metal, or of metal clad with precious metal: Other: Other: Of gold, including metal clad with gold." The rate of duty will be 3.9% ad valorem.

NY N206343 states the following, in relevant part:

> The item is identified as the "Valcambi Suisse Minted Gold Round Bar." The item is a 1 oz., gold "minted" round, weighting 31.10 grams, having a fineness of 999,9. [sic] Present on the obverse surface of the round is the Valcambi's Hallmark (logo, weight, metal, name, fineness, essayeur fondeur [the official stamp of the refinery that manufactured the bullion] and

bar number). Present on the reverse surface of the round is the official Valcambi SA Stamp. This round is not legal tender, has no engraved nominal value, and the selling price is determined by the current spot price for its metal content.

Although called a gold round bar, its shape is in the form of a round coin, and is therefore precluded from being classified in subheading 7115.90.0530, of the Harmonized Tariff Schedule of the United States (HTSUS). Consequently, the Valcambi Suisse Minted Gold Round Bar is classified in subheading 7115.90.30000, HTSUS.

The applicable subheading for the Valcambi Suisse Minted Gold Round Bar will be 7115.90.3000, HTSUS, which provides for "Other articles of precious metal or of metal clad with precious metal: Other: Other: Of gold, including metal clad with gold." The rate of duty will be 2.9% ad valorem.

ISSUE:

Whether the subject gold rounds are classified as goldsmiths' wares, of heading 7114, HTSUS, or as other articles of precious metal, in heading 7115, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration in this case are as follows:

7114	Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal:
7114.19.00	Of other precious metal whether or not plated or clad with precious metal.
***	
7115	Other articles of precious metal or of metal clad with precious metal:
7115.90.	Other:
7115.90.30	Of gold, including metal clad with gold

Note 4(a) to Chapter 71 states the following:

The expression "*precious metal*" means silver, gold and platinum.

The subject rounds are made of gold, and classification in Chapter 71 is not in dispute.

Note 10 to Chapter 71 states the following:

For purposes of heading 7114, the expression "*articles of goldsmiths' or silversmiths' wares*" includes such articles as ornaments, tableware, toilet-ware, smokers' articles and other articles of household, office or religious use.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which

constitute the official interpretation of the HTSUS at the international level, may be utilized. The ENs, although not dispositive or legally binding, provides a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg 35127 (August 23, 1989).

The EN 71.14, Subpart (E) states the following, in relevant part:

> This heading coves articles of goldsmiths' or silversmiths' wares as defined in Note 10 to this Chapter wholly or partly of precious metal or metal clad with precious metal. In general these goods are larger than articles of jewellery of heading 71.13; they include:
>
> ***
>
> (E) Other articles for domestic or similar use, for example, busts, statuettes and other figures for interior decoration; jewel cases; table centrepieces, vases, jardinieres; picture frames; lamps, candelabra, candlesticks, chandeliers; mantelpiece ornaments, decorative dishes and plates, medals and medallions (other than those for personal adornment); sporting trophies; perfume burners, etc.

The EN 71.15 states the following, in relevant part:

> This heading is therefore largely confined to articles for technical or laboratory use such as crucibles, cupels and certain spatulas (e.g. of platinum or metals of the platinum group); platinum or platinum alloy in the form of cloth or grill for use as catalysts, etc.; vessels (whether or not lined or heat-insulated), not fitted nor designed to be fitted with mechanical or thermal equipment; electroplating anodes. Gold anodes may be in the form of sheets of pure gold cut to the required size and drilled at two corners for attachment of hooks for suspending them in the electroplating tank. ...

We note at the outset the rounds at issue are not legal tender. They are not struck by a national issuing authority, they do not have a face value, and they cannot be spent in their country of issue. It is for this reason that heading 7118, HTSUS, which provides for coins, is not being considered. *See* Headquarters Ruling (HQ) H074995, dated July 29, 2010 (classifying gold and silver coins by differentiating legal tender from commemorative coins), *and see* NY N016199, dated September 11, 2007 (classifying silver commemorative coins).

The classification of imported merchandise is determined by its condition as imported. *Amersham Corp. v. United States,* 5 C.I.T. 49, 53 (Ct. Int'l Trade 1982), *citing Mitsubishi International Corp. v. United States,* 78 Cust. Ct. 4, C.D. 4686 (1977). Note 10 to Chapter 71 defines the relevant text of heading 7114, HTSUS. Specifically, it states that articles of goldsmiths' wares includes "ornaments". The term "ornament" is not defined in the tariff, and as such, it must be construed in accordance with its common and commercial meanings. *See Nippon Kogasku (USA) Inc., v. United States,* 69 CCPA 89, 673 F.2d 380 (1982). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States, 872 F.2d 1572, 1576 (Fed. Cir. 1989)*. To ascertain the common meaning of a term, a court may consult, "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States, 69 C.C.P.A. 128, 673 F.2d 1268, 1271*

(CCPA 1982) ; *Simod, 872 F.2d at 1576*. As the Courts are so empowered, it is prudent for CBP to do so as well. Merriam-Webster defines "ornament" as a small fancy object that is put on something else to make it more attractive; a useful accessory; something that lends grace or beauty[1] . Merriam-Webster defines "decorative" as an object which is purely ornamental[2] , as opposed to an object with a utilitarian function.

The ENs to heading 71.14 clarifies the tariff text "other articles for domestic or similar use" as including figures for interior decoration, mantelpiece ornaments, medals and medallions, among other listed articles. The myriad listed articles vary in size, shape, and purpose and so could be challenging to find unifying characteristics beyond aesthetics. However, in this context, the use of the word "etc." [etcetera] indicates that this list is not exhaustive, but rather is illustrative. Medals and medallions, which are provided for in the ENs share similar characteristics as commemorative coins insofar as they are for decorative or ornamental use, to be viewed and enjoyed by its owner or guests, or could be given as gifts to memorialize a certain event or milestone. They are unlikely to be hoarded to build wealth or maintain oneself in a downward economy. As such, the subject coins are classified alongside medals and medallions, or decorative ornaments, and are properly classified in heading 7114, HTSUS, as an article of goldsmiths' wares.

This is consistent with prior CBP rulings on commemorative coins. *See* NY N200016, dated January 24, 2010; NY N200017, dated January 24, 2010; NY N249940, dated February 20, 2014; NY R01031, dated November 15, 2004; NY A86378, dated August 6, 1996.

Furthermore, the tariff text itself, as well as the EN 71.15 clarifies that this heading is reserved for articles for technical or laboratory use, and the subject coins have no technical or laboratory use. *See* EN 71.15, *and see* NY N264210, dated May 19, 2015 (classifying 24K gold flakes in a solution of butylene glycol in subheading 7115.90.3000, HTSUSA, because gold flakes in a solution of 99 grams of butylene glycol which is added to a cosmetic lotion post-importation in the manufacture of skincare products is not an article of goldsmiths' wares). *See also Salem Minerals Inc. v. United States*, 34 Int'l Trade Rep. (BNA) 1747, Slip Op. 12–88 (Ct. Int'l Trade June 26, 2012), where the Court of International Trade found that "gold leaf vials filled with clear liquid" lacked any constituent component that a goldsmith would make and that the goods could not be concluded to be more than the sum of its constituent parts. In other words, "taken as a whole, those gold leaf vials do not reach to the level of the work, or the ware, of a goldsmith within the purview of HTSUS heading 7114." *Id* * 21. Consequently, the Court held that the gold leaf vials were properly classifiable under subheading 7115.90.30, HTSUS.

HOLDING:

By application of GRI 1, the subject "Valcambi Suisse Minted Gold Round Bar" and the New Zealand "1 oz. Gold Kiwi" commemorative coins are classified in heading 7114, HTSUS. They are specifically provided for in subheading 7114.19.00, HTSUS, which provides for, "Articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad

[1] "Ornament." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 16 July 2015. <http://www.merriam-webster.com/dictionary/ornament>.

[2] "Decorative." *Merriam-Webster.com*. Merriam-Webster, n.d. Web. 16 July 2015. <http://www.merriam-webster.com/dictionary/decorative>.

with precious metal: Of other precious metal whether or not plated or clad with precious metal." The column one general rate of duty is 7.9% ad valorem.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at *www.usitc.gov*

EFFECT ON OTHER RULINGS

NY N206343, dated January 16, 2015, and NY N260757, dated February 2, 2015, are hereby REVOKED.

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

CLAUDIA K. GARVER
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

PROPOSED MODIFICATION OF THREE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF DECORATIVE PILLOWS, HEATABLE SAKS, AND STUFFED MATTRESS COVERS

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

ACTION: Notice of proposed modification of three ruling letters and revocation of treatment relating to the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes.

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) intends to modify three ruling letters concerning the country of origin of decorative pillows, heatable saks, and stuffed mattress covers for marking purposes. Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments on the correctness of the proposed actions are invited.

