

**HQ H313043**

**October 22, 2020**

**OT:RR:CTF:FTM H313043 TSM**

**CATEGORY: Classification; Origin**

**TARIFF NO.: 6307.90.9875**

Mr. Alemayehu Minilik  
Amber USA LLC  
11813 Federalist Way #24  
Fairfax, VA 22030

**Re: Tariff classification, country of origin, and preferential tariff treatment under the African Growth and Opportunity Act (“AGOA”) of certain polyester woven face masks**

Dear Mr. Minilik:

This is in response to your letters, dated June 19, 2020, and July 20, 2020, in which you requested a ruling, on behalf of Amber USA LLC, regarding the tariff classification under the Harmonized Tariff Schedule of the United States (“HTSUS”), country of origin, and preferential tariff treatment under the African Growth and Opportunity Act (“AGOA”) of certain polyester woven face masks. Your request, submitted as an electronic ruling request, was forwarded to this office from the National Commodity Specialist Division for review. A sample of the merchandise at issue was examined by this office.

**FACTS:**

The merchandise at issue is unisex polyester woven face masks, intended to be used as non-medical protective face coverings. The face masks are composed of three layers of pleated textile fabric: (1) a polyester water repellent and anti UV outer layer; (2) a 100 percent polyester water repellent middle layer; and (3) a 100 percent polyester inner layer. The 7 ¼ x 4 inch face masks feature elastic bands that fasten behind the ears and an aluminum strip on the top edge, which lies on the bridge of the nose to help the masks conform to the contours of the face. The masks are washable and reusable, and come in three colors: white, green, and purple. The masks will be shipped to the United States from Ethiopia.

The manufacturing steps are as follows:

Thailand:

- Polyester water repellent and anti UV fabric, 100 percent polyester water repellent fabric, and 100 percent polyester fabric are formed.
- Elastic bands, thread, and aluminum strip are produced.

Ethiopia:

- Cutting and sewing of face masks.
- The face masks are shipped to the United States.

You have provided a sample unisex polyester woven face mask for our examination.

**ISSUE:**

What is the tariff classification, country of origin, and status under the AGOA of the face masks at issue?

**LAW AND ANALYSIS:**

**1. Tariff Classification**

Classification under the HTSUS is determined 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 2020 HTSUS provisions under consideration are as follows:

6307 Other made up articles, including dress patterns:

6307.90 Other:

Other:

6307.90.98 Other

\* \* \*

Face masks, including respirators without replaceable filters:

\* \* \*

Other face masks:

\* \* \*

6307.90.9875

Other

\* \* \*

Note 7 to Section XI, HTSUS, which includes Chapters 50-63, provides that:

For the purposes of this section, the expression “made up” means:

- (a) Cut otherwise than into squares or rectangles;
- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);
- (c) Cut to size and with at least one heat-sealed edge with a visibly tapered or compressed border and the other edges treated as described in any other subparagraph of this note, but excluding fabrics the cut edges of which have been prevented from unraveling by hot cutting or by other simple means;
- (d) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unraveling by whipping or by other simple means;
- (e) Cut to size and having undergone a process of drawn thread work;
- (f) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or
- (g) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

\* \* \*

In addition, in interpreting the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

\* \* \*

EN to heading 63.07 provides, in pertinent part, the following:

This heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.

\* \* \*

[T]his heading covers articles in the length, made up within the meaning of Note 7 to Section XI, **provided** they are not included in other headings of Section XI. For instance, it applies to textile draught excluders for doors or windows (including those stuffed with wadding).

\* \* \*

EN 63.07 provides that this heading covers “made up” articles of any textile material which are not included more specifically in any other headings of Section XI or elsewhere in the Nomenclature. The face masks at issue are not provided more specifically elsewhere in the Nomenclature and are made of textile materials, specifically woven polyester fabrics. Moreover, these face masks are assembled by sewing and therefore are “made up” within the meaning of Note 7(f) to Section XI. Accordingly, we find that the face masks at issue are classified under heading 6307, HTSUS, and specifically under subheading 6307.90.9875, HTSUSA, which provides for “Other made up articles, including dress patterns: Other: Other: Other: Face masks, including respirators without replaceable filters: Other face masks: Other.”

