United States International Trade Commission

Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States

Investigation No. 1205-8 (Final)

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U.S. International Trade Commission

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TABLE OF CONTENTS

OVERVIEW

This report contains the Commission's recommendations to the President under section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (the Act) (19 U.S.C. 3005) for changes to chapter 64 of the Harmonized Tariff Schedule of the United States (HTS).[1] The report includes a summary of the information on which the recommendations are based, a probable economic effect statement, and copies of written views received from Federal agencies and other interested parties. The Commission is submitting this report in response to a letter from the Department of the Treasury dated January 15, 2010. In the letter Treasury requests that the Commission consider and recommend changes to HTS chapter 64, and an additional U.S. note, pertaining to "certain footwear featuring outer soles of rubber or plastic to which a layer of textile material has been added." The letter states that "the suggested measures would promote the uniform application of the Harmonized System Convention as well as alleviate unnecessary administrative burdens." A copy of the Treasury letter is included in appendix A of this report.

Section 1205 of the Act requires the Commission to keep the HTS under continuous review and periodically to recommend to the President, subject to certain limitations, such modifications to the HTS as the Commission considers necessary or appropriate. In formulating its recommendations, the Commission must provide notice of "proposed" recommendations and solicit and consider the views of interested Federal agencies and the public. The Commission must submit its recommendations in the form of a report that includes (1) a summary of the information on which the recommendations are based, (2) a statement of the probable economic effect of each recommended change on any industry in the United States, and (3) a copy of all written views submitted by interested Federal agencies and a copy or summary, prepared by the Commission, of the views of all other interested parties.[2]

In response to the request letter, the Commission instituted an investigation under section 1205 of the Act and published a notice to that effect in the *Federal Register* on April 13, 2010 (75 F.R. 18882). In that notice, the Commission announced that it would post on the Commission's website a preliminary report containing proposed recommendations by May 28, 2010. The Commission asked other Federal agencies and interested parties to file written views by June 25, 2010. The Commission initially indicated that it would transmit its report to the President by July 12, 2010, but subsequently announced that it would delay transmittal to August 9, 2010, to allow more time to consider the matter, including written views submitted by interested parties (see notice published in the *Federal Register* of July 19, 2010 (75 F.R. 41891)). Copies of the *Federal Register* notices are included in appendix A.

In addition to the request letter (noted above), appendix A to this report contains WCO Classification Opinions and Federal Register notices pertaining to the investigation. The HTS modifications we recommend are set out in appendix B. Correlation tables between present and recommended HTS subheadings are found in appendix C (sorted by proposed HTS subheading) and appendix D (sorted by current HTS subheading)). Appendixes E through N present the views filed by interested parties and Government officials during both phases of this investigation.

The Commission is posting this report on its website (http://www.usitc.gov/tariff_affairs/modifications_hts.htm). Should further information be developed

[1] This Act, Public Law 100-418, approved the implementation of the HTS and repealed the former Tariff Schedules of the United States, effective as of January 1, 1989.

[2] The Commission's recommendations in previous investigations in this series have largely involved conforming the HTS with amendments made to the HS nomenclature structure or the classification of goods thereunder, following actions of the World Customs Organization (WCO). The HS amendments involved in such prior investigations under section 1205 were issued by the WCO to take effect in 1991, 1996, 2002, and 2007. Another investigation under this statute, investigation No. 1205-7, deals with HS amendments scheduled for implementation on January 1, 2012. The proposed modifications to the HTS involved in that investigation were set out in the Commission's final report of June 2010 (Publication 4166).

before the President proclaims HTS modifications, such as during any hearing and consultations USTR may conduct, in discussions USTR may conduct with any supplying country, or during the Congressional layover period, the Commission could provide appropriate assistance or make further recommendations. The Commission's investigation will remain open to allow it to address any such matters.

RECOMMENDATIONS AND PROBABLE ECONOMIC EFFECT FINDING

The Commission's recommendations address three issues with respect to the subject footwear: the language to be used in a proposed additional U.S. note to chapter 64; the creation of, and article descriptions and duty rates in, proposed tariff rate lines; and the possible need for additional tariff rate lines to continue existing duty treatment. On the basis of the information available, including Treasury's request letter and submissions from U.S. Customs and Border Protection (CBP), the U.S. Department of Commerce, and other interested parties,[3] the Commission makes the following recommendations:

(1) with respect to the additional U.S. note proposed by Treasury, that the President proclaim the note as proposed;

(2) with respect to the tariff rate lines proposed by Treasury, that the President proclaim the proposed rate lines, but that the article descriptions be modified as shown in appendix B to this report, in order to clarify product coverage; and

(3) with respect to additional tariff rate lines requested by interested parties, that no additional tariff rate lines be created as requested by the interested parties based on the information provided by the requesting parties for our inquiry.

