



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Division of Enforcement
Bureau of Consumer Protection

May 14, 2001

Terrie A. Gleason, Esq.
Juhong Kim, Esq.
Baker & McKenzie
815 Connecticut Avenue, N.W.
Washington, D.C. 20006-4078

Dear Mrs. Gleason and Mr. Kim:

This is in reply to your letter requesting written confirmation regarding the proper country-of-origin marking of a stadium seat cushion imported by R.G. Barry Corporation from Mexico. It is our understanding that the seat cushion is assembled in Mexico from U.S. and foreign components. Specifically, you state that the stadium seat cushion is composed of: (1) a cushion consisting of plastic foam, (2) a textile cover, and (3) a water-based energy pack. The plastic foam is produced either in the United States or abroad. The textile cover is assembled in Mexico from fabric that is made and cut in the USA. The water-based energy pack is made in the United States from domestic materials. The three components for the stadium seat cushion are assembled into the seat cushion in Mexico, and then the finished product is shipped into the United States.

Your letter enclosed a copy of binding ruling "NY G83156" from the U.S. Customs Service, dated November 6, 2000, regarding the stadium seat cushions. The ruling did not require foreign origin marking on the finished stadium seat cushion. Further, the ruling states: "The country of origin of the stadium seat cushion for marking purposes is the United States." I contacted U.S. Customs National Import Specialist, John Hansen, about the ruling, and he assured me that the ruling should not be construed as implying that U.S. Customs holds that the stadium seat cushions may be marked "Made in USA," or with any equivalent expression.

As you know, the Federal Trade Commission administers the Rules and Regulations Under the Textile Fiber Products Identification Act. Rule 33(a)(4), 16 C.F.R. § 303.33(a)(4), states, in part, that

- (4) Each textile fiber product partially manufactured in a foreign country and partially manufactured in the United States shall contain on a label the following information:*
- (i) The manufacturing process in the foreign country and in the USA; for example:*

The regulations then set forth several examples. Various truthful disclosures not contained in the list of examples may be nonetheless appropriate, depending on the circumstances. With respect to the specific scenario set forth in your letter, Commission staff has given this matter careful consideration and does not object to the disclosure that you propose, namely: "Textile Cover: Made in USA With Some Foreign Processing." As an alternative, the label might state "Fabric made and cut in USA. Sewn abroad."

In accordance with Section 1.3(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), this is a staff opinion only and has not been reviewed or approved by the Commission or by any individual Commissioner, and is given without prejudice to the right of the Commission later to rescind the advice and, where appropriate, to commence an enforcement action.

In accordance with Section 1.4 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.4, your request for advice, along with this response, will be placed on the public record.

I hope this information has been helpful.

Sincerely,

A handwritten signature in cursive script that reads "Steve Ecklund".

Steve Ecklund
Federal Trade Investigator

BAKER & MCKENZIE

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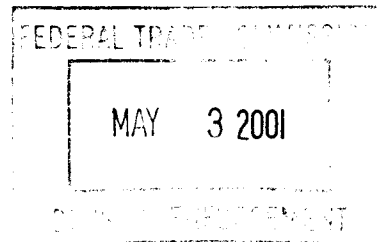
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April 30, 2001
Revised May 3, 2001



VIA HAND DELIVERY

Mr. Stephen Ecklund
Federal Trade Investigator
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
601 Pennsylvania Avenue, N.W. - 4th Floor
Washington, D.C. 20580

Re: FTC Country of Origin Marking of Stadium Seat Cushion
Imported by R.G. Barry Corporation from Mexico

Dear Mr. Ecklund:

On behalf of our client, R.G. Barry Corporation ("RG Barry"), we hereby request written confirmation of the proper country of origin marking of a stadium seat cushion imported by RG Barry from Mexico (hereinafter "Stadium Seat Cushion"). We discussed this matter with you recently and you indicated that, under the facts described below, we may inquire whether it is permissible for RG Barry to mark its Stadium Seat Cushion, **"Textile Cover: Made in USA With Some Foreign Processing."**