## 2. Country of Origin

The Uruguay Round Agreements Act (“URAA”), particularly Section 334, codified at 19 U.S.C. § 3592, as amended by Section 405 of Title IV of the Trade and Development Act of 2000 (“TDA”), sets forth rules of origin for textile and apparel products. In pertinent part, 19 U.S.C. § 3592 reads:

(b) Principles

(1) In general

Except as otherwise provided for by statute, a textile or apparel product, for purposes of the customs laws and the administration of quantitative restrictions, originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession, if –

(A) the product is wholly obtained or produced in that country, territory, or possession;

(B) the product is a yarn, thread, twine, cordage, rope, cable, or braiding and —

(i) the constituent staple fibers are spun in that country, territory, or possession, or

(ii) the continuous filament is extruded in that country, territory, or possession;

(C) the product is a fabric, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted,

entangled, or transformed by any other fabric-making process in that country, territory, or possession; or

(D) the product is any other textile or apparel product that is wholly assembled in that country, territory, or possession from its component pieces.

Part 102 of the U.S. Customs and Border Protection (“CBP”) Regulations (19 C.F.R. § 102.21) implements the rules of origin for textile and apparel products set forth in 19 U.S.C. § 3592. Section 102.21(c), CBP Regulations (19 C.F.R. § 102.21(c)), provides in pertinent part as follows:

(c) General rules. Subject to paragraph (d) of this section, the country of origin of a textile or apparel product will be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

- (1) 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.
- (2) 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 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.
- (3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:
  - (i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or
  - (ii) Except for fabrics of chapter 59 and goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.
- (4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.
- (5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country

of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of Section 102.21. Paragraph (c)(1) provides that “[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.” The face masks at issue are produced in two different countries: (1) Thailand (where the component fabrics are formed), and Ethiopia (where the fabrics are cut and face masks sewn). Therefore, the origin of the face masks cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of Section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), 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 section 102.21. As determined above, the face masks at issue are classified under subheading 6307.90, HTSUS. Therefore, paragraph (e)(1), as applicable to the instant determination, establishes a tariff shift rule that provides:

HTSUS	Tariff Shift and/or Other Requirement
6307.90	The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

The face masks at issue are constructed from fabrics formed in Thailand. Accordingly, Section 102.21(c)(2) is applicable. The country of origin of the face masks is Thailand.

### **3. Status under the AGOA**

The third issue is whether the face masks are eligible for preferential tariff treatment under the AGOA. 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 tariff 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. 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. Ethiopia was designated a beneficiary country by Presidential Proclamation 7350, published in the Federal Register on October 4, 2000, 65 Fed. Reg. 59321. See General Note 16(a), HTSUS. It was determined to be

eligible for textile benefits under the AGOA by the USTR effective August 2, 2001. See 66 Fed. Reg. 41648, dated August 8, 2001.

General Note 16 (b), HTSUS, establishes that for 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, the good 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 is the growth, product or manufacture of the beneficiary sub-Saharan African country and the sum of (A) the cost or value of materials produced in one or more beneficiary sub-Saharan African country, plus (B) the direct costs of the processing operations performed in the beneficiary sub-Saharan African country, or any two or more beneficiary sub-Saharan African country’s that are members of the same association of countries which is treated as one country under section 507(a)(2) of the 1974 Act, is equivalent to not less than 35 percent of the appraised value of the article at the time of entry into the United States.

The imported face masks, classified under subheading 6307.90.9875, HTSUSA, are eligible goods, as indicated by the SPI “D,” provided that the additional requirements of the program are met. The next issue we must consider in this case is whether the face masks are considered the growth, product, or manufacture of Ethiopia. The face masks would be considered the products of Ethiopia when the country of origin is determined to be Ethiopia through the application of 19 C.F.R. § 102.21. However, pursuant to 10 C.F.R. § 102.21(c)(2), the country of origin of the face masks is Thailand. Therefore, the face masks are not eligible for the preferential tariff treatment under the General Note 16.

