

HQ H114575

April 6, 2011

OT:RR:CTF:VS H114575 CMR

CATEGORY: Classification

Port Director
Attention: Chief, Trade Operations Branch D
Customs and Border Protection
Building 77 JFK International Airport
Jamaica, NY 11430

RE: Application for Further Review of Protest #4701-10-100057; Eligibility for Preferential Treatment under the African Growth and Opportunity Act; certain women's knit garments

Dear Port Director:

This decision is in response to your memorandum, dated June 25, 2010, forwarding the application for further review of protest #4701-10-100057. The protestant, Sofia Cashmere LLC, through counsel protests the denial of preferential tariff treatment under the African Growth and Opportunity Act (AGOA) for an entry of certain women's knit apparel consisting of sweaters and pullovers. We note the protest was timely filed on January 12, 2010, eight days after the date of liquidation.

FACTS:

The merchandise at issue in the relevant entry consists of certain women's 100 percent cotton and 100 percent cashmere knit sweaters and pullovers classifiable, per the protestant, in subheadings 6110.12.10, Harmonized Tariff Schedule of the United States (HTSUS) as women's sweaters wholly of cashmere and 6110.20.2020, HTSUS, as women's sweaters of cotton. Claiming preferential treatment under the AGOA, the garments were entered under subheading 9819.11.12, HTSUS, which provides for apparel articles wholly assembled, or knit to shape and wholly assembled, in one or more lesser developed AGOA countries regardless of the country of origin of the fabric or yarn used to make the apparel.

Your port requested additional information from the importer via Customs and Border Protection (CBP) Forms 28 issued on June 23, 2009 and August 11, 2009. Although responses were received, not all of the requested information was provided. The August 11, 2009 CBP Form informed the importer that the request was part of an AGOA verification. By CBP Form 29, Notice of Action, dated October 14, 2009, the importer was notified of the negative determination regarding this AGOA claim and of the proposed rate advance. By CBP Form 29, dated November 3, 2009, the importer was notified that proposed action had been taken.

The missing information not received by the port included shipping documents to show the movement of the yarns from Italy to Madagascar, inland freight bills and production records such as knitting and cutting records and time and wage cards. Counsel for the importer has offered an explanation for the failure to submit the requested production record. The factory in Madagascar was uncooperative regarding supplying production records and the importer's efforts to obtain the documentation became impossible when Madagascar lost its eligibility for AGOA preferential tariff treatment. As evidence of the importer's efforts to obtain the records, counsel submitted emails on this matter.

The production process explained in the protest submission indicates that Sofia Cashmere sources cashmere yarn from Italy and provides it to the manufacturer in Madagascar. The manufacturer sources the cotton yarn from Peru. Counsel for the importer has submitted a manufacturer's certificate of origin for the cotton yarn stating its Peruvian origin, an invoice showing that the manufacturer in Madagascar was billed for the yarn, a bill of lading showing the manufacturer as the party to be notified on arrival, a Madagascar customs entry form showing the name of the Peruvian manufacturer as the exporter and the Madagascar manufacturer as the importer and indicating the merchandise was cotton knitting yarns, and a SWIFT record showing payment by the Madagascar manufacturer to the cotton yarn producer.

In addition, with regard to the cashmere yarn, counsel has submitted the invoice for the cashmere fiber, referred to in the invoice as "cashmere tops", the spinner's affidavit stating the yarn was produced in Italy along with the spinner's invoices showing the importer as the buyer and the goods to be shipped to the manufacturer in Madagascar, the invoice from the Italian dyeing processor, the waybill showing shipment from Italy to the manufacturer in Madagascar, a Madagascar customs entry form showing the Italian exporter and the Madagascar manufacturer as the importer and proof of payment to the fiber, yarn and dyeing companies.

Further, as part of the manufacturer profile that was submitted to the port, we find that handflat knitting machines and looping machines are identified. As it was not indicated anywhere in the record, we assume the sweaters are knit to shape.

