U.S. Department of Homeland Security
Washington, DC 20229
U.S. Customs and Border Protection

HQ H312424

August 18, 2020

OT:RR:CTF:VS H312424 AP

CATEGORY: Classification

Center Director
Apparel, Footwear and Textiles CEE
200 East Bay Street
Charleston, South Carolina 29401

Attn.: Jose Ramos, Supervisory CBP Import Specialist

RE: Application for Further Review of Protest Number 4601-20-112855; African Growth and Opportunity Act; Ethiopia; footwear; double substantial transformation; value-content; General Note 16, HTSUS

Dear Center Director:

The following is our decision regarding the Application for Further Review ("AFR") of Protest Number 4601-20-112855, timely filed on April 21, 2020, on behalf of VCS Group LLC ("protestant"). Protestant contests U.S. Customs and Border Protection's ("CBP") denial of preferential tariff treatment under the African Growth and Opportunity Act ("AGOA") for its footwear imported from Ethiopia.

FACTS:

The subject footwear was manufactured at Huajian International Shoes City (Ethiopian) P.L.C. ("factory") in Ethiopia from raw materials supplied from China.[1] Protestant placed the purchase order with vendor Huajian Industrial, the parent company of the factory in Ethiopia. The raw materials, which included leather, thermoplastic rubber ("TPR"), pilea polyurethane("PU"), memory foam, insole board, and non-woven material, were procured from unrelated suppliers in China. The cutting process, the stitching, and the assembly took place at the factory in Ethiopia.

[1] *See generally* Chinese Firm Steps Up Investment in Ethiopia with "Shoe City," https://www.theguardian.com/global-development/2013/apr/30/chinese-investment-ethiopia-shoe-city (last visited Aug. 12, 2020).

The cow leather from China was used to produce the upper of the shoes. It was shipped to Ethiopia as leather skins in square foot sheets. In Ethiopia, the leather skins were cut into shaped components to form unassembled uppers for the footwear. The upper components were then lasted and were assembled into the finished footwear by stitching and gluing. The TPR from China formed the outsole of the shoe. The TPR from China was formed into the finished outsole by heating the TPR material and pouring it into an outsole mold. The PU from China was used as the insole lining and sock lining. It was shipped from China as sheet yardage. The PU raw material was cut to shape, sewn, and glued to the outer surface area and insole.

The memory foam from China was affixed under the sock lining for comfort. The memory foam was cut to shape and glued to the insole as part of the padded foot bed. The non-woven material for counter pocket from China was cut to shape and sewn into the shoe during assembly of the upper and insole material. The raw materials from China incorporated into the footwear also included other trims, reinforcements, and packing materials.

The footware made at the factory in Ethiopia was shipped for importation into the United States. On October 8, 2018, the footwear was entered under subheadings 6403.91.9045, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA") (entry line 1), 6403.99.9065, HTSUSA (entry lines 2, 4 and 5), and 6402.99.3165, HTSUSA (entry line 3), which are all eligible for Special Indicator "D" in the Special Rate of Duty column of the HTSUS. On October 25, 2019, the entry was denied special "D" rate of duty upon liquidation as the documentation provided did not establish a double substantial transformation.

ISSUE:

Whether the footwear is eligible for preferential tariff treatment under the AGOA.

LAW AND ANALYSIS:

We note that the matter protested is protestable under 19 U.S.C. § 1514(a)(1) as a decision on the value of merchandise. The protest was timely filed, within 180 days of liquidation for the entry. *See* Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. 108-429, § 2103(2)(B)(ii)-(iii) (codified as amended at 19 U.S.C. § 1514(c)(3) (2006)). Further Review of this protest is properly accorded to protestant pursuant to 19 C.F.R. § 174.24(b) because the issues protested involve questions of law or fact, which have not been ruled upon.

Title I of the Trade and Development Act of 2000, Pub. L. 106-200, 114 Stat, 251, May 18, 2000, referred to as the AGOA, seeks to promote trade opportunities between the United States and the countries of sub-Saharan Africa. The AGOA provides for the extension of duty-free treatment under the Generalized System of Preferences ("GSP") to non-textile articles normally excluded from GSP duty-free treatment that are not import sensitive and the entry of specific textile and apparel articles free of duty.