Mr. Stephen Ecklund
April 30, 2001
Page 2

Product Description

RG Barry is a leading domestic manufacturer and importer of footwear and thermal comfort products. The particular product in issue here is RG Barry's Stadium Seat Cushion. The Stadium Seat Cushion is composed of (1) a cushion consisting of plastic foam, (2) a textile cover and (3) a water-based energy pack. The plastic foam is produced either in the United States or abroad. The textile cover is assembled in Mexico from fabric formed and cut in the United States. The water-based energy packs are made under patent in the United States from U.S.-origin materials. The water based energy pack is designed to be heated in a microwave oven and inserted into the seat cushion. The three components for the Stadium Seat Cushion are assembled into the seat cushion in Mexico, which is shipped into the United States.

Customs Marking Requirements

On November 6, 2000, the U.S. Customs Service ("Customs") issued a binding ruling finding that the Stadium Seat Cushion is a U.S.-origin item for country of origin marking purposes. NY Ruling #G83156 (November 6, 2000) (copy enclosed). As such, for Customs purposes, the Stadium Seat Cushion is not required to be marked with any country of origin. Customs based its ruling on the new rules it published in the Federal Register on July 11, 2000 (65 Fed. Reg. 42,634 (July 11, 2000)) which removed a section from the Customs Regulations (i.e., Section 12.130(c)(1)) that would have required RG Barry's Stadium Seam Cushion to be considered a Mexican-origin good for country of origin marking purposes.

FTC Marking Requirements

Notwithstanding Customs' determination that the Stadium Seat Cushion does not need to be marked for Customs purposes, the Stadium Seat Cushion is a "textile fiber product" for

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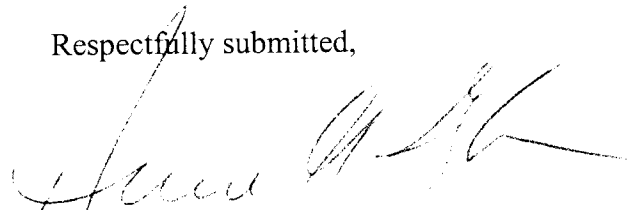
Mr. Stephen Ecklund
April 30, 2001
Page 3

purposes of the Textile Fiber Products Identification Act (the "Act") and, therefore, subject to the Federal Trade Commission ("FTC") labeling requirements. Pursuant to Section 303.33(a)(4)(i) of the FTC Regulations, a textile fiber product partially manufactured in a foreign country and in the United States is required to indicate on its label "[t]he manufacturing process in the foreign country and in the USA." 16 C.F.R. §303.33(a)(4)(i).

The FTC amended Section 303.33(a)(4)(i) on December 1, 2000. See 65 Fed. Reg. 75154, 75155 (copy enclosed). The FTC notice, however, does not provide specific guidance as to how a product, such as RG Barry's Stadium Seat Cushion, should be marked. In this regard, we request written confirmation that the Stadium Seat Cushion may be marked **"Textile Cover: Made in USA With Some Foreign Processing."**

Thank you for your assistance with this matter. If you have any questions or require additional information to issue your written confirmation, please do not hesitate to contact either Terrie Gleason at (202) 452-7030 or Juhong Kim at (202) 835-1641.