The Commission finds that the proclamation of these modifications would have little or no economic effect on any industry in the United States.

The Commission's reasons in support of these recommendations and the probable economic effect finding are set forth below.

BACKGROUND

I. THE HARMONIZED SYSTEM CONVENTION

Subtitle B of title I of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) approved the United States' accession to the International Convention on the Harmonized Commodity Description and Coding System (the Convention), which was completed in Brussels on June 14, 1983, under the auspices of the Customs Cooperation Council.[4] The Convention established a standardized

[3] The interested parties raised issues regarding Treasury's proposed note and tariff lines. Party comments on the note concerned the clarity of standards, potential difficulty of administration, and the need for further distinctions (between indoor and outdoor footwear and the methods used to attach textile materials). Several parties criticized Treasury's proposed tariff lines for allowing footwear having less than the greatest surface area made up of textile materials to obtain the lower duty rates that would be carried forward. The parties also requested additional tariff lines to preserve duty rate neutrality. These issues are addressed below.

[4] The Customs Cooperation Council (CCC) was renamed the World Customs Organization (WCO) in 1994; although it is still referred to in legal documentation as the CCC, it is commonly referred to now as the WCO.

tariff nomenclature for goods in trade,[5] the purpose of which is to facilitate international trade through the use of a single nomenclature structure for the description, classification, and coding of imports and exports of the contracting parties. This nomenclature, under the requirements of the Convention, assists in the collection, comparison, and analysis of international trade statistics. Article 3 of the Convention requires each contracting party to use the HS nomenclature as the basis of its customs tariff nomenclature and publication of foreign trade statistics and to apply the general rules for the interpretation of the nomenclature in classifying goods.

The Convention created the Harmonized System Committee (HSC), made up of representatives of all the contracting parties to the Convention. Among the HSC's functions is the preparation of recommendations for achieving uniform interpretation of the HS nomenclature by the members and for keeping the HS product categories current, taking into account technological developments and changing patterns in international trade. These recommendations are issued as amendments to the Convention, especially to the HS annex, and may be reflected in one or more related publications of the WCO, notably the Explanatory Notes to the HS and the Compendium of Classification Opinions, on which the contracting parties rely for guidance in the understanding of the nomenclature. While the Explanatory Notes and Compendium are helpful and authoritative sources of such information, they are not legally binding on the contracting parties.

The amendments to the HS recommended by the WCO generally arise in two contexts: (1) the HSC's actions on classification questions or disputes initiated by members, and (2) the work of the Review Sub-Committee (RSC), when its recommendations are subsequently approved by the HSC and ultimately by the WCO. The RSC was established in 1990 by the HSC to review the HS nomenclature on a regular basis and to consider possible changes needed to keep it current with changes in technology and trade patterns. These recommended amendments are set forth in a document presented to the contracting parties to the Convention under the process set forth in Article 16 to the Convention. Most of the amendments set forth in the WCO's Article 16 recommendation[6] were addressed by investigation No. 1205-7, concerning RSC proposals that resulted from its most recent review cycle.

Pursuant to Article 16, amendments to the HS that have been recommended to members by the WCO are deemed to be accepted 6 months after the date of notification of the recommendation by the Secretary General, provided that there is no objection outstanding before the WCO at the end of this period. By agreement of the members, any amendments to the Explanatory Notes or to the Compendium of Classification Opinions are deemed to be accepted when no objection is notified within 3 months of HSC approval.

II. EXECUTIVE AUTHORITY

Section 1206 of the 1988 Act (19 U.S.C. 3006) authorizes the President to proclaim certain types of modifications to the HTS, on the basis of the Commission's recommendations under section 1205 of

[5] The annex to the Convention contains the Harmonized Commodity Description and Coding System, commonly referred to as the Harmonized System or HS, which includes the HS structured nomenclature, rules of interpretation, and legal notes. The 1988 Act implemented the HTS, which incorporates the structure of the HS nomenclature.