Ethiopia has been designated as a beneficiary sub-Saharan African country ("BSAC") for purposes of the AGOA and may be afforded preferential treatment under the HTSUS. *See*

General Note ("GN") 16(a), HTSUS. GN 16(b), HTSUS, establishes that a good provided in a provision for which a rate of duty appears in the "Special" subcolumn followed by the symbol "D" in Chapters 1 through 97 of the HTSUS, is designated to be an eligible article for duty-free treatment from countries designated as beneficiary countries under the AGOA, if imported directly into the customs territory of the United States and provided that such good:

> (i) is the growth, product or manufacture of a designated beneficiary sub-Saharan African country enumerated in subdivision (a) of this note, and
>
> (ii) the sum of—
>
> (A) the cost or value of the materials produced in one or more designated beneficiary sub-Saharan African countries, plus
>
> (B) the direct costs of processing operations performed in the designated beneficiary sub-Saharan African country or any two or more designated beneficiary sub-Saharan African countries that are members of the same association of countries which is treated as one country under section 507(a)2 of the 1974 Act,
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> is not less than 35 per centum of the appraised value of such article at the time it is entered … No article or material of a designated beneficiary sub-Saharan African country enumerated in subdivision (a) of this note and receiving the tariff treatment specified in this note shall be eligible for such duty-free treatment by virtue of having merely undergone simple combining or packing operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

Applying the guidance set forth in GN 16(b), HTSUS, we note that, based on the tariff classifications of the footwear, it is eligible to receive the special "D" rate of duty and is eligible to receive preferential treatment under the AGOA, provided that the additional requirements of the AGOA program are met.

The footwear was imported directly into the United States from Ethiopia. We must determine whether the imported footwear is considered to be the growth, product, or manufacture of Ethiopia. The provisions of 19 C.F.R. §§ 10.171, 10.173, and 10.175 through 10.178 apply for purposes of determining whether imported merchandise qualifies for preferential treatment under the AGOA. *See* 19 C.F.R. § 10.178a(d). As applied, where an article is produced from materials imported into a BSAC from a non-BSAC, as here, the article is considered a "product of" the BSAC only if the imported materials are substantially transformed into a "new or different article of commerce." 19 C.F.R. § 10.176(a).

The test for determining whether a substantial transformation has occurred is whether an article emerges from a process with a new name, character, or use different from that possessed by the article prior to the processing. *See Texas Instruments v. United States*, 69 CCPA 151, 681 F.2d 778 (1982). In *Uniroyal, Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), the court held that a shoe upper, which was lasted in Indonesia and attained its ultimate shape, form and size there, was substantially transformed in Indonesia from sheets of leather into a substantially complete shoe prior to its exportation to the United States. In Headquarters Ruling Letter ("HQ") H187035, dated Jan. 3, 2012, uppers were

substantially transformed in the United States where the shoes were lasted, bottomed, and finished.

You argue that the leather skins, TPR, and PU from China all lost their individual identities in Ethiopia when they were cut to shape and sewn, glued, and assembled together, merging into a new and different article of commerce, with a new name, character and use (finished footwear). We agree that the operations would render the footwear a "product of" Ethiopia. *See Texas Instruments*; *Uniroyal*; HQ H187035, *supra*.

Next, we must address whether a double substantial transformation occurred. Specifically, we must determine whether during the manufacture of the footwear in Ethiopia, the imported materials (*i.e.*, leather skins, TPR, and PU of Chinese origin) were substantially transformed into a separate and distinct intermediate article of commerce, which was then substantially transformed into the final footwear. The value of material from a non-BSAC may be included in the 35 percent value-content requirement only if there is a substantial transformation of the non-BSAC material into a "new and different article of commerce" in a BSAC, which itself must then be substantially transformed in the BSAC into a new and different article of commerce. That is, the imported materials of Chinese origin must undergo a double substantial transformation in Ethiopia for their value to be counted toward the 35 percent value-content requirement. *See* 9 C.F.R. § 10.177.

You assert that the sum of the leather, TPR and PU produced in Ethiopia, and the direct costs of processing performed in Ethiopia amounts to at least 48.99 percent of the appraised value of the footwear. You state that the leather underwent a double substantial transformation and the value of the leather skins is attributable to the upper components produced in Ethiopia. You also state that similarly, the TPR and PU underwent a double substantial transformation, first when being cut to shape into components and second when being sewn and assembled into the finished footwear.

For purposes of the leather, we refer to HQ 735338, dated Jan. 28, 1994, where a leather upper of footwear was cut and stitched in the Czech Republic, and imported into Italy completely open and unlasted. The leather had many uses and processing it into a completely opened and unlasted footwear upper, with one use (a part of a shoe), resulted in a change in the name, character, and use of the leather. Furthermore, the upper was substantially transformed as a result of the processes performed in Italy (lasting and the attachment of the midsole and outsole) into the finished article (a shoe). *See also* HQ 559137, dated Sept. 7, 1995 (fabric cut to shape and then assembled into T-shirts underwent a double substantial transformation); HQ 560882, dated July 1, 1998 (concluding that "if the entire processing operation performed in the single [beneficiary developing country] is significant, and the intermediate and final articles are distinct articles of commerce, then the double substantial transformation requirement will be satisfied.").