ISSUE:

Are the women's knit sweaters at issue eligible for preferential tariff treatment under the AGOA?

LAW AND ANALYSIS:

The AGOA provides certain specified trade benefits for countries of sub-Saharan Africa. These benefits include duty-free treatment for certain non-textile articles previously excluded from preferential treatment under the Generalized System of Preferences, and duty- and quota-free treatment for certain textile and apparel articles which meet the requirements set forth in Section 112 of the Act (codified at 19 U.S.C. 3721). Beneficiary countries are designated by the President of the United States after having met eligibility requirements set forth in the AGOA. Once designated, a beneficiary country is entitled to the duty-free treatment for the designated non-textile articles determined not to be import-sensitive in the context of imports from the beneficiary sub-Saharan African countries. A second designation by the United States Trade Representative (USTR), published in the Federal Register, that a beneficiary country has taken the measures required by the Act to prevent unlawful transshipment and has adopted an effective visa system, is necessary before a beneficiary country may enjoy the duty- and quota-free benefits extended to textile and apparel articles under the Act. Madagascar was designated a beneficiary country by Presidential Proclamation 7350, published in the Federal Register on October 4, 2000 (65 Fed. Reg. 59321). It was determined to be eligible for textile benefits under the AGOA by the USTR effective March 6, 2001 (66 Fed. Reg. 14242). Madagascar is also designated as a lesser developed beneficiary country as provided for in U.S. Note 2(d), Subchapter XIX, HTSUS. See *also*, Presidential Proclamation 7350, *supra*.

The provisions implementing the textile provisions of the AGOA in the HTSUS are contained, for the most part, in subchapter XIX, Chapter 98, HTSUS (one provision may be found in subheading 9802.00.80, HTSUS). The regulations pertinent to the textile provisions of the AGOA may be found at §§ 10.211 through 10.217 of the CBP Regulations (19 CFR 10.211 through 10.217).

With regard to the sweaters at issue, we have reviewed the documentation submitted by counsel to support his client's claim that the garments qualify for preferential tariff treatment under subheading 9819.11.12, HTSUS. Of the documents cited by your port as missing from the record, documents showing the shipment of the yarns from Italy and Peru to the manufacturer in Madagascar are in the files. The invoice referencing "TOPS CHINA WHITE CASHMERE" refers to the cashmere fiber purchased by a party related to Sofia Cashmere. This document appears to have been a source of confusion due to the reference to tops. "Top" is defined as "a fiber preparation where all the fibers are combed and aligned. All short or broken fibers, noils, neps and debris have been removed." See *Spindling and Fiber Definitions* at <http://www.ispindle.com/dict/dict2.htm>.

The submitted documentation supports the AGOA claim in this case. The failure to submit inland freight documentation or production documents does not cause the claim to fail. Counsel submitted a reasonable explanation for the failure to obtain the production records and the circumstances at the time in Madagascar and the loss of AGOA benefits for Madagascar support the explanation provided by counsel. Sufficient evidence has been submitted regarding the origin of the yarns and the shipment of the yarns to Madagascar to the claimed manufacturer. In addition, the invoices between the manufacturer and Sofia Cashmere and the payment evidence support the claim that the manufacturer in Madagascar produced and was paid for the subject sweaters. In order to qualify for AGOA preferential tariff treatment under subheading 9819.11.12, HTSUS, the sweaters must be knit to shape and wholly assembled in one or more lesser developed AGOA countries, and may use yarn of any origin. We have documentation to support that 100 percent cotton yarn and 100 percent cashmere yarn were sent to the manufacturer in Madagascar and the same manufacturer sold and shipped 100 percent cotton and 100 percent cashmere sweaters to Sofia Cashmere, the importer. Accordingly, this office would allow this protest.

HOLDING:

The protest is allowed. Sixty days from the date of this letter, Regulations and Rulings of the Office of International Trade will take steps to make this decision available to Customs and Border Protection ("CBP") personnel and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

Myles B. Harmon, Director
Commercial and Trade Facilitation Division