

H263272

July 26, 2017

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H263272 SMS
OT:RR:CTF:ER

C.J. Erickson
Cowan, Liebowitz, & Latman, P.C.
1133 Avenue of the Americas
New York, NY 10036-6799

RE: Entry of shipments for personal use valued less than \$800 under 19 U.S.C. §1321(a)(2)(C).

Dear Mr. Erickson:

This is in response to your request for a ruling, dated January 5, 2015, on behalf of Fashion Retail, S.A. of Spain (“FRSA”), regarding the eligibility of informal entry and the applicability of the exemption from duty of certain foreign origin merchandise ordered by, and shipped directly to, United States consumers for personal use, pursuant to 19 U.S.C. § 1321(a)(2)(C). We regret the delay in our response.

FACTS:

Consolidated personal use import shipments, not to exceed \$200¹, per ultimate consignee, will be sent directly to each ultimate consignee under separate house airway bills. The merchandise is ordered for personal use, by individual U.S. consumers, through the E-commerce website, ZARA.com. Orders are received by ITX USA LLC, the U.S. entity responsible for processing the payments of the orders and transmitting them to FRSA. Once FRSA receives the order, FRSA pulls the items from inventory, packages the goods for international transport, addresses each package with the U.S. consumer’s name and address, assigns a unique House Airway Bill (“HAWB”) number for the package, and consolidates the individual packages for transport through an air carrier. FRSA includes a manifest identifying the individual HAWB for all the parcels in the consolidated shipment. The merchandise is loaded in the aircraft in Unit Load Devices, a palletized consolidation of individual pre-addressed U.S. customer parcels.

¹ On February 24, 2016, the Trade Enforcement and Trade Facilitation Act of 2015 was signed into law, which increased the *de-minimis* value exemption from \$200 to \$800. Accordingly, beginning March 10, 2016, articles valued at \$800 or less, which are imported by one person on one day, are eligible for duty free entry, under 19 U.S.C. 1321(a)(2)(C). See 81 Fed. Reg. 58831 (Aug. 26, 2016).

FRSA is the foreign shipper of the merchandise and is responsible for fulfilling the order. FRSA sends internal invoice documentation to ITX Fashion Ltd., an Irish company that maintains the website in which the U.S. consumers order their merchandise. ITX Fashion then sends an internal invoice to ITX USA LLC, which processes customer payments. Customer orders are consolidated at the point of foreign loading for international air transportation to the U.S., via commercial airline. The individual parcels are grouped for transportation but are individually listed on the manifest. Upon arrival to the United States each parcel is unloaded and moved, via port licensed ground handler, to the designated express consignment hub, NYACC at John F. Kennedy International Airport (“JFK”), inspected by U.S. Customs and Border Protection (“CBP”), and then retrieved by a domestic ground or air carrier for immediate delivery to the U.S. customer. FRSA explains that “[a]t all times prior to pick-up by the domestic courier the imported merchandise remains under Customs supervision.”

FRSA provided a sample electronic transaction, which shows the shipment of clothing from Zara to a customer at his residence in the United States; and a sample individual invoice showing the shipment from Zara, invoiced through ITX USA, LLC in New York, to the individual customer in the U.S., and listing the product codes, descriptions of the items sold, quantity, and price. A sample group invoice from ITX Fashion, LTD to ITX USA, LLC, was also provided, which contains a list of over 40 product reference codes, the description and quantity of the merchandise sold, with unit prices for each product. FRSA contends that through this process, as evidenced by the invoice and individually assigned HAWBs, each consumer order is treated as a separate transaction. You assert that the HAWB numbers and summary manifests also serve as control documents to ensure compliance with Section 321 valuation limits. Additionally, you explain that in the event that a U.S. consumer places an order in excess of \$200, or places multiple orders in one day with an aggregate value in excess of \$200, these orders will be flagged as disallowed under Section 321.

ISSUE:

Whether the importation of individual online orders of merchandise, consolidated for shipment, consigned to individual purchasers, and valued at less than \$800, qualify for the administrative exemption from duty set forth in 19 U.S.C. §1321 and 19 C.F.R. § 10.151.