Moreover, the textile and apparel provisions of the AGOA are contained in Subchapter XIX, Chapter 98, HTSUS. Specifically, subheading 9819.11.33, HTSUS, provides for “Textile articles classifiable under chapters 50 through 60, inclusive, or chapter 63 of the tariff schedule, the foregoing articles that are products of a lesser developed beneficiary sub-Saharan African country (as defined in U.S. note 2(d) to this subchapter) and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components or components knit-to-shape that are the product of one or more such countries.” Note 2(d) to Subchapter XIX of Chapter 98, HTSUS, in relevant part defines Ethiopia as one of the lesser developed beneficiary sub-Saharan African countries, provided that it is also listed in Note 1 to Subchapter XIX of Chapter 98, HTSUS, on the day of the entry, or withdrawal from warehouse for consumption, of the merchandise in question.<sup>1</sup> U.S. Note 1 to Subchapter XIX of Chapter 98, HTSUS, lists Ethiopia

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<sup>1</sup> U.S. Note 2(d) to Subchapter XIX of Chapter 98, HTSUS, provides as follows:

For purposes of subheading 9819.11.12, only those designated beneficiary sub-Saharan African countries that have been enumerated in U.S. note 1 to this subchapter, following publication of a notice by the United States Trade Representative, shall be eligible to be treated as lesser developed beneficiary countries pursuant to section 112(b)(3)(B) of the AGOA (19 U.S.C. § 3721(b)(3)(B)). Countries qualifying for designation as a lesser developed beneficiary country shall be enumerated in this note whenever the USTR issues a Federal Register notice as described herein and shall be eligible to enter goods under such subheading as of the effective date announced in such notice. Products of the following countries qualifying as lesser developed beneficiary sub-Saharan African countries for purposes of such subheading, if described therein, shall be eligible to enter thereunder, provided that such countries are named in U.S. note 1 to this subchapter on the date of entry, or withdrawal from warehouse for consumption:

as having been found by the USTR to have satisfied the requirements of the AGOA.<sup>2</sup> The regulations pertinent to the textile provisions of the AGOA may be found at §§ 10.211 through 10.217 of the Customs Regulations (19 C.F.R. §§ 10.211 through 10.217). 19 C.F.R. § 10.213 provides for a complete list of the textile and apparel articles that are eligible for preferential tariff treatment under the AGOA, which includes textile articles classifiable under Chapter 63, HTSUS. See 19 C.F.R. § 10.213(a)(12).

At issue is whether the face masks qualify for preferential tariff treatment under subheading 9819.11.33, HTSUS, of the AGOA. To qualify, textile articles classifiable under Chapter 63, HTSUS, must be the products of Ethiopia that are wholly formed in Ethiopia from fibers, yarns, fabrics, fabric components or components knit-to-shape, that are the products of Ethiopia. Upon review, we have determined that under 19 C.F.R. § 102.21(c)(2), the face masks at issue are the products of Thailand. Accordingly, we conclude that the masks at issue are not eligible for AGOA preferential tariff treatment under subheading 9819.11.33, HTSUS.

#### **HOLDING:**

By application of GRI 1 and 6, the face masks at issue are classified under heading 6307, HTSUS, and specifically under subheading 6307.90.9875, HTSUSA, which provides for “Other made up articles, including dress patterns: Other: Other: Other: Face masks, including respirators without replaceable filters: Other face masks: Other.” The 2020 general, column one rate of duty is 7 percent 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 the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

The country of origin of the face masks at issue is Thailand. The face masks are not eligible for AGOA preferential tariff treatment.

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Republic of Benin; Republic of Botswana; Burkina Faso; Republic of Cape Verde; Central African Republic; Republic of Chad; Republic of Congo; Côte d'Ivoire; Republic of Djibouti; Eswatini; Ethiopia; Gambia, The; Republic of Ghana; Guinea; Guinea-Bissau; Republic of Kenya; Kingdom of Lesotho; Republic of Liberia; Madagascar; Republic of Malawi; Republic of Mali; Mauritius; Republic of Mozambique; Republic of Namibia; Niger; Federal Republic of Nigeria; Democratic Republic of Sao Tomé and Príncipe; Republic of Senegal; Republic of Sierra Leone; United Republic of Tanzania; Republic of Uganda; Republic of Zambia.

<sup>2</sup> U.S. Note 1 to Subchapter XIX of Chapter 98, HTSUS, provides in relevant part as follows:

The USTR has determined that the following countries have adopted an effective visa system and related procedures and have satisfied the customs requirements of the AGOA and, therefore, are to be afforded the tariff treatment provided for in this note:

Benin, Botswana, Burkina Faso, Cape Verde, Chad, Cote d'Ivoire, Eswatini, Ethiopia, Ghana, Guinea, Kenya, Lesotho, Republic of Liberia, Madagascar, Malawi, Mali, Mauritius, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Tanzania, Uganda, Zambia.



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,

Yuliya A. Gulis, Chief  
Food, Textiles and Marking Branch