Looking at the leather, the invoices in Exhibit E show specific colors, thickness, and amount of leather skins imported from China. Exhibit F indicates certain operations in Ethiopia of the leather skins into uppers, which were then lasted and assembled into the finished footwear. Exhibit F indicates that the imported leather skins were cut into components to form the unassembled uppers for the footwear and then the upper components were lasted and assembled

into the finished footwear by stitching and gluing. The leather skins were first transformed into unlasted shoe components and then into lasted uppers. Thus, the cutting of the leather skins to shape and the lasting and assembly of the leather components may be regarded as double substantial transformation, similar to the finding in HQ 735338 by the processes considered in the Czech Republic and Italy.

For purposes of the TPR and PU, we refer to several court decisions. In *Drexel Chem. Co. v. United States*, 27 CIT 804 (2003), a double substantial transformation occurred when a DCU cake was air milled into fine particles because the physical and chemical changes to the DCU cake resulted in a usable herbicide. However, in *F.F. Zuniga v. United States*, 996 F.2d 1203 (Fed. Cir. 1993), the production of kiln furniture in Mexico from several dry ingredients of U.S. origin through a multiple step processing operation did not constitute a double substantial transformation. In *F.F. Zuniga*, none of the products resulting from those steps, *i.e.*, castables, casting slip, or greenware, was a new and different intermediate article of commerce, which lost the identifying characteristics of its constituent components. The court in *F.F. Zuniga*, 996 F.2d at 1206, stated that, "In a process where the manufacturer does not sell an intermediate product, the substantial transformation of the original materials may be found where there is a definite and distinct point at which the identifying characteristics of the starting materials is lost and an identifiable new and different product can be ascertained … A transitional stage of a material in process, advancing toward the finished product, however, may not be sufficient." Further, *Azteca Milling Co. v. United States*, 890 F.2d 1150 (Fed. Cir. 1989) involved corn grown in the U.S. and exported to Mexico where it was removed from the cob, cleaned and cooked in vats with lime to produce masa, or corn flour. There was no double substantial transformation in Mexico because the products formed at each stage of the production process were not distinct articles of commerce.

We find that the TPR and PU from China lost their individual identities in Ethiopia when they were transformed into footwear components of certain size and shape suitable for further manufacturing into footwear. The commercial invoices and packing lists in Exhibits H and F list the quantity of the imported TPR and PU materials, but do not outline the individual steps in the production. Exhibit F shows the injection molding process. The TPR was poured into an injection mold to form the outsole of the shoe, which was then assembled into the finished shoe by gluing. Exhibit F also illustrates the cutting of the PU and the insole assembly. The sock lining was cut and assembled with a counter pocket; the sock lining was assembled with foam; glue and smooth fabric were applied to the foam; glue was applied on the sock and insole; the insole was matched to the edge of the sock lining; and the inside and outside uppers were glued and stitched. In sum, the PU was cut to shape, sewn, and glued to the outer surface area and insole to make the insole lining and sock lining. Thus, we conclude for purposes of resolution of this protest decision that the TPR and PU underwent a double substantial transformation by being cut to shape into components, which were new and distinct articles of commerce, and then assembled into the finished footwear. *See Drexel Chem. Co.*; *F.F. Zuniga*; *Azteca Milling Co.*

Since a double substantial transformation of the Chinese leather, TPR, and PU into footwear occurred in Ethiopia, based on the information presented in Exhibit F, the cost or value of the leather skins, TPR, and PU may be counted toward satisfying the 35 percent value-content requirement of the AGOA. The cost sheet that you have presented in Exhibit T details that the

percentage of leather uppers produced in Ethiopia and the direct costs of their processing amounts to 48.99 percent the value of the footwear, which exceeds the 35 percent requirement in GN 16(b). If the regional value content for the TPR and the PU is added, the total percentage amount will be greater that 48.99 percent. To the extent that these transactions will be conducted in the future, the importer should improve their documentation concerning their work processes to align with their particular entries. The information concerning the other imported materials is not sufficient to render an opinion and should not count towards the 35 percent.

HOLDING:

Based upon the information submitted, the foowear will be eligible for preferential duty treatment under the AGOA. The raw materials from China (leather skins, TPR and PU) underwent a substantial transformation in Ethiopia and therefore, the imported footwear would be considered a "product of" Ethiopia for the purposes of the AGOA. Further, the intermediary products formed from the leather skins, TPR and PU underwent a double substantial transformation in Ethiopia, and could be counted toward the 35 percent value-content requirement of the AGOA. Accordingly, the protest should be GRANTED.

In accordance with the Protest/Petition Processing Handbook (CIS HB 3500-08A, December 2007, pp. 24 and 26), you are to mail this decision, together with the CBP Form 19, to the protestant, through its counsel, no later than 60 days from the date of this letter. Any reliquidation of the entries in accordance with this decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision Regulations and Rulings, Office of Trade will make the decision available to CBP personnel, and to the public on the CBP Home Page at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

Sincerely,

for Craig T. Clark, Director
Commercial and Trade Facilitation Division