[6] Article 16 of the HS Convention sets out the procedures for amending the Convention and its HS annex, including provisions for contracting parties to notify the WCO Secretary General of objections to any recommended amendment. A copy of the WCO recommendation of June 26, 2009, which is the source of the amendments proposed to the HTS in investigation No. 1205-7, can be found on the Commission's website, http://www.usitc.gov/tariff_affairs/modifications_hts.htm.

the 1988 Act, including changes needed to bring the HTS into conformity with proposed WCO amendments of the HS nomenclature. The Commission is directed by section 1205(a) to keep the HTS under continuous review and to recommend appropriate modifications to the President whenever amendments to the HS nomenclature are adopted by the WCO and as warranted by particular circumstances:

> "[The Commission] shall recommend to the President such modifications in the Harmonized Tariff Schedule as [it] considers necessary or appropriate–
>
> (1) to conform the [HTS] with amendments made to the Convention;[7]
>
> (2) to promote the uniform application of the Convention and particularly the Annex thereto;
>
> (3) to ensure that the HTS is kept up-to-date in light of changes in technology or changes in patterns of international trade;
>
> (4) to alleviate unnecessary administrative burdens; and
>
> (5) to make technical rectifications."[8]

Section 1205(d) provides that the Commission cannot recommend a modification to the HTS unless the change (1) is "consistent with the Harmonized System Convention or any amendment thereto recommended for adoption;" (2) is "consistent with sound nomenclature principles;" and (3) "ensures substantial rate neutrality." Any modification that would change a rate of duty "must be consequent to, or necessitated by, nomenclature modifications that are recommended under this section." Finally, the recommended modifications "must not alter existing conditions of competition for the affected U.S. industry, labor, or trade."

Section 1206 of the 1988 Act authorizes the President to proclaim modifications to the HTS, on the basis of recommendations by the Commission under section 1205, if he determines that the recommended changes are in conformity with U.S. obligations under the HS Convention and do not run counter to the national economic interest of the United States. The modifications can be proclaimed only after the expiration of a layover period of 60 legislative days that begins on the date the President submits a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate; the report must enumerate the proposed modifications and the reasons for making them. Under the terms of the 1988 Act, such proclaimed modifications cannot become effective before the 30th day after the implementing proclamation is published in the *Federal Register*.

[7] Under the terms of article 2 of the HS Convention, the nomenclature annex is a part of the Convention, and a reference to the Convention is deemed to include a reference to the annex.

[8] Section 1202(6) of the 1988 Act limits the scope of "technical rectifications" to include clerical or typographical errors that do not affect the substance or meaning of the text, such as errors in spelling, numbering, punctuation, or indentation and also to inadvertent errors (including inadvertent omissions) in cross-references between headings, subheadings, or notes, as well as to similar errors. The Commission recommends, wherever possible, appropriate conforming changes in legal notes or other provisions of the HTS, primarily to replace superseded heading or subheading references with the corresponding new references.

MODIFICATIONS TO THE HTS REGARDING CERTAIN FOOTWEAR

I. GENERAL CONSIDERATIONS

The duty rates set forth in the proposed tariff subheadings in appendix B are those which are scheduled to be in effect as of January 1, 2011. Though they are not labeled as such in appendix B, the three tariff rate columns coincide with column 1-general, column 1-special, and column 2, as they appear in the HTS. If and when a proposed new HTS subheading represents the combination of two or more existing HTS subheadings with differing column 1-general duty rates, the proposed general rate for the new subheading is based on that for the existing subheading or subheadings that account for a preponderance of the trade under the proposed new subheading. Any staged duty-rate reductions that have already been established by Presidential proclamation (e.g., as a result of bilateral, regional, or multilateral trade agreements) for existing HTS provisions would continue to be applied on and after the implementation date as appropriate under the recommended new provisions.[9] Further, the duty rates shown may be subject to change as a result of legislation or proclamations that may take effect between the time that the Commission submits its final report to the President and the eventual implementation date; such changes would be incorporated in any final implementing proclamation before it is submitted to the President for signature.

It should be noted that it would be possible for specific footwear articles that may be affected by CBP's interpretation of any new note eventually proclaimed for chapter 64 to be classifiable in existing subheadings under headings 6401 through 6404, where the duty rate would be the same as the prior duty treatment afforded by CBP. In such instances, no separate provision would be needed in chapter 64, and the tables in appendixes C and D would not reflect this situation. As discussed later in this report, the objective of section 1205 is to avoid duty rate changes, whether higher or lower than existing duty treatment, and the Commission relies upon CBP and importers to identify instances where such changes might arise. Finally, although the amendments to the HTS that would be proclaimed by the President deal only with legal amendments to the HTS (i.e., those at the 8-digit level), this report also includes, as reference information, projected 10-digit statistical reporting numbers that are expected to carry over from the HTS version likely to exist at the time the recommended amendments are proclaimed by the President.[10] It is hoped that including both the legal and statistical changes in appendix B and the correlation tables in appendixes C and D is helpful to readers of this report, but no new statistical categories are proposed in this report.