LAW AND ANALYSIS:

Section 321(a)(2)(C) of the Tariff Act of 1930, as amended (19 U.S.C. §1321(a)(2)(C)), provides for the duty free entry of articles valued at \$800 or less which are imported by one person on one day. The purpose of this provision is to minimize expense and inconvenience to the government disproportionate to the revenue that is collected. The applicable regulations are found in sections 10.151, 10.153, and 143.23(j) of CBP Regulations (19 C.F.R. §§ 10.151, 10.153, and 143.23(j)). The administrative exemption from duty was established by the Customs Simplification Act of 1953 (Pub L. 67-243), which primary purpose was to save time, money, and complications in the administration of customs laws. *See* The Customs Simplification Act of 1953, Senate Report No. 632. The law “[eliminated] certain unnecessary annoyances and inequities which [plagued] both the Government and private parties engaged in the import-export business.” *Id.*

The CBP regulation promulgated under, 19 C.F.R. §10.151, provides that importations, made by one person on one day, valued at not over \$800 may be entered under informal entry procedures free of duty and tax, unless there is reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry or of avoiding compliance with any pertinent law or regulation. Consolidated shipments addressed to one consignee shall be treated for purposes of Section 10.151 as one importation (19 C.F.R. § 10.153(d)). A “shipment” for purpose of Section 321 means the merchandise described on the bill of lading or other document used to file or support entry. 19 C.F.R. § 101.1; 59 Fed. Reg. 30289 (June 13, 1994) ((T.D. 94-51)).

CBP has allowed orders, valued under \$200, made online or through a catalog and delivered directly to the purchaser, to enter duty-free. In HQ 115828, dated December 2, 2002, Sears Roebuck contracted with a supplier based in Canada to fulfill orders placed by customers from its catalogs and internet sales channels. Most of the orders were for merchandise valued at less than \$200. Once the orders were placed with Sears Roebuck, it would transmit the order to the supplier in Canada, who then filled the order from inventory and shipped the merchandise directly to the customer in the United States. We held that those shipments could be imported free of duty under the informal entry procedures, because the merchandise was imported by one purchaser on one day. Similarly, in HQ 115779, dated Aug. 29, 2002, we held that purchases of textiles of \$200 or less, ordered online and shipped from overseas directly to customers for their personal use, were entitled to entry under 19 U.S.C. §1321, provided that they were imported by one person on one day and not part of a single shipment broken up into increments for the purpose of avoiding duty. More recently in H236325, dated August 21, 2014, we found that jewelry purchased from jewelry manufacturer, First Canadian, online from Overstock.com Inc., and shipped directly to the purchaser in the U.S. was allowed administrative exemption. We held that, “the \$200 per day value limit applies to each individual purchaser. Because the individual orders of jewelry of \$200 are shipped directly to the customer, the administrative exemption from duty should apply.” H236325 (Aug. 21, 2014).

CBP has also addressed the applicability of Section 321 to consolidated shipments. In HQ 114113, dated October 26, 1998, an Irish catalogue company solicited orders in the United States for crystal ware, and requested a binding ruling regarding the ability of two proposed shipment processes to enter free of duty under Section 321. In the first scenario the company labeled each individual package with the ultimate purchasers’ names and addresses and the forwarder in Ireland affixed a United Parcel Service (“UPS”) label to each package. The packages were consolidated for shipment and the container was manifested under a master air waybill with a HAWB breakdown attached. The HAWB listed the shipper, nominal consignee and ultimate consignee name and address, quantity, weight, product description, value, and country of origin on a line item basis. American Cargo Express (“ACE”), a freight forwarder, broker and container freight station (“CFS”) operator in New York, was identified as the consignee on the master air waybills. ACE prepared a consolidated informal entry, and attached a copy of the house airway bill breakdown and several invoices. In the second scenario, the Irish catalog company consolidated its U.S. orders and shipped them to Newark Airport. The freight was transferred to Cargo City CFS at JFK and CFS transmitted a consolidated manifest to CBP, electronically, which listed the ultimate consignee name and address, product description, quantity, price and country of origin information on a line item basis. Each individual shipment

was assigned a HAWB number. Each box was labeled with the number and the name and address of the customer. A UPS label was then attached to each package at the CFS for domestic distribution purposes. A broker, filed a consolidated informal entry, with a hard copy printout of the house airway bill breakdown as transmitted by CFS electronically. In both scenarios the individual U.S. purchasers were known and identified on the entry documents at the time of importation, and the orders were consolidated merely for shipment purposes.