DATE: Comments must be received on or before June 8, 2018.

ADDRESS: Written comments are to be addressed to the U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 90 K St., NE, 10th Floor, Washington, DC 20229–1177. Submitted comments may be inspected at the address stated above during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0277.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section

which provides for "Mattress 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: Other: Pillows, cushions and similar furnishings: Of cotton." The rate of duty will be 5.3% ad valorem.

The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber, Scenarios 1 through 4, will be 9404.90.2000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Mattress 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: Other: Pillows, cushions and similar furnishings: Other." The rate of duty will be 6% ad valorem.

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

NAFTA Preference:

The rules for determining whether the decorative pillows are an "originating good" of Mexico and thus eligible for preferential tariff treatment under the provisions of the NAFTA Act are provided for in General Note 12 of the HTSUS, which provides, in relevant part, as follows:

> (a) Goods in the territory of a party to the NAFTA are subject to duty as provided therein. For the purposes of this note –
>
> > (a) (ii) Goods that originate in the territory of a NAFTA party under 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 (whether or not the goods are marked) ..., 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 Implementation Act.
>
> (b) For 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 [de minimis provision], 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....
> >
> > (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials....

Thus, by operation of GN 12, the eligibility of an article for NAFTA preferential treatment is predicated upon a finding that the goods are originating in the territory of a NAFTA party under GN 12 (b) and that they are goods of Canada or Mexico under the NAFTA Marking Rules.

The components of the decorative pillows are the outer-shells of cotton or outer-shells of polyester, and the inserts of feathers or polyester fiber. Neither the outer-shells of cotton or outer-shells of polyester fabric, nor the inserts of feathers or polyester fiber are originating material, because those materials are not produced in the NAFTA parties of the United States, Mexico or Canada. Since the outer-shells of cotton are origin India and the outer-shells of polyester are origin China, the decorative pillows cannot be wholly produced in the territory of a NAFTA party. Therefore, the pillows qualify for NAFTA treatment only if the provisions of General Note 12 (b) (ii) (A) are met; i.e., if the merchandise is transformed in the territory of Mexico so that the non-originating materials undergo a change in tariff classification or satisfy the rules set forth in subdivisions (r), (s), and (t) of this note.

Because the decorative pillows are classified in subheading 9404.90, HTSUS, we apply the tariff shift rule for that subheading. General Note 12(t)/94.7 states "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." The outer shell fabrics whether cotton or polyester are classifiable in heading 6307, HTSUS, the feather are classifiable in heading 0505, HTSUS, and the polyester fiber fill is classified in heading 5503, HTSUS. The tariff shift rule for subheading 9404.90 is satisfied because the [non-originating materials] are outside the excluded headings for the rule above. Therefore, the decorative pillows meet the tariff shift requirement, and qualify as NAFTA originating goods.

However, to receive the NAFTA preferential duty rate for goods from Mexico, the decorative pillows must be considered a good of Mexico under the NAFTA Marking Rules (Part 102, Customs Regulations). Decorative pillows classified in subheading 9404.90.10, HTSUS (outer-shells of cotton) are subject to the rules of origin for textile and apparel products set forth in 19 CFR 102.21 – *see* 102.20 "Chapter 94 Note" and 102.21 "subheading 9404.90" governing note, and decorative pillows classified in subheading 9404.90.20, HTSUS (outer-shells of polyester) are subject to the rules of origin set forth in 19 CFR 102.20, for non-textile and apparel products – *see* 102.20, "subheadings 9404.30–9404.90" governing note.

The "Rule of Origin" for decorative pillows of cotton, scenarios 5 through 8, set forth in 102.21, 9404.90 reads: "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."

Applying the "Rule of Origin" set forth in 102.21, 9404.90, we find that the only fabric making process for scenarios 5 through 8 occurs in India, and as such the country of origin for the cotton decorative pillows is India.

The "Rule of Origin" for decorative pillows of polyester, scenarios 1 through 4, set forth in 102.20, 9404.30–9404.90 reads: "A change to down-and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111, through 5113, 5208 through 5212, 5309 through 5311, 5407

through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6006, or subheading 6307.90."

Regardless of the "Rule of Origin" set forth in 102.20, 9404.30–9404.90, it is our opinion in scenario 1 and scenario 3 that the pillows having polyester outer-shells and filled/stuffed with inserts of feathers and closed by means of zippers are "Non-qualifying operations" in accordance with 102.17; the processing operation is of "simple packing" of the filler material and of "minor processing" of 102.1 (m) (6) "Putting up in measured doses, packing, repacking packaging and repackaging," thereby completing the finished decorative pillows. The country-of-origin for the decorative polyester pillows, simply packed in measured amounts in Mexico, is China.

Regardless of the "Rule of Origin" set forth in 102.20, 9404.30–9404.90, it is our opinion in scenario 2 and scenario 4 that the pillows having polyester outer-shells and filled/stuffed with polyester fiber and sewn closed on one side are "Non-qualifying operation" in accordance with 102.17; the processing operation of stuffing and closing one end is merely "a change to end-use," decorative pillow shells to stuffed decorative pillows, as well as "simple packing" of the filler material and of "minor processing" of 102.1 (m) (6) "Putting up in measured doses, packing, repacking packaging and repackaging. The country-of-origin for the decorative polyester pillows, with merely a change in end use and simply packed in measured doses in Mexico, is China.

We further observe that the NAFTA preference override contained in 19 CFR 102.19 (a) states, in relevant part, "... if a good which is originating within the meaning of §181.1 (q) [referring to General Note 12, HTSUS] 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." Unlike Headquarters ruling HQ 963233 dated December 13, 2000, in which fabric of Korean origin was cut, formed and sewn into pillow shells ("saks") of Canadian origin, undergoing production beyond minor processing, we find that the processing operations in Mexico are of non-qualifying operations and do not exceed minor processing, and therefore the decorative pillows are not entitled to the NAFTA "MX" preferential duty rate.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Neil H. Levy at neil.h.levy@cbp.dhs.gov.

Sincerely,

STEVEN A. MACK
Director
National Commodity Specialist Division

ATTACHMENT B

HQ H265611
October 21, 2015
CLA-2 OT: RR: CTF: TCM: H265611ERB
CATEGORY: Classification
TARIFF NO.: 9404.90.2000

MS. JENNIFER DIAZ
BECKER & POLIAKOFF
121 ALHAMBRA PLAZA, 10TH FLOOR
CORAL GABLES, FL 33134

RE: Tariff classification of stuffed mattress covers; NAFTA Country of Origin of the finished stuffed mattress cover imported from Mexico

DEAR MS. DIAZ:

This is in reply to your letter dated April 17, 2015 to the U.S. Customs and Border Protection (CBP) National Commodity Specialist Division (NCSD) in New York, on behalf of your client Dolven Enterprises (Dolven), seeking a prospective ruling under the Harmonized Tariff Schedule of the United States (HTSUS) regarding the tariff classification of Dolven's stuffed mattress covers. One complete sample and three sample swatches (the uppermost padded layer, the interlock, and the "sandman" (the side or edges of the mattress cover)) was provided to this office, and are being returned with this ruling. Our analysis also includes information provided in a conference call between you, your client, and this office which took place on August 27, 2015.

FACTS:

The subject merchandise is two styles of mattress covers. Each style comes in numerous sizes, (i.e. twin, long twin, double, queen, kind, California king, and split c-king), however, the characteristics of both styles and all sizes are the same. There are two separate compartments to this product. 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). Put simply, there are two zippered compartments: one for an optional pad and one for the mattress.

Post-importation into the United States the mattress cover will fully enclose a mattress in its lower compartment via the double zipper closure. Again, the mattress is not imported with the subject mattress cover. Dolven does not manufacture, produce or sell mattresses. 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, Dolven sells the mattress cover to certain mattress and bed manufacturers, which in turn, cover their own mattresses and sell the combined unit to consumers.

You argue that the instant mattress cover is classified under heading 9404, HTSUS, which provides for, "Mattress 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."

ISSUE:

Whether merchandise described as a padded, fitted textile mattress cover is classified as a textile of chapter 63, or as stuffed bedding of heading 9404, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in their appropriate order.

The HTSUS headings under consideration are the following:

6302	Bed linen, table linen, toilet linen and kitchen linen:
6304	Other furnishing articles, excluding those of heading 9404:
6307	Other made up articles, including dress patterns:
9404	Mattress 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:

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HS and are thus useful in ascertaining the proper classification of merchandise. *See* T.D. 89–90, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to heading 9404, HTSUS, states, in relevant part:

> This heading covers:
>
> (B) Articles of bedding and similar furnishings which are sprung or stuffed or internally fitted with any material (cotton, wool, horsehair, down, synthetic fibres, etc.) or are of cellular rubber or plastics (whether or not covered with woven fabric, plastics, etc.)