II. CLASSIFICATION OF FOOTWEAR IN THE HTS

The following paragraphs set forth a summary of the characteristics at issue with regard to the subject footwear, explain the intent of the proposed HTS modifications, and indicate the changes (and the reasons therefor) with respect to the proposed HTS subheadings set forth in the request letter. Editorial and formatting adjustments are also briefly noted.

[9] As a result of any HTS modifications the President may proclaim, revised staged rate reductions for pertinent provisions will also be proclaimed. The one- or two-letter alphabetical symbols in the middle column of duty rates (representing the column 1-special duty rate column in the HTS) are explained in detail in the general notes at the beginning of the HTS. See HTS general note 3(c)(i), which may be found on line at http://www.usitc.gov/tata/hts/bychapter/index.htm, and subsequent general notes for the requirements of individual preferential duty programs.

[10] Statistical reporting numbers appear in appendix B, in italics, directly beneath the 8-digit legal lines to which they belong. The units of quantity specified in the HTS for the reporting of goods in trade are omitted from the appendix. See the Preface to the HTS for an explanation of these nonlegal provisions and the administrative process concerned.

In general, imports of footwear into the United States are classified in HTS chapter 64.[11] Headings 6401 through 6405 of the HTS categorize footwear according to the constituent material of the outer sole and that of the uppers, with heading 6405 covering "other footwear" not described in the first four headings of the chapter. Other physical characteristics, such as whether the footwear is waterproof or covers the ankle, determine narrower product groupings at the 6-digit HS level, and still other features (such as whether the footwear incorporates a protective metal toe cap) are specified at the U.S. tariff rate line or 8-digit level. Duty rates on footwear range from free to 48 percent ad valorem; many tariff rate lines for footwear with outer soles of rubber or plastics have column 1-general duty rates of 37.5 percent ad valorem or of 90 cents per pair plus 37.5 percent ad valorem. Footwear with outer soles of textile materials generally falls in heading 6405, at column 1-general rates that range from 2.5 percent to 12.5 percent ad valorem.

Note 4(b) to chapter 64 of the HTS provides that, in classifying footwear in provisions that specify the constituent materials of the outer sole, classification is to be determined by "the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments." This note is an international or HS note directly controlling classification under all five of the pertinent headings noted above. Customs and Border Protection (CBP) has issued a number of rulings holding that a textile material applied to the surface of an outer sole otherwise made of rubber or plastics is considered the determinative constituent material under note 4(b) when the textile material covers the majority of the outer sole in contact with the ground. As noted in Treasury's letter, these rulings serve as the impetus for the request letter, which lays out the history of the classification questions about the subject footwear and thereby indicates the reasons for the request.

III. DECISIONS OF THE WCO'S HARMONIZED SYSTEM COMMITTEE

A United States request to the WCO's HSC led the HSC to consider the classification of three specific examples of footwear having rubber/plastics outer soles with varying added textile components and ultimately to issue formal amendments to the Compendium of Classification Opinions.[12] These opinions, adopted by the WCO, are included in appendix A. Classification Opinion 6405.20/1 involved a shoe having a textile upper and an outer sole of rubber, 52 percent of the surface of which was covered with a textile flock partially embedded in the rubber. For the first footwear sample, the textile material was found to be the constituent material of the outer sole having the greatest surface area in contact with the ground and thus controlling its classification in heading 6405. A different outcome with respect to the other two samples resulted in Classification Opinions 6404.19/1 and 6404.19/2, in which textile material was held not to be the constituent material of the outer sole for classification purposes. The General Explanatory Note to chapter 64, amended to take into account these Classification Opinions, elaborates on how the measurement of surface materials is to be accomplished and which elements (treated as accessories or reinforcements, as referenced in note 4(b) to the chapter) are to be ignored.[13]

[11] See HTS chapter 64 at the Commission's web site, http://www.usitc.gov/publications/docs/tata/hts/bychapter/1001c64.pdf for complete text.

[12] See Annex O/19, Doc. NC0938B3b (HSC/35 – Report); Annex F/2, Doc. NC1004E1b (HSC/36 – Report); and Annex O/16, Doc. NC1059B2b (HSC/37 – Report), and appendix A to this report.