Respectfully submitted,



Terrie A. Gleason
Juhong Kim
Attorneys for
R.G. Barry Corporation

Enclosures

cc: Ms. Marilynn Thomas
R.G. Barry Corporation

NY G83156 11-06-00 CATEGORY: CLASSIFICATION

NY G83156

November 6, 2000

CLA-2-RR:NC:TA:349 G83156

CATEGORY: Classification

Ms. Teresa A. Gleason

Mr. Michael E. Murphy

Baker & McKenzie

815 Connecticut Avenue, N.W.

Washington, D.C. 20006-4078

RE: Classification, status under the North American Free Trade Agreement (NAFTA) and country of origin determination for a stadium seat cushion; 19 CFR 102.21(c)(2); tariff shift; 19 CFR 12.130(c); Article 509

Dear Ms. Gleason and Mr. Murphy:

This is in reply to your letter dated October 2, 2000, received by this office on October 11, 2000, on behalf of R. G. Barry Corporation, requesting a classification, status under the NAFTA and country of origin determination for a stadium seat cushion which will be imported into the United States.

FACTS:

The subject merchandise is referred to as a Stadium Seat Cushion. A sample was not submitted. The seat cushion is composed of plastic foam, a textile fabric cover and a water based energy pack. The energy pack is designed to be heated in a microwave oven and inserted into the seat cushion. Once heated, the energy pack will retain and radiate heat for a number of hours. The manufacturing operations for the stadium seat cushion are as follows:

United States:

- fabric for the cover is formed.
- fabric is cut to size and shape.
- energy packs are made from U.S. origin materials.
- cut components and energy packs are shipped to Mexico.

United States or a Non-NAFTA Country:

- plastic foam is made.

1

-foam is shipped to Mexico.

Mexico:

-fabric cover is assembled.

-plastic foam is cut to size.

-fabric cover, plastic foam and energy pack are assembled into the seat cushion.

-cushion is packed and shipped to the U.S.

ISSUE:

What are the classification, eligibility under NAFTA and country of origin of the subject merchandise?

CLASSIFICATION:

You have indicated that an earlier version of the stadium seat cushion was the subject of Headquarters Ruling Letter (HQ) 954864 dated October 20, 1993. That cushion was classified as an article of bedding and similar furnishing in subheading 9404.90.2000(EN), HTSUSA. Since that ruling certain advances have been made with regard to the components of the energy pack. While the composition of the energy pack may have changed, the conclusion reached in HQ 954864 remains applicable for the instant seat cushion.

The applicable subheading for the stadium seat cushion will be 9404.90.2000(EN), HTSUSA, which provides for 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 general rate of duty will be 6 percent ad valorem.

Subheading 9404.90.2000(EN), HTSUSA, is not assigned a textile category designation and item classified therein are not subject to quota or visa restrictions. Textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at www.customs.gov. In addition, textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

NAFTA ELIGIBILITY:

The subject seat cushion undergoes processing operations in the United States and Mexico which are countries provided for under the North American Free Trade Agreement (NAFTA). General Note 12, HTSUSA, incorporates Article 401 of the North American Free Trade Agreement

(NAFTA) into the HTSUSA. Note 12(a) provides, in pertinent part:

(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... 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... .

Accordingly, the seat cushion at issue will be eligible for the "Special" "MX" rate of duty provided they are NAFTA "originating" goods under General Note 12(b), HTSUSA, and they qualify to be marked as goods of Mexico. Note 12(b) provides in pertinent part:

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

- (i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or
- (ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that-
 - (A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, 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; or

The plastic foam may be made in a non-NAFTA country and you have not indicated the origin of the yarn used to make the fabric cover. Accordingly, the subject merchandise qualifies as a good of Mexico only if the good has been transformed in Mexico such that the non-originating material undergoes the applicable change in tariff.

The stadium seat cushion is classified in subheading 9404.90,(EN) HTSUSA. For merchandise classifiable in this heading, subdivision (t), chapter 94, states that:

A change to subheading 9404.90 (EN)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 non-originating materials used to make the seat cushion undergo the requisite change in

classification. The stadium seat cushion is eligible for the NAFTA preference. The seat cushion is entitled to the special "MX" duty rate of Free under the NAFTA upon compliance with all applicable laws, regulations and agreements.