Tariff Classification

In Headquarters Ruling Letter (HQ) H015427, dated January 5, 2010, classifying electric blankets and seat pads, this office stated that heading 9404, HTSUS, is limited to "Articles of bedding and similar furnishings which are...stuffed or internally fitted with any material." This highlights the key distinction between bedding of chapter 63 and bedding of chapter 94. Articles of bedding properly classified in heading 9404, HTSUS, are stuffed. Linens and other bedding furnishings classified in chapter 63 are not.

The subject merchandise is a mattress cover, which is certainly an article of bedding. While mattress covers may or may not be stuffed, the instant merchandise is comprised of textiles (of polyester or of polyester and spandex) sized and shaped to a particular mattress size, and the upper-most layer is stuffed with polyester stuffing. When in use by consumers, the mattress cover

will enclose the mattress and will remain there underneath sheets or other bedding. The tariff and the ENs both state that articles of bedding of heading 9404, HTSUS, may be fitted with springs, or stuffed or internally fitted with any material or of cellular rubber or plastics. The ENs continue in this vein, clarifying that goods classified therein may be stuffed with cotton, wool, horsehair, down or synthetic fibers. *See* EN 94.04. Each of these exemplars of "material" are basic, homogenous, stuffing materials. The polyester used here is a homogenous, synthetic fiber, and it is permanently sewn (or stuffed) into the upper-most layer of the subject mattress cover creating comfortable, padded surface for the slumbering occupant of the bed. Hence, the mattress cover contains a stuffed quilted portion, even though a separate pad is not included.

Thus, the subject polyester stuffed mattress covers are provided for *eo nomine* in heading 9404, HTSUS, because they are described as "articles of bedding, "stuffed" with "any material". They are beyond the scope of bedding of chapter 63. This is consistent with previous CBP rulings of similar merchandise. *See* New York Ruling (NY) N140355, dated January 14, 2011, and *see* NY N222087, dated July 11, 2012.

NAFTA Claim

The subject finished mattress cover is comprised of component parts which, individually, are classified in different parts of the tariff. The stuffed knit fabric covering is classifiable in subheading 6006.33.0040, which provides for, "Other knitted or crocheted fabrics: Of synthetic fibers: Of yarns of different colors: Of double knit or interlock construction: Of polyester." The interlock material is classified in subheading 6004.10.0085, which provides for, "Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5 percent or more of elastomeric yarn or rubber thread, other than those of heading 6001: Containing by weight 5 percent or more elastomeric yarn but not containing rubber thread: Warp knit: Other." Finally, what is called a "sandman" is classified in subheading 5801.36.0010, which provides for, "Woven pile fabrics and chenille fabrics, other than fabrics of heading 5802 or 5806: Of man-made fibers: Chenille fabrics." The zippers are slide fasteners of chapter 69. The components do not originate within any of the three NAFTA countries: United States, Canada, or Mexico. *See* 19 CFR § 134.1(i) which states "*NAFTA country*. "NAFTA country" means the territory of the United States, Canada or Mexico as defined in Annex 201.1 of the NAFTA."

However, the components are shipped into Mexico where they are cut and sewn into the finished good. As such, our analysis starts with HTSUS General Note 12 which provides for the NAFTA. Specifically, General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under the NAFTA. General Note 12(b), 19 U.S.C. § 1202 states, in relevant part, the following:

> For 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 material 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,...

Thus, if the goods are sufficiently transformed in Mexico so that the non-originating materials undergo a change in tariff classification described in subdivision (t) to General Note 12, HTSUS, then they will be eligible for the NAFTA preference. General Note 12(t), Rule 7, which regards the relevant subheadings of Chapter 94 states the following:

7. 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.

The exceptions noted therein do not apply in this case.

In Mexico, the textiles are cut and sewn into the finished good, the zippers are attached, and it becomes the stuffed mattress cover of heading 9404, HTSUS, which is thereafter imported into the United States. Therefore, the goods have experienced the requisite tariff shift and are entitled to the NAFTA duty preference, under General Note 12.

Our analysis next turns to the goods' country of origin. Part 102 of Customs Regulations regards the Rules of Origin. Specifically, 19 CFR § 102.20 regards specific rules by tariff classification. Therein it states the following:

The following rules are the rules specified in § 102.11(a)(3) and other sections of this part. Where a rule under this section permits a change to a subheading from another subheading of the same heading, the rule will be satisfied only if the change is from a subheading of the same level specified in the rule.

Regarding Section XX, which includes Chapters 94 the following is stated:

9404.30 – 9404.90.....	A change to down-and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or
	For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, **except from heading 5007 ... 5801 through 5804 ... or 6001 through 6006 ...**

[Emphasis added]

The textile components of the subject stuffed mattress cover each fall within the exceptions noted above. As a result, our analysis must consider 19 CFR § 102.19 which provides for the NAFTA preference override. Customs regulations 19 CFR § 102.19 states:

(a) 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 (see § 181.11 of this chapter) has been completed and signed for the good.

Paragraph (b) is not applicable here, as the country of origin of all materials is not the United States. The aforementioned § 181.1(q) states:

> *Originating. Originating*, when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

19 CFR § 102.1(m) defines "minor processing" as:

> **(1)** Mere dilution with water or another substance that does not materially alter the characteristics of the good;
> **(2)** Cleaning, including removal of rust, grease, paint, or other coatings;
> **(3)** Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
> **(4)** Trimming, filing or cutting off small amounts of excess materials;
> **(5)** Unloading, reloading or any other operation necessary to maintain the good in good condition;
> **(6)** Putting up in measured doses, packing, repacking, packaging, repackaging;
> **(7)** Testing, marking, sorting, or grading;
> **(8)** Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
> **(9)** Repairs and alterations, washing, laundering, or sterilizing.

Cutting and sewing the various polyester materials and fabrics into the finished stuffed mattress cover is more than "minor processing" as referenced in 19 CFR § 102.19(a), and defined in § 102.1(m), listed above.

Therefore, the goods are NAFTA originating by means of General Note 12, Chapter 94, subheading Rule 7, HTSUS. The override provision of § 102.19 is therefore satisfied and the country of origin of the subject finished stuffed mattress cover is Mexico. This determination is consistent with a previous CBP decision on similar merchandise. *See* HQ 956240, dated January 20, 1995, regarding a down comforter shell classifiable in subheading 6307.90, HTSUS, and down feathers of subheading 0505.10, HTSUS.

The finished mattress cover is classifiable in subheading 9404.90, HTSUS, and therefore the requisite tariff classification shift requirement of General Note 12(t) was met. The merchandise may utilize a "Made in Mexico" country of origin statement.

HOLDING:

By application of GRI 1, the subject stuffed mattress cover is classified in heading 9404, HTSUS. Specifically, it is provided for in subheading 9404.90.2000, HTSUSA (Annotated) which provides for, "Mattress 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: Other: Other." The 2015 column one, general rate of duty for merchandise of this subheading is 6% *ad valorem*.

The subject stuffed mattress cover is eligible for NAFTA preferential duty treatment. Also, in accordance with 19 CFR § 102, it is a product of Mexico for country of origin marking purposes.

Duty rates are subject to change. The text of the most recent HTSUS and the accompany duty rates are provided at *www.usitc.gov* 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 963233
December 13, 2000
CLA-2 RR:CR:GC 963233ptl
CATEGORY: Classification
TARIFF NO.: 9404.90.10; 9404.90.20

MR. SAMUEL I. HAYES
NATURE'S WAY THERAPEUTIC PRODUCTS, INC.
91021–1427 BELLEVUE AVENUE
WEST VANCOUVER, BC
CANADA V7V 3N3

RE.: Reconsideration of NY E84744; Heatable Sak, flax-filled pillow "Multirest"; HQ 975617.

DEAR MR. HAYES:

This is in response to your letter of October 4, 1999, to the Director, National Commodity Specialist Division, New York, requesting reconsideration of the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of a flax filled article referred to as a heatable sak in New York Ruling Letter (NY) E84744, issued to you on August 3, 1999. Your letter was referred to this office for reply. We regret the delay.

Although NY E84744 classified several articles, you have only requested reconsideration of the heatable sak. In NY E84744, the heatable sak was classified in heading 9404, HTSUS, which provides for articles of bedding and similar furnishing. You contend that the heatable sak is classifiable in heading 1404, HTSUS, which provides for vegetable products not elsewhere specified or included. You also requested a determination whether the article qualifies for preferential treatment under the North American Free Trade Agreement (NAFTA).

We have reviewed NY E84744 and have determined that it is not in error. We affirm the classification of the heatable sak in either subheading 9404.90.1000 or 9404.90.2000, HTSUS, pursuant to the analysis set forth below. This ruling does not affect the classification of the other articles in NY E84744.