In HQ 114113 we held that the importation would be eligible for duty free entry as the brokers used individual HAWB's to support entry. The HAWB's listed the individual purchasers to whom the merchandise was being shipped as the consignees. The value of each individual shipment was under \$200, and Section 10.153(d) would only become a factor if two or more of the shipments listed on the HAWB breakdown were addressed to the same consignee, in which case, the value of the shipments would be added together, and if any amounts were in excess of \$200, entry under formal entry procedures would be required. We highlighted that T.D. 94-51 states:

if the document used to file or support entry is an individual bill of lading to the ultimate consignee in the United States, the monetary limitation is applied on the basis of the value of the shipment on the individual bill of lading. . . . On the other hand, if the document used to file or support entry is a master bill of lading (as opposed to each individual bill of lading), the monetary limitation is applied on the basis of the total value of the shipments on the master bill of lading. The same is true of the application of the monetary limitation in § 321(a)(2) for other importations (i.e., those not involving an express consignment entity).

HQ 114113 (Oct. 26, 1998) (*quoting* 59 Fed. Reg. 30289 (June 13, 1994)).

Conversely, in HQ 114562, dated January 7, 1999, sales agents conducted home parties in the U.S. and took cosmetic catalog orders, which were later shipped from Montreal directly to the sales agent, who then distributed the merchandise to the ultimate purchaser. CBP found that because the packages were addressed to the sales agent, who would take care of the Customs formalities before delivering the individual orders to the purchasers, the transactions were commercial in nature, and not personal. We further determined that while commercial shipments may be entered under Section 321, the \$200 per day limit would apply to the sales agent and not the individual purchasers. CBP held:

(In contrast, the \$200 per day value limit would apply to each individual purchaser if the parcels were sent directly from Canada to the individual purchasers.) This means that Section 321 may not be used if the aggregate value of the parcels received by a sales agent on a given day exceeds \$200. In that case, the parcels would have to be entered under regular mail informal or formal entry procedures, depending on their value.

HQ 114562 (Jan. 7, 1999). In HQ 114562 and HQ 114113, the applicability of the administrative exemption depended on whether or not the orders were individually addressed or if the manifest documented the individual end user. Even when orders were consolidated for

shipping purposes, the individuals were treated as the importer of record, if they were known and identified prior to importation. Conversely, when the consolidated shipments were solely addressed to the sales agent, with the end user unknown, the agent was deemed the importer and not the individual purchasers, and the \$200 limit applied to the aggregate value of the shipments entered.

In this instance, you indicate that most of the shipments of clothing will be valued at \$200 or less and that they will be for the personal use of Zara customers. Further, each shipment will be ordered online and sent directly to the individual purchaser. The order will be invoiced by ITX Fashion, who maintains the website, then the invoice documentation is sent to ITX USA LLC, which processes the payments and transmits the individual orders to FRSA for shipment. FRSA will use individually assigned HAWBs and summary manifests as control documents to ensure compliance with valuation limits. The orders are grouped only for shipment purposes and are not sent to an intermediary consignee before delivery to the individual customer. This proposed transaction is similar to that in HQ 114113 and H236325, where the merchandise was shipped directly from the overseas supplier to the U.S. purchaser, via an internet or catalog transaction. This is distinguishable from the situation in HQ 114562 where orders were first shipped to a sales agent then distributed to the end purchaser. Here, as in HQ 114113, the merchandise is imported by one person, the internet consumer, on one day and is valued at less than \$800, and is only consolidated for shipment purposes. Therefore, provided each importer claims the Section 321 exemption on no more than one shipment a day, and provided the shipment is not one of several increments of a single order sent separately to avoid payment of duty, these shipments may be imported free of duty under the informal entry procedures pursuant to 19 U.S.C § 1321 and 19 C.F.R. §§ 10.151, 10.153.

HOLDING:

Online purchases of clothing of \$800 or less, placed by individual purchasers, consolidated for shipment purposes with individual HAWB's to support entry, and shipped directly to the customer in the United States by an overseas supplier, are entitled to duty free entry under the provisions of 19 U.S.C. §1321 and 19 C.F.R. § 10.151, provided that the use of the exemption is restricted to one person on one day.

Please note that 19 C.F.R. §177.9(b) provides that “[e]ach ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a CBP field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based.”

Sincerely,

Monika R. Brenner, Acting Chief
Entry Process and Duty Refunds Branch