

§ 102.21 to implement the rules of origin for the textile products specified in section 405(a) of the Act. On May 10, 2001, a correction to T.D. 01–36 was published in the **Federal Register** (66 FR 23981). On August 9, 2002, Customs published in the **Federal Register** (67 FR 51751), as T.D. 02–47, another interim rule which made technical corrections to § 102.21 to reflect the terms of the 2002 Harmonized Tariff Schedule of the United States within the country of origin rules for certain textile and apparel products, as well as a correction regarding the scope of the definition of the term “textile or apparel product”. Because T.D. 02–47 was a technical correction document, no comments were requested. Comments were requested in T.D. 01–36.

### Discussion of Comments

Two commenters responded to the solicitation of public comment published in T.D. 01–36. A description of the comments received, together with Customs analyses, is set forth below.

*Comment:* One commenter suggested that the interim amendments to § 102.21 of the Customs Regulations be changed in regard to certain textile fabrics and made-up articles by removing the requirement that dyeing, printing and finishing of fabric need to occur in order to confer origin. The commenter proposed that, instead, the rule should require that either dyeing and finishing of fabric or printing and finishing of fabric should confer origin. The commenter noted that the recommended change reflects a more common industry practice.

The commenter also requested that Customs amend the interim § 102.21 to change how origin is determined for embroideries. The commenter deemed it unfair in the case of embroideries to adhere to the principle that only the fabric-making process confers origin when the principle has been abandoned for fabrics. The commenter asserts that as the origin rules for fabric that existed prior to the implementation of section 334 have been reintroduced, the same treatment should be accorded to embroideries.

*Customs Response:* Section 405(a)(3) of the Act states that dyeing and printing, when accompanied by two or more of specified finishing operations, will confer origin to fabric classified under the HTSUS as of silk, cotton, man-made fiber, or vegetable fiber. The same standard is used to determine origin for specified made-up textile articles. Section 405 contains no reference to embroideries, and Customs is following the language and requirements specified by Congress.

*Comments:* One commenter requested that Customs clarify the application of interim rule § 102.21(e) for purposes of determining the origin of down comforters and featherbeds, with outer shells of cotton, respectively classifiable under HTSUS subheadings 9404.90.8505 and 9404.90.9505. The commenter interpreted the interim rule as requiring that origin determinations for these goods be based on where the fabric comprising the outer shell is formed and seeks confirmation of that interpretation.

*Customs response:* Customs agrees with the commenter’s interpretation. Section 102.21(e)(2)(i), Customs Regulations, provides, in pertinent part, that the country of origin of goods of HTSUS subheadings 9404.90.85 and 9404.90.95 is the country, territory or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of specified finishing operations, except for goods classified under those subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton.

Down comforters with outer shells of cotton are classifiable in subheading 9404.90.85, HTSUS, based on a determination that the down component imparts the essential character to the comforter and is therefore the component that determines classification at the eight-digit subheading level. Similarly, down featherbeds with outer shells of cotton are classified in subheading 9404.90.95, HTSUS. See *PillowTex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *aff’d*, 171 F.3d 1370 (CAFC 1999).

Goods classified under HTSUS subheadings 9404.90.85 (quilts, eiderdowns, comforters and similar articles) and 9404.90.95 (other) are classified at the ultimate statistical level based on the fiber composition of the outer shell fabric. It is for this reason that down comforters and featherbeds with outer shells of cotton are subject to the exclusion set forth in § 102.21(e)(2). Accordingly, origin for these goods is determined pursuant to the rule set forth in § 102.21(e)(1); *i.e.*, origin is conferred in the country in which the fabric comprising the good is formed by a fabric-making process.

It is noted that prior to enactment of section 405, the origin of all goods of HTSUS subheading 9404.90 was the country in which the fabric comprising the good was formed by a fabric-making process. As a result of the statutory amendment to section 334 effected by section 405, the processing operations that confer origin on certain textile fabrics and made-up articles were

changed to include dyeing, printing and two or more finishing operations.

Customs is of the view that the exclusion of certain goods classified under HTSUS subheadings 9404.90.85 and 9404.90.95, which include down comforters and featherbeds with outer shells of cotton, of wool, or consisting of fiber blends containing 16 percent or more by weight of cotton, from the dyeing, printing and finishing origin rule, is indicative of Congress’ focus on the fiber content of the fabric comprising these goods. In this regard, the Conference Report to the Act states:

In particular, this dyeing and printing rule would apply to fabrics classified under the Harmonized Tariff Schedule (HTS) as silk, cotton, man-made and vegetable fibers. The rule would also apply to the various products classified in 18 specific subheadings of the HTS listed in the bill, except for goods made from cotton, wool, or fiber blends containing 16 percent or more of cotton.

As the fabric comprising the good in a down comforter with an outer shell of cotton is the cotton fabric of the outer shell, Customs agrees with the commenter that down comforters and down featherbeds with outer shells of cotton are precluded from application of § 102.21(e)(2) and are to have their origin determined based upon the tariff shift rule set forth in § 102.21(e)(1). The fact that the ultimate classification of down comforters and featherbeds with outer shells of cotton is dependent on the fiber content of the fabric of the outer shell offers support for this conclusion.

### Further Customs Analysis

Customs has determined that no changes are necessary to the interim rules, published as T.D. 01–36 and T.D. 02–47, based on these comments. However, it has come to Customs attention, upon further review of T.D. 01–36, that clarification is needed regarding the application of § 102.21(e)(2)(i), (ii) and (iii) in determining the origin of goods of HTSUS subheading 6117.10. The rules set forth in § 102.21(e)(2) are to be applied hierarchically. The rule set forth in § 102.21(e)(2)(i) clearly applies to goods of HTSUS subheading 6117.10, and it is only if the origin of the good cannot be ascertained by application of the rule that the subsequent rules set forth in § 102.21(e)(2)(ii) and (iii) become relevant. The rule set forth in § 102.21(e)(ii) contains an exception for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, so that the rule does not apply to such goods of that subheading. Accordingly, the origin of these goods, if not determinable under