FACTS:

The "Heatable Sak" is a sealed fabric pouch, measuring approximately 8.5 x 13 inches, loosely filled with flax seeds (3.5 lbs.). The pouch of the sample provided is made of knitted velour fabric. In the original classification request, dated July 8, 1999, the following description of the article was provided: "This Heatable sak provides fully adjustable cervical support, conforming to and supporting the head and neck, while the aroma therapy facilitates a complete relaxation of the body." In the request for reconsideration, the article's primary use is claimed to be as a heating pad and aromatherapy adjunct. However, you have also mentioned its functionality as a pillow. You state that the heatable sak can be "used when traveling as cervical or lumbar support." The article's flax seed filling is claimed to allow the article to retain both heat (from a microwave) and cold (from freezing). In the original submission, the article is said to retain heat for approximately 15 minutes. This period increases to a half-hour in the request for reconsideration as you stress its aromatherapy uses.

The knitted velour fabric forming the shell of the heatable sak is a product of Korea. The fabric is imported in bulk into Canada where it is cut, formed, sewn and filled with Canadian produced flax seed.

ISSUE:

Whether a flax filled product identified as a "Heatable Sak" is properly classified in heading 9404, HTSUS, the provision for articles of bedding and similar furnishings, including pillows, or in heading 1404, HTSUS, the provision for other vegetable products not elsewhere specified or included?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The HTSUS headings under consideration are as follows:

1404	Vegetable products not elsewhere specified or included:
	* * *
1404.90.00	Other
9404	Mattress 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:
	* * *
9404.90	Other:
	Pillows, cushions and similar furnishings:
9404.90.10	Of cotton (369)
9404.90.20	Other

Before we ascertain whether the article is eligible for preferential treatment under the NAFTA, we must first determine its classification under the HTSUS.

In support of your contention that the heatable sak should not be classified as a pillow, you state "[U]nder your regulations the minimum size of a pillow is 10" x 10"." Those dimensions were obtained from a Headquarters Ruling (HQ 957617, dated May 3, 1995) which classified an article of those dimensions as a pillow. In that ruling, a distinction was made, not only of the size of the different exemplars, but also the shapes of other articles (some in the shape of a motorcycle and a punching bag) and the fact that they were not designed to afford support. The "Mud Cloth Pillow" of HQ 957617 was classified in heading 9404, HTSUS, not because of its size, but rather because of its ability to provide support to the user.

In the instant case, your own language in seeking classification states that the person using the heatable sak "places the pillow under their neck and head for shoulder and cervical support". In the request for reconsideration, you state that the article can be used when traveling as cervical or lumbar

support. Clearly, the article is capable of providing support to various portions of the body while also being used as an aromatherapy prop.

Based on the above analysis of the article, its construction and prospective uses, we determine that the heatable sak does possess the characteristics of a pillow in that it can provide support to the user. Heading 1404, HTSUS, is a basket provision wherein a variety of merchandise is classified when no other heading more specifically provides for the article. That is not the situation in this case. The heatable sak is more accurately described within the provisions of subheading 9404.90, HTSUS, as a pillow and, is therefore classified in that subheading.

NAFTA Preference:

The rules for determining whether the pillow is an "originating good" of Canada and thus eligible for preferential tariff treatment under the provisions of the North American Free Trade Act are provided for in General Note 12 of the HTSUS, which provides, in relevant part, as follows:

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

(a)(i) Goods that originate in the territory of a NAFTA party under subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (whether or not the goods are marked), 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 "CA" in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Implementation Act.

* * *

(b) For 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 [de minimis provision], 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....
>
> (iii) they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials....

Thus, by operation of GN 12, the eligibility of an article for NAFTA preferential treatment is predicated upon a finding that the goods are originating in the territory of a NAFTA party under GN 12(b) and that they are goods of Canada or Mexico under the NAFTA Marking Rules.

The components of the heatable sak are the outer shell knit fabric and the flax seed filler. Because the flax seed is grown in Canada, it qualifies as an

originating material. However, because the knit shell is milled in Korea, the goods are not wholly produced in the territory of a NAFTA party. Therefore the heatable sak qualifies for NAFTA treatment only if the provisions of General Note 12(b)(ii)(A) are met; i.e., if the merchandise is transformed in the territory of Canada so that the non originating materials (Korean velour) undergo a change in tariff classification or satisfy the rules set forth in subdivisions (r), (s), and (t) of this note.

Because the heatable sak is classified in subheading 9404.90, HTSUS, we apply the tariff shift rule for that subheading. General Note 12(t)/94.7 states "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". The outer shell fabric is knit in Korea. The tariff shift rule for subheading 9404.90 excludes woven fabrics, but does not exclude knit fiber fabrics. Therefore, as long as the outer fabric shell of the heatable sak is a knit article (a product of Chapter 60), the article will meet the tariff shift requirement. Therefore, the article qualifies as a NAFTA originating good.

However, as indicated earlier, to receive the NAFTA preferential duty rate for goods from Canada, the heatable sak must be considered a good of Canada under the NAFTA Marking Rules (Part 102, Customs Regulations). Heatable saks classified in subheading 9404.90.10, HTSUS (outer shell of cotton), are subject to the rules of origin for textile and apparel products set forth in 19 CFR 102.21. Heatable saks classified in subheading 9404.90.20, HTSUS (outer shell of a fabric other than cotton), are subject to the rules of origin set forth in 19 CFR 102.11. Applying the applicable rules in sections 102.21 and 102.11 to the heatable saks classifiable in subheading 9404.90.10 and 9404.90.21, respectively, results in the articles being considered products of Korea.

However, the NAFTA preference override contained in 19 CFR 102.19(a) states, in relevant part, "... if a good which is originating within the meaning of §181.1(q) [referring to General Note 12, HTSUS] 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". Because the heatable sak is cut to form, sewn and filled in Canada with Canadian flax seed, it is considered a product of Canada, and is eligible for the NAFTA "CA" preferential duty rate.

HOLDING:

A flax filled pillow, identified as "Heatable sak" is classified in subheading 9404.90.10, 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: of cotton, when the outer shell fabric is of cotton and in 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: other, when the outer shell fabric is made of a fabric other than cotton.

The "Heatable Sak" with its knit outer shell is eligible for preferential duty treatment under the NAFTA as a good of Canada.

NY E84744 is affirmed.

Sincerely,

JOHN DURANT,
Director
Commercial Rulings Division

ATTACHMENT D

HQ H290258
OT:RR:CTF:VS H290258 EE
CATEGORY: Classification

ELISE SHIBLES
SANDLER, TRAVIS & ROSENBERG, P.A.
505 SANSOME STREET, SUITE 1475
SAN FRANCISCO, CA 94111

RE: Modification of NY N287930; NAFTA country of origin marking; pillows

DEAR MS. SHIBLES:

This is in response to your letter dated September 13, 2017, in which you request, on behalf of your client Spencer N Enterprises, Inc. ("Spencer N Enterprises"), reconsideration of New York Ruling Letter ("NY") N287930, dated August 3, 2017. NY N287930, issued to you by U.S. Customs and Border Protection ("CBP") concerns the tariff classification of certain decorative pillows and eligibility for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA"). We have reviewed NY N287930 and determined that it is partially incorrect with respect to the country of origin marking. For the reasons set forth below, we are modifying that ruling letter.

FACTS:

Spencer N Enterprises is an importer and distributor of soft décor products. The subject merchandise consists of decorative pillows. In NY N287930, the importer presented the following eight scenarios to CBP where pillow components were processed in Mexico and subsequently imported into the United States as finished decorative pillows.

Scenario 1 – decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. Both the polyester shells (China) and inserts of feathers (China) are sent in-bond into Mexico.

Scenario 2 – decorative pillows (no attached closure) constructed from polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the polyester shells and the shells are finished by sewing the opening closed. Both the polyester shells (China) and polyester fiber (China) are sent in-bond into Mexico.

Scenario 3 – decorative pillows constructed from polyester shells (containing a zipper closure) of Chinese origin sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the polyester shells and closing the zipper. We note that the only difference between Scenario 1 and Scenario 3 is that the polyester shells (China) in Scenario 3 entered the United States before being sent to Mexico, versus in Scenario 1 both the polyester shells (China) and inserts of feathers (China) were sent together in-bond into Mexico.

Scenario 4 – decorative pillows (no attached closure) constructed from a polyester shells of Chinese origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the polyester shells and the shells are finished by sewing the opening closed. We

note that the only difference between Scenario 2 and Scenario 4 is that the polyester shells (China) in Scenario 4 entered the United States before being sent to Mexico, versus in Scenario 2 both the polyester shells (China) and polyester fiber (China) were sent together in-bond into Mexico.

Scenario 5 – decorative pillows constructed from cotton shells (containing a zipper closure) from India are sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. Both the cotton shells (India) and feathers (China) are sent in-bond to Mexico.

Scenario 6 – decorative pillows (no attached closure) constructed from cotton shells of Indian origin sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. Both the cotton shells (India) and polyester fiber (China) are sent in-bond to Mexico.

Scenario 7 – decorative pillows constructed from cotton shells (containing a zipper closure) from India are sent to Mexico for stuffing with inserts of feathers of Chinese origin. The only processing in Mexico is the stuffing of the feathers in the cotton shells and closing the zipper. We note that the only difference between Scenario 5 and Scenario 7 is that the cotton shells (India) in Scenario 7 entered the United States before being sent to Mexico, versus in Scenario 5 both the cotton shells (India) and feathers (China) were sent together in-bond into Mexico.

Scenario 8 – decorative pillows constructed from cotton shells (no attached closure) from India are sent to Mexico for stuffing with polyester fiber of Chinese origin. In Mexico, the polyester fiber is blown into the cotton shells and the shells are finished by sewing the opening closed. We note that the only difference between Scenario 6 and Scenario 8 is that the cotton shells (India) in Scenario 8 entered the United States before being sent to Mexico, versus in Scenario 6 both the cotton shells (India) and polyester fiber (China) were sent together in-bond into Mexico.

In its submission, the importer provided that the polyester shells from China are classified under heading 6304, Harmonized Tariff Schedule of the United States ("HTSUS"); polyester fiber from China is classified under heading 5503, HTSUS; feather insert from China is classified under heading 5503, HTSUS; and the cotton shell from India is classified under heading 6304, HTSUS.

CBP noted that illustrative literature or photographs of the decorative pillows were not presented. Additionally, for purposes of the ruling, "feathers" were not considered of down, either from goose or duck. CBP determined that the applicable subheading for the decorative pillows having cotton shells stuffed with feathers or polyester fiber, in scenarios 5 through 8, was 9404.90.1000, 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, [c]ushions and similar furnishings: [o]f cotton." The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber, in scenarios 1 through 4, was 9404.90.2000, 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 decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, were not eligible for preferential tariff treatment under NAFTA.

ISSUE:

Whether the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, imported into the United States are eligible for preferential tariff treatment under the NAFTA.

What is the country of origin of the decorative pillows 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.

Counsel for the importer provided us with an additional submission for the reconsideration request, elaborating on the production processes of the decorative pillows. Counsel for the importer also provided us with photos and samples of the merchandise.

Counsel for the importer states that in scenarios 1 & 3, pillow components include: chief weight polyester woven pillow covers of Chinese origin with a zipper closure on one edge (heading 6304, HTSUS); chief weight polyester woven internal pillow shells of Chinese origin with one edge partially unfinished (heading 6307, HTSUS); feathers of Chinese origin (heading 0505, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel states that in Mexico, the feathers are stuffed into the unfinished pillow shells and the edge is sewn closed forming a feather insert. The feather inserts are inserted into the pillow covers and the zippers are closed.

Counsel for the importer states that in scenarios 2 & 4, pillow components include: chief weight polyester woven pillow shells of Chinese origin with one edge partially unfinished (heading 6307, HTSUS); polyester staple fiber of Chinese origin (heading 5503, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the polyester fiber is blown into the pillow shells and the shells are finished by sewing the unfinished portion of the edge closed.

Counsel for the importer states that in scenarios 5 & 7, pillow components include: chief weight cotton woven pillow covers of Indian origin with a zipper closure on one edge (heading 6304, HTSUS); chief weight cotton woven internal pillow shells of Indian origin with one edge partially unfinished (heading 6307, HTSUS); feathers of Chinese origin (heading 0505, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the feathers are stuffed into the unfinished pillow shells and the edge is sewn closed forming a feather insert. The feather inserts are inserted into the pillow covers and the zippers are closed.

Counsel for the importer states that in scenarios 6 & 8, pillow components include: chief weight cotton woven pillow shells of Indian origin with one edge partially unfinished (heading 6307, HTSUS); polyester staple fiber of Chinese origin (heading 5503, HTSUS); and sewing thread of unknown origin (headings 5204, 5401, 5402, 5508, HTSUS). Counsel claims that in Mexico, the polyester fiber is blown into the pillow shells and the shells are finished by sewing the unfinished portion of the edge closed.

Since the decorative pillows contain non-originating materials, they are not considered goods wholly obtained or produced entirely in a NAFTA party under GN 12(b)(i). We must next determine whether the decorative pillows qualify under GN 12(b)(ii). There is no dispute as to the classification of the pillows in subheadings 9404.90.1000 and 9404.90.2000, HTSUS. The applicable rule of origin for the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, 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." In its submission for the reconsideration of NY N287930, the counsel for the importer states that the pillow covers are classified under heading 6304, HTSUS; the pillow shells are classified under heading 6307, HTSUS; the polyester stable fiber is classified under heading 5503, HTSUS; the feathers are classified under heading 0505, HTSUS; and the sewing thread is classified under headings 5204, 5401, 5402, 5508, HTSUS. Since these non-originating materials are classified in a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with NY N287930 that the decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, 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. NY N287930 applied 19 C.F.R. § 102.20 to the decorative pillows classified under subheading 9404.90.2000, 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 decorative pillows with a polyester outershell, they are considered textile products and the 19 C.F.R. § 102.21 rules of origin are applicable.

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

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

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

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

19 C.F.R. § 102.21(e)(2) is not applicable since it does not cover subheadings 9404.90.1000 and 9404.90.2000, HTSUS. In the instant case, the fabric making process occurs where the polyester and cotton fabric is formed. *See* 19 C.F.R. 102.21(b)(2). Therefore, according to 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the decorative pillows is the same as the origin of the polyester and cotton fabric, which is China and India, respectively.

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, as determined in NY N287930, the decorative pillows are originating goods under 19 C.F.R. § 181.1(q). Additionally, the decorative pillows are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the decorative pillows are a product of Mexico under the "NAFTA preference override" since they undergo more than "minor processing."[1] Pursuant to 19 C.F.R. § 102.19(a), the decorative pillows are products of Mexico.

HOLDING:

The decorative pillows having cotton shells stuffed with feathers or polyester fiber in scenarios 5 through 8, are classified under subheading 9404.90.1000, 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

---

[1] The phrase "minor processing" is defined at 19 C.F.R. §102.1(m) as the following:
(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
(2) Cleaning, including removal of rust, grease, paint, or other coatings;
(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
(4) Trimming, filing or cutting off small amounts of excess materials;
(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
(6) Putting up in measured doses, packing, repacking, packaging, repackaging;
(7) Testing, marking, sorting, or grading;
(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
(9) Repairs and alterations, washing, laundering, or sterilizing.

covered: [o]ther: [p]illows, [c]ushions and similar furnishings: [o]f cotton." The applicable subheading for the decorative pillows having polyester shells stuffed with feathers or stuffed with polyester fiber in scenarios 1 through 4 is 9404.90.2000, 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."

Decorative pillows classified under subheadings 9404.90.1000 and 9404.90.2000, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the decorative pillows is Mexico for purposes of the marking requirements.

EFFECT ON OTHER RULINGS:

NY N287930, dated August 3, 2017, is hereby MODIFIED with respect to the country of origin of the decorative pillows classified under 9404.90.2000, HTSUS, for marking purposes.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

ATTACHMENT E

HQ H293880
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. For the reasons set forth below, we are modifying that ruling letter.

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.

ISSUE:

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."[2] Pursuant to 19 C.F.R. § 102.19(a), the stuffed mattress covers are products of Mexico.

---

[2] The phrase "minor processing" is defined at 19 C.F.R. §102.1(m) as the following:
(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
(2) Cleaning, including removal of rust, grease, paint, or other coatings;
(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
(4) Trimming, filing or cutting off small amounts of excess materials;
(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
(6) Putting up in measured doses, packing, repacking, packaging, repackaging;
(7) Testing, marking, sorting, or grading;
(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
(9) Repairs and alterations, washing, laundering, or sterilizing.

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.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

ATTACHMENT F

HQ H293881
OT:RR:CTF:VS H293881 EE
CATEGORY: Classification

MR. SAMUEL I. HAYES
NATURE'S WAY THERAPEUTIC PRODUCTS, INC.
91021–1427 BELLEVUE AVENUE
WEST VANCOUVER, BC
CANADA V7V 3N3

RE: Modification of HQ 963233; NAFTA country of origin marking; heatable saks

DEAR MR. HAYES:

This letter is to inform you of the reconsideration of Headquarters Ruling Letter ("HQ") 963233 which was issued to you by U.S. Customs and Border Protection ("CBP") on December 13, 2000. HQ 963233 concerns the tariff classification of certain heatable saks and eligibility for preferential tariff treatment under the North American Free Trade Agreement ("NAFTA"). We have reviewed HQ 963233 and determined that it is partially incorrect with respect to the country of origin marking analysis. For the reasons set forth below, we are modifying that ruling letter.