COUNTRY OF ORIGIN - LAW AND ANALYSIS:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592)) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

We note that as written, the listed headings and subheadings under 19 CFR 102.21(b)(5) include subheading 9404.90.10(EN), HTSUSA, but fail to include subheading 9404.90.20(EN), HTSUSA, for purposes of the section 102.21 rules of origin. The omission of that subheading was addressed in Headquarters Ruling Letter (HQ) 962122 dated October 1, 1998 which stated that: "...it is Customs position that the omission of subheading 9404.90.20(EN), HTSUS, was an oversight. In that respect we direct your attention to the statute pertaining to the rules of origin, 19 U.S.C. section 3592, which states explicitly under (b)(2), Special rules, that:

(A) the origin of a good that is classified under one of the following HTS headings or subheadings shall be determined under subparagraph (A),(B), or (C) of paragraph (1), as appropriate: 5609, 5807, 5811, 6209.20.5040(EN), 6213, 6214, 6301, 6302, 6303, 6304, 6305, 6306, 6307.10,(EN) 6307.90, 6308, or **9404.90</JL>(EN)BD>; and... (Emphasis added)**

As the statute does not break out subheading 9404.90,(EN) HTSUS, it is Customs position that the statute takes precedence over the regulation. That is to say, Customs cannot exclude by regulation what is specifically included by statute. Accordingly, in determining the origin of the subject cushions, the 102.21 rules of origin are applicable."

Paragraph (c)(1) states that "The 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 stadium seat cushion is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "Where 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 of the foreign materials 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:"

Paragraph (e) in pertinent part states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section":

HTSUS

Tariff shift and/or other requirements

9404.90(EN) The country of origin of a good classifiable under subheading 9404.90 (EN) is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

As the fabric comprising the seat cushion is formed in a single country, following the terms of the tariff shift requirement, the country of origin of the seat cushion is conferred in the United States. However, there is an exception to products from the United States that are sent abroad for processing. Section 12.130(c), Customs Regulations, provides that any product of the United States which is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article.

Section 12.130 which remains in effect was originally intended to be used to determine the country of origin of textiles and textile products for quota/visa requirements. In T.D. 90-17, issued February 23, 1990, Customs announced a change in practice and position. This change resulted in Customs using Section 12.130 for quota, duty, and marking purposes when making country of origin determinations for textile goods. In accordance with T.D. 90-17 and Section 12.130(c), the country of origin of the seat cushion made from U.S. formed fabric is Mexico, for quota, marking, and duty purposes. However, this position has recently been modified. On July 11, 2000, Customs published T.D. 00-44 in the Federal Register (65 FR 42634 stating that effective October 10, 2000, Customs will no longer apply 19 CFR 12.130(c)) for purposes of country of origin marking. Therefore, in accordance with T.D. 00-44, Section 12.130(c) and Section 102.21(c)(2), the country of origin of the instant seat cushion for purposes of marking will be the United States. For duty purposes Section 12.130(c) remains in effect and the seat cushion is subject to the rate of duty noted previously.

As the origin of the seat cushion for the purposes of marking has been determined to be the United States, the cushion is not required to be marked as a foreign article for purposes of 19 U.S.C. 1304 as previously required. However, separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. For more information on the applicability of the requirements under the Textile Fiber Products Identification Act (TFPIA), you should contact the Federal Trade Commission, Textile Program, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580.

HOLDING:

The subject stadium seat cushion is classified in subheading 9404.90.2000(EN), HTSUSA, which provides for other quilts, eiderdowns, comforters and similar articles, with an outer shell of man-made fibers. The seat cushion is entitled to the NAFTA "MX" duty rate of Free upon compliance with all applicable laws, regulations and agreements.

The country of origin of the stadium seat cushion for marking purposes is the United States.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 181.100(a)(2). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 C.F.R. 181)). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 181.100(a)(2), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted.

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 John Hansen at 212-637-7078.

Sincerely,

Robert B. Swierupski
Director,
National Commodity
Specialist Division