[13] GEN 64(C), Harmonized System Explanatory Notes 2007, vol. 3, as amended at the HSC's 37th session, reads in pertinent part as follows: "In determining the constituent materials of the outer sole, no account should be taken of attached accessories or reinforcements which partly cover the sole . . . . These accessories or reinforcements include spikes, bars, nails, protectors or similar attachments (including a thin layer of textile flocking . . . or a detachable textile material, applied to but not embedded in the sole)."

IV. PROPOSED ADDITIONAL U.S. NOTE 5 TO CHAPTER 64

A. Treasury Proposal

In its request letter, Treasury proposed the adoption of the following additional U.S. note to chapter 64 of the HTS:

> For the purposes of determining the constituent material of the outer sole pursuant to Note 4(b) of this Chapter, no account shall be taken of textile material which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength.

According to Treasury, this note was drafted "to clarify that textile materials that do not possess the characteristics usually required for normal use of an outer sole (e.g., durability, strength, etc.) should not be taken into account for classification purposes when added to an outer sole."[14] In support, Treasury stated the WCO's Opinions do not provide a sufficient basis to apply note 4(b) to chapter 64. Treasury indicated that the additional U.S. note would allow CBP to classify the subject footwear based on "whether the layers of textile materials possess the characteristics usually required for normal use of an outer sole, such as durability or strength. Those which do not should be considered accessories and reinforcements and should not be taken into consideration for classification purposes."[15] The additional U.S. note, according to Treasury, would provide the appropriate standard for deciding whether particular textile materials on an outer sole should be considered "accessories or reinforcements" as provided in note 4(b) and, thus, would ensure that footwear is classified in accordance with the HS and the WCO Classification Opinions.[16]

B. Views of Interested Parties

In response to the Commission's request for public comments, the following interested parties submitted written views addressing Treasury's proposed additional U.S. note:

American Apparel & Footwear Association ("AAFA")
Rubber and Plastic Footwear Manufacturers Association ("RPFMA")
Pro Line Manufacturing Company ("Pro Line")
Footwear Distributors and Retailers of America ("FDRA")
E. S. Originals ("ESO")
C. P. International Corporation ("CPI")
U.S. Customs and Border Protection ("CBP")

In addition, three other submissions were received in support of the views of those submitters listed above, as follows:

National Retail Federation ("NRF"), in support of comments by AAFA and FDRA
Members of Congress, in support of comments by RPFMA
U.S. Department of Commerce, in support of Treasury's proposal.

The written submissions of all interested parties are set out in appendixes E through N of this report.

[14] Treasury request letter, p. 3 (see app. A).
[15] *Ibid.*
[16] *Ibid.*

Submissions from RPFMA (supported by Members of Congress) and CBP supported the text as proposed by Treasury in its request; RPFMA also offered alternative texts. Certain other parties (AAFA, FDRA, ESO), supported the note, in principle, but subject to modifications.

AAFA and FDRA indicated that CBP, when applying the new note, should distinguish between footwear for indoor use and that for outdoor use. AAFA also indicated that the note focused on a standard for classification at the heading level, but was not relevant to classification at the subheading level.

AAFA and CPI indicated that CBP should adopt a clear and simple standard to measure "durability and strength" and to clarify what is meant by "normal use." ESO supported this view and suggested that the "Martindale Abrasion test (SATRA method #31)" could be used for this purpose. ESO also indicated, however, that textile materials that are molded into or embedded in the sole should not be subject to testing.

Pro Line, on the other hand, disagreed with the requested note, indicating that it represented "a substantive departure from prior practice," introduced vague standards that would be difficult to administer, and would require CBP to monitor the condition of the sole after importation. ESO also expressed concern about monitoring the footwear after importation.

C. Commission Recommendation

As indicated above, the Commission recommends that the President proclaim the note as proposed by Treasury.

D. Discussion and Analysis

The request letter received from Treasury proposed a new additional U.S. note that would provide explicit direction to ignore non-durable textile materials in applying note 4(b) to chapter 64. The Commission examined the proposal during the preliminary phase of this report and concluded that, although it would be useful to incorporate in the HTS the substance of the Classification Opinions and the General Explanatory Note, questions would likely be raised about the meaning and scope of the language. Written views received during both phases of this investigation suggested that, at least for some interested parties, there would still be difficulty in classifying footwear or predicting how CBP might rule on particular footwear articles should the requested note be proclaimed.

The request letter states that, in Treasury's view, the Explanatory Note and the WCO's opinions do not provide "an adequate distinction" between textile accessories and reinforcements that are to be ignored and those textile additions or layers that are to be taken into account in measuring the materials on the outer sole. The proposed additional U.S. note 5 to chapter 64 as set