FACTS:

The "Heatable Sak" is a sealed fabric pouch, measuring approximately 8.5 x 13 inches, loosely filled with flax seeds (3.5 lbs). The pouch of the sample that was provided in HQ 963233 was made of knitted velour fabric. In the original classification request, the following description of the article was provided: "this heatable sak provides fully adjustable cervical support, conforming to and supporting the head and neck, while the aroma therapy facilitates a complete relaxation of the body." The article's primary use is claimed to be as a heating pad and aromatherapy adjunct; however, it also functions as a pillow. The heatable sak can be "used when traveling as cervical or lumbar support." The article's flax seed filling is claimed to allow the article to retain both heat (from a microwave) and cold (from freezing). The article is said to retain heat for approximately a half-hour.

The knitted velour fabric forming the shell of the heatable saks is a product of Korea. The fabric is imported in bulk into Canada where it is cut, formed, sewn and filled with Canadian produced flax seed.

CBP determined the heatable saks having an outershell of cotton were classified under subheading 9404.90.10, 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, [c]ushions and similar furnishings: [o]f cotton." The heatable saks having an outershell of a fabric other than cotton 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 heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, were eligible for preferential tariff treatment under NAFTA.

ISSUE:

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

What is the country of origin of the heatable saks 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)(i), 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 Canada. 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—
>
> * * * *
>
> (i) 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 Canada 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 "CA" 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 heatable saks 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 heatable saks qualify under GN 12(b)(ii). There is no dispute as to the classification of the heatable saks in subheadings 9404.90.10 and 9404.90.20, HTSUS. The applicable rule of origin for the heatable saks classified under subheadings 9404.90.10 and 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 components of the heatable saks are the outershell knit fabric and the flax seed filler. Since the flax seed is grown in Canada, it qualifies as an originating material. However, the knit shell is milled in Korea and therefore is a non-originating material. The tariff shift rule for subheading 9404.90 excludes woven fabrics, but does not exclude knit fiber fabrics. Therefore, since the non-originating materials are classified in Chapter 60 which is a chapter other than chapter 94 and in headings which are not excepted, the tariff shift rule is met. Accordingly, we agree with HQ 963233 that the heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, qualify as NAFTA originating goods.

GN 12(a)(i), HTSUS, provides that NAFTA-originating goods must also qualify to be marked as products of Canada 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 963233 applied 19 C.F.R. § 102.11 to the heatable saks 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 heatable saks with outershell of velour knit fabric, they are considered textile products and the 19 C.F.R. § 102.21 rules of origin are applicable.

The country of origin of a textile or apparel product is determined by hierarchical application of the general rules set forth in 19 C.F.R. § 102.21(c)(1) through (c)(5). 19 C.F.R. § 102.21(c)(1) provides: "[t]he country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the heatable saks 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 heatable saks are classified under subheadings 9404.90.10 and 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 subheadings 9404.90.10 and 9404.90.20, HTSUS. In the instant case, the fabric making process occurs where knitted velour fabric is formed. *See* 19 C.F.R.

102.21(b)(2). Therefore, according to 19 C.F.R. § 102.21(c)(2) and (e)(1), the country of origin for the heatable saks is the same as the origin of the knitted velour fabric, which is Korea.

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 heatable saks are originating goods under 19 C.F.R. § 181.1(q). Additionally, the heatable saks are not goods of a single NAFTA country under 19 C.F.R. § 102.21. As such, the heatable saks are a product of Canada under the "NAFTA preference override" since they undergo more than "minor processing."[3] Pursuant to 19 C.F.R. § 102.19(a), the heatable saks are products of Canada.

---

[3] The phrase "minor processing" is defined at 19 C.F.R. §102.1(m) as the following:
(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
(2) Cleaning, including removal of rust, grease, paint, or other coatings;
(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
(4) Trimming, filing or cutting off small amounts of excess materials;
(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
(6) Putting up in measured doses, packing, repacking, packaging, repackaging;
(7) Testing, marking, sorting, or grading;
(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
(9) Repairs and alterations, washing, laundering, or sterilizing.

HOLDING:

The heatable saks having an outershell of cotton are classified under subheading 9404.90.10, 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, [c]ushions and similar furnishings: [o]f cotton." The applicable subheading for the heatable saks having an outershell of a fabric other than cotton is 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 heatable saks classified under subheadings 9404.90.10 and 9404.90.20, HTSUS, are eligible for preferential tariff treatment under NAFTA. The country of origin of the heatable saks is Canada for purposes of the marking requirements.

EFFECT ON OTHER RULINGS:

HQ 963233, dated December 13, 2000, is hereby MODIFIED with respect to the country of origin of the heatable saks classified under 9404.90.20, HTSUS, for marking purposes.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

ACCREDITATION AND APPROVAL OF CAMIN CARGO CONTROL, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Camin Cargo Control, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc., has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 6, 2017.

DATES: The accreditation and approval of Camin Cargo Control, Inc., as commercial gauger and laboratory became effective on July 6, 2017. The next triennial inspection date will be scheduled for July 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 1301 Metropolitan Ave., Thorofare, NJ 08086, has been approved to gauge and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Camin Cargo Control, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
3	Tank Gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Property.
12	Calculations.
17	Maritime Measurements.

Camin Cargo Control, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petro-

leum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	ASTM D86	Standard Test Method for Distillation of Petroleum Products.
27–48	ASTM D4052	Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter.
27–58	ASTM D5191	Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for the current CBP Approved Gaugers and Accredited Laboratories List. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 10, 2018.

JAMES D. SWEET,
Acting Executive Director,
Laboratories and Scientific
Services Directorate.

[Published in the Federal Register, April 17, 2018 (83 FR 16894)]

APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of September 20, 2017.

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on September 20, 2017. The next triennial inspection date will be scheduled for September 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Cassata, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 1020 South Holland Sylvania Rd., Holland, OH 43528, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API Chapters	Title
2	Tank Calibration.
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurements.
17	Maritime Measurements.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding

the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 10, 2018.

JAMES D. SWEET,
Acting Executive Director,
Laboratories and Scientific
Services Directorate.

[Published in the Federal Register, April 17, 2018 (83 FR 16894)]

MODIFICATION OF THE NATIONAL CUSTOMS AUTOMATION PROGRAM TEST REGARDING SUBMISSION OF IMPORT DATA AND DOCUMENTS REQUIRED BY U.S. FISH AND WILDLIFE SERVICE THROUGH THE AUTOMATED COMMERCIAL ENVIRONMENT

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

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP), in consultation with the U.S. Fish and Wildlife Service (FWS), is modifying and reopening the National Customs Automation Program (NCAP) test pertaining to the submission of certain import data and documents for commodities regulated by FWS ("FWS test") through the Automated Commercial Environment (ACE). The modifications in this notice apply to the participation and discontinuation of participation in the test, submission options for test participants, and restrictions to the initial participation in the test. Except to the extent expressly announced or modified by this document, all aspects, rules, terms and conditions announced in a previous notice regarding the FWS test remain in effect.

DATES: As of May 23, 2018, the modifications to the FWS test will become operational. This test will continue until concluded by way of announcement in the **Federal Register**.

ADDRESSES: Comments concerning this notice and any aspect of this test may be submitted at any time during the test via email to Christopher Mabelitini, Trade Transformation Office, Office of Trade, U.S. Customs and Border Protection at (571) 468–5095 or

Christopher.Mabelitini@cbp.dhs.gov, with a subject line identifier reading "Comment on FWS Test FRN."

FOR FURTHER INFORMATION CONTACT: For Partner Government Agency (PGA)-related questions, contact Bill Scopa, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection at (202) 863–6554 or *William.R.Scopa@cbp.dhs.gov.* For technical questions related to ACE or Automated Broker Interface (ABI) transmissions, contact your assigned client representative. Interested parties without an assigned client representative should direct their questions to Steven Zaccaro, Trade Transformation Office, Office of Trade, U.S. Customs and Border Protection at (571) 358–7809 or *Steven.J.Zaccaro@cbp.dhs.gov* with the subject heading "FWS Test." For FWS-related questions, contact Tamesha Woulard, Office of Law Enforcement, U.S. Fish and Wildlife Service at (703) 358–1949 or *Tamesha_Woulard@fws.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

National Customs Automation Program Test

The National Customs Automation Program (NCAP) was established by Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement (NAFTA) Implementation Act (Customs Modernization Act) (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (19 U.S.C. 1411). Through NCAP, the thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS) as the electronic data interchange (EDI) system authorized by U.S. Customs and Border Protection (CBP). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace specific legacy ACS functions and add new functionality. Section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) provides

for the testing of NCAP components. *See* T.D. 95–21, 60 FR 14211 (March 16, 1995).

The U.S. Fish and Wildlife Service (FWS) Partner Government Message Set (PGA) and Digital Image System (DIS) Test

On May 5, 2016, CBP published a notice in the **Federal Register** (81 FR 27149) announcing an NCAP test concerning the electronic submission of certain import data and documents for commodities regulated by FWS ("FWS test"). The test notice provided that test participants would electronically submit data contained in FWS's "Declaration for Importation or Exportation of Fish and Wildlife" ("Declaration" or "FWS Form 3–177") to ACE using the Partner Government Agency (PGA) Message Set, and any required original permits or certificates, and copies of any other documents required under the FWS regulations (*see* 50 CFR part 14) to ACE via the Document Image System (DIS). Under the test, ACE replaced FWS's internet-based filing system ("eDecs") used for the electronic submission of the Declaration and accompanying documents. After receipt in ACE, the data and electronic documents would be sent to FWS for processing. The test notice further stated that original "Convention on International Trade in Endangered Species of Wild Fauna and Flora" ("CITES") permits and certificates, and foreign-law paper documents would continue to be submitted directly to the FWS office at the applicable port. There was a lack of participation, and on January 12, 2017, the FWS PGA Message Set test was suspended due to concerns raised by the industry regarding the design of the message set. *See* CSMS Message Set 17–000015.

II. Test Modifications

This document announces the reopening of the FWS test with modifications. Each modification is discussed separately below. Except to the extent expressly announced or modified by this document, all aspects, rules, terms, requirements, obligations and conditions announced in the previous notice regarding the FWS test remain in effect.

A. Application for Participation in Test

The original test notice announced that a party seeking to participate in the test program had to send an email to its CBP client representative, Trade Transformation Office, Office of Trade (formerly known as ACE Business Office, Office of International Trade). This notice announces that applications to participate in the test program should be submitted by email to FWS at *lawenforcement@fws.gov,* with the subject heading "Request to Participate in the FWS Test." A copy of the application should be sent to the applicant's CBP client

representative, Trade Transformation Office, Office of Trade. Applications must include the applicant's filer code, the commodities the applicant intends to import, and the intended ports of arrival. Any applicant to the original test notice who wishes to participate in the reopening of the test should apply again pursuant to this notice.

B. Discontinuation of Participation in Test

The original notice was silent as to the discontinuation of participation in the test program. This notice announces that requests to discontinue participation in the test program should be submitted by email to FWS at *lawenforcement@fws.gov,* with the subject heading "Request to Discontinue Participation in the FWS Test." This process ensures that any future entries submitted by an importer who wishes to discontinue participation will not be rejected by the business rules operating in the test due to missing Declaration data and accompanying documents. A copy of the request to discontinue should be sent to the participant's CBP client representative, Trade Transformation Office, Office of Trade. The request should include the date the participant wishes to end the participation.

C. Submission of Data and Documents in ACE

Under the original test program, test participants were required to submit the Declaration data electronically to ACE when filing an entry, using the PGA Message Set, and the participants had to refrain from filing the Declaration data and accompanying documents in eDecs. This notice announces that CBP established a design that provides participants with different filing options when submitting data, disclaimers or documents in ACE. Participants do not need to notify CBP or FWS about which option they plan on using. Participants may use different filing options for different entries.

(1) *Option 1:* Test participants will file FWS Form 3–177 data in ACE using the PGA Message Set and upload required FWS documents in DIS. This filing option replaces eDecs for those participants filing entries under the auspices of this test program. ACE will send the data and electronic documents to FWS for processing.

(2) *Option 2:* Test participants will file FWS Form 3–177 and required documents directly with FWS. Under this option, test participants will either file the applicable eDecs confirmation number in the PGA Message Set (if FWS clearance was already received via eDecs) or use Disclaimer code "D" ("data filed through paper") to file in the PGA Message Set (if FWS clearance was already received via paper).

DIS will not be used under this option unless further information is requested by CBP or FWS to substantiate a disclaimer on a case-by-case basis.

(3) *Option 3:* Test participants will file in the PGA Message Set using Disclaimer code "C" ("data filed through other agency means") to indicate that they will follow up with FWS and file in eDecs at a later time. DIS will not be used under this option unless further information is requested by CBP or FWS to substantiate a disclaimer on a case-by-case basis.

(4) *Option 4:* When a Harmonized Tariff code is flagged as "FW1", participants will file in the PGA Message Set using Disclaimer code "E" ("product does not contain fish or wildlife, including live, dead, parts or products thereof, except as specifically exempted from declaration requirements under 50 CFR part 14") to disclaim the need to file FWS Form 3–177 and required documents because the commodity does not contain fish or wildlife. However, if a commodity contains both FWS regulated and non-FWS regulated animal components, Disclaimer code "E" should be used in conjunction with one of the above options.

D. Restrictions to Initial Participation in Test

This test notice announces two restrictions to the initial participation in this reopened test program. Initially, participation will be restricted to certain FWS ports. FWS will notify participants of the ports they may use to enter commodities under the test procedures. In addition, initial participation in the test program will exclude entries of live and perishable commodities. Once FWS determines that a participant has fully tested its software for filing entries in ACE, FWS will notify the participant of its eligibility to file for entries of live and perishable commodities.

III. Waiver of Regulation Under the Test

For purposes of this test, those provisions of 19 CFR parts 10 and 12 that are inconsistent with the terms of this test are waived for the test participants only. *See* 19 CFR 101.9(b). This document does not waive any recordkeeping requirements found in 19 CFR part 163 and the Appendix to part 163 (commonly known as the "(a)(1)(A) list"). This test also does not waive any FWS requirements under 50 CFR part 14.

IV. Test Participation and Selection Criteria

To be eligible to apply for this test, the applicant must:

(1) Be a self-filing importer who has the ability to file ACE entry/cargo release and ACE Entry Summaries certified for cargo release or

a broker who has the ability to file ACE entry/ cargo release and ACE Entry Summaries certified for cargo release;

(2) File Declarations and disclaimers for FWS-regulated commodities; and

(3) Have an FWS eDecs filer account that contains the CBP filer code when filing under Option 1.

Test participants must meet all the eligibility criteria described in this document in order to participate in the test program.

V. Application Process

As of April 23, 2018, FWS will accept applications throughout the duration of the test. FWS will notify the selected applicants by an email message of their selection and the starting date of their participation. Selected participants may have different starting dates. Anyone providing incomplete information, or otherwise not meeting participation requirements, will be notified by an email message and given the opportunity to resubmit the application. There is no limit on the number of participants.

VI. Test Duration

The modifications announced in this test will become operational on May 23, 2018. At the conclusion of the test pilot, an evaluation will be conducted to assess the effect that the PGA Message Set has on expediting the submission of FWS importation-related data elements and the processing of FWS-related entries. The final results of the evaluation will be published in the **Federal Register** as required by § 101.9(b)(2) of the CBP regulations (19 CFR 101.9(b)(2)). Any modifications to this test will be announced via a separate **Federal Register** notice.

VII. Paperwork Reduction Act

The collection of information contained in this FWS PGA Message Set test has been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB control number 1018–0012. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: April 17, 2018.

BRENDA B. SMITH,
Executive Assistant Commissioner,
Office of Trade.

[Published in the Federal Register, April 23, 2018 (83 FR 17669)]

RENEWAL OF THE GENERALIZED SYSTEM OF PREFERENCES (GSP) AND RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS UNDER THE GSP

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

ACTION: General notice.

SUMMARY: The Generalized System of Preferences (GSP) is a renewable preferential trade program that allows the eligible products of designated beneficiary developing countries to enter the United States free of duty. The GSP program expired on December 31, 2017, but has been renewed through December 31, 2020, effective April 22, 2018, with retroactive effect between January 1, 2018, through April 21, 2018, by a provision in the Consolidated Appropriations Act, 2018.

This document provides notice to importers that U.S. Customs and Border Protection (CBP) will again accept claims for GSP duty-free treatment for merchandise entered, or withdrawn from warehouse, for consumption and that CBP will process refunds on duties paid, without interest, on GSP-eligible merchandise that was entered during the period that the GSP program was lapsed. Formal and informal entries that were filed electronically via the Automated Broker Interface (ABI) using Special Program Indicator (SPI) Code "A" as a prefix to the tariff number will be automatically processed by CBP and no further action by the filer is required to initiate the refund process. Non-ABI filers, and ABI filers that did not include SPI Code "A" on the entry, must timely submit a duty refund request to CBP. CBP will continue conducting verifications to ensure that GSP benefits are available to eligible entries only.

DATES: As of April 22, 2018, the filing of GSP-eligible entry summaries may be resumed without the payment of estimated duties, and CBP will initiate the automatic liquidation or reliquidation of formal and informal entries of GSP-eligible merchandise that was entered on or after January 1, 2018, through April 21, 2018, and filed via ABI with SPI Code "A" notated on the entry. Requests for refunds of GSP duties paid on eligible non-ABI entries, or eligible ABI entries filed without SPI Code "A," must be filed with CBP no later than September 19, 2018.

ADDRESSES: Instructions for submitting a request to CBP to liquidate or reliquidate entries of GSP-eligible merchandise that was entered on or after January 1, 2018, through April 21, 2018

but without the SPI Code "A" are located at *http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences.*

FOR FURTHER INFORMATION CONTACT: General questions concerning this notice should be directed to Seth Mazze, Office of Trade, Trade Agreements Branch, 202–863–6567 or at *fta@dhs.gov*. For operational questions regarding: Formal/Informal Entries and Baggage Declarations: Randy Mitchell, 202–863–6532; Mail Entries: Robert Woods, 202–344–1236; Non-ABI Informal Entries: Contact the appropriate Center of Excellence and Expertise. Questions from filers regarding ABI transmissions should be directed to their assigned ABI client representative.

SUPPLEMENTARY INFORMATION:

Background

Section 501 of the Trade Act of 1974, as amended (19 U.S.C. 2461), authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary countries for specific time periods. Pursuant to 19 U.S.C. 2465, as amended by section 201(a) of Pub. L. 114–27, 129 Stat. 371, duty-free treatment under the GSP program expired on December 31, 2017.

On March 23, 2018, President Donald J. Trump signed the Consolidated Appropriations Act, 2018 (Pub. Law 115–141, 132 Stat. 348) (the Act). Section 501 of Title V of the Act pertains to the extension of duty-free treatment and the retroactive application for certain liquidations and reliquidations under the GSP. Section 501(b)(1) provides that GSP duty-free treatment will be applied to eligible articles from designated beneficiary countries that are entered, or withdrawn from warehouse, for consumption on or after April 22, 2018 through December 31, 2020. Section 501(b)(2) provides that for entries made on or after January 1, 2018 through April 21, 2018 (30th day after the date of enactment of the Act), to which duty-free treatment would have applied if GSP had been in effect during that time period ("covered entries"), any duty paid with respect to such entry will be refunded provided that a request for liquidation or reliquidation of that entry, containing sufficient information to enable U.S. Customs and Border Protection (CBP) to locate the entry or to reconstruct the entry if it cannot be located, is filed with CBP no later than September 19, 2018 (180 days after enactment of the Act). Section

501(b)(2)(C) provides that any amounts owed by the United States pursuant to section 501(b)(2)(A) will be paid *without* interest.

Field locations will not issue GSP refunds except as instructed to do so by CBP Headquarters. The processing of retroactive GSP duty refunds will be administered by CBP according to the terms set forth below.

Duty-Free Entry Summaries

As of April 22, 2018, filers may resume filing GSP-eligible entry summaries without the payment of estimated duties.

GSP Duty Refunds

Formal/Informal Entries

CBP will automatically liquidate or reliquidate formal and informal entries of GSP-eligible merchandise that were entered on or after January 1, 2018 through April 21, 2018, and filed electronically via the Automated Broker Interface (ABI) using Special Program Indicator (SPI) Code "A" as a prefix to the listed tariff number. Such entry filings will be treated as a conforming request for a liquidation or reliquidation pursuant to section 501(b)(2)(A) of the Act, and no further action by the filer is required to initiate a retroactive GSP duty refund. To avoid confusion, importers should not submit post-importation GSP claims on tariff items filed with the SPI "A" at entry summary. CBP expects to begin processing automatic refunds for these entries shortly after April 22, 2018.

CBP will not automatically process GSP duty refunds for formal covered entries that were not filed electronically via ABI, nor for formal and informal covered entries that were filed electronically via ABI with payment of estimated duties, but without inclusion of the SPI Code "A" as a prefix to the listed tariff number. In both situations, requests for liquidation or reliquidation of covered entries must be made no later than September 19, 2018, pursuant to the procedures set forth in *http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences.*

Mail Entries

For merchandise that was imported via the mail, addressees must request liquidation or reliquidation of covered entries no later than September 19, 2018, pursuant to the procedures set forth in *http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences*.

Baggage Declarations and Non-ABI Informals

For non-ABI informal entries and baggage declarations, travelers/importers must request liquidation or reliquidation of covered entries no later than September 19, 2018, pursuant to the procedures set forth in *http://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/generalized-system-preferences*.

Dated: April 18, 2018.

BRENDA B. SMITH,
Executive Assistant Commissioner,
Office of Trade.

[Published in the Federal Register, April 20, 2018 (83 FR 17561)]

AGENCY INFORMATION COLLECTION ACTIVITIES:

Entry/Immediate Delivery Application and Ace Cargo Release

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; revision and extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted (no later than June 18, 2018) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0024 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email. Submit comments to: CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief,

Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number (202) 325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Entry/Immediate Delivery Application and ACE Cargo Release.

OMB Number: 1651–0024.

Form Number: 3461 and 3461 ALT.

Current Actions: This submission is being made to extend the expiration date with a change in the data collected. There is an increase to the annual burden hours based on updated agency estimates. Since the last OMB Renewal there have been two submissions for a Non Substantive Change for this information collection. The Non Substantive Changes made are the following:

Change one submitted on February 22, 2018: CBP is submitting this Non Substantive Change to OMB to reflect a change in the

Harmonized Tariff Schedule (HTS) which is maintained by the U.S. International Trade Commission (USITC). HTS data is provided to CBP at entry.

Effective February 7, 2018, the following changes to the Harmonized Tariff Schedule for units of quantity reporting will take effect:

- For HTS 8450.90.20 and 8450.90.60, certain parts of washing machines, the new unit of quantity will be "No." instead of "X".
- For HTS 8541.40.6030, solar cells, a second unit of quantity, "W" (for total wattage), will be added.
- For statistical reporting purposes under subheading 8541.40.6030, importers should report the total watts at maximum power based on standard test conditions according to the latest revision of International Electrotechnical Commission (IEC) 60904, "Photovoltaic Devices."
- These modifications will take effect as announced in Presidential Proclamations 9693 (83 FR 3541) and 9694 (83 FR 3553), of January 23, 2018.

For additional information regarding the HTS please follow this link: *https://hts.usitc.gov/current*

Change two submitted on March 19, 2018: CBP is submitting this Non Substantive change to reflect an adjustment in ACE Cargo due to U.S. Department of Commerce Bureau of Industry and Security (BIS) for Procedures for Submitting Requests for Exclusions from the Section 232 National Security Adjustments of Imports of Steel and Aluminum information collection. Importers who have submitted for exclusion from Section 232 shall submit the BIS exclusion number in the additional importer declaration field. This collection is authorized by 15 CFR 705, *https://www.gpo.gov/fdsys/pkg/CFR-2016-title15-vol2/pdf/CFR-2016-title15-vol2-part705.pdf*

Type of Review: Extension and Revision (with change)

Abstract: All items imported into the United States are subject to examination before entering the commerce of the United States. There are two procedures available to effect the release of imported merchandise, including "entry" pursuant to 19 U.S.C. 1484, and "immediate delivery" pursuant to 19 U.S.C. 1448(b). Under both procedures, CBP Forms 3461, Entry/Immediate Delivery, and 3461 ALT are the source documents in the packages presented to Customs and Border Protection (CBP). The information collected on CBP Forms 3461 and 3461 ALT allow CBP officers to verify that the information regarding the consignee and shipment is correct and

that a bond is on file with CBP. CBP also uses these forms to close out the manifest and to establish the obligation to pay estimated duties in the time period prescribed by law or regulation. CBP Form 3461 is also a delivery authorization document and is given to the importing carrier to authorize the release of the merchandise.

CBP Forms 3461 and 3461 ALT are provided for by 19 CFR 141 and 142. These forms and instructions for Form 3461 are accessible at: *http://www.cbp.gov/newsroom/publications/forms*

ACE Cargo Release is a program for ACE entry summary filers in which importers or brokers may file Simplified Entry data in lieu of filing the CBP Form 3461. This data consists of 12 required elements: Importer of record; buyer name and address; buyer employer identification number (consignee number), seller name and address; manufacturer/supplier name and address; Harmonized Tariff Schedule 10-digit number; country of origin; bill of lading; house air waybill number; bill of lading issuer code; entry number; entry type; and estimated shipment value. Three optional data elements are the container stuffing location; consolidator name and address, and ship to party name and address. The data collected under the ACE Cargo Release program is intended to reduce transaction costs, expedite cargo release, and enhance cargo security. ACE Cargo Release filing minimizes the redundancy of data submitted by the filer to CBP through receiving carrier data from the carrier. This design allows the participants to file earlier in the transportation flow. Guidance on using ACE Cargo Release may be found at *http://www.cbp.gov/trade/ace/features.*

Affected Public: Businesses

CBP Form 3461 paper form only:

Estimated Number of Respondents: 12,307.
Estimated Number of Responses per Respondent: 1.
Estimated Total Annual Responses: 12,307.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 3,077.

ACE Cargo Release to include electronic submission for 3461/3461ALT:

Estimated Number of Respondents: 9,810.
Estimated Number of Responses per Respondent: 2,994.
Estimated Total Annual Responses: 29,371,140.
Estimated Time per Response: 10 minutes.
Estimated Total Annual Burden Hours: 4,875,609.

Dated: April 12, 2018.

SETH D RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, April 17, 2018 (83 FR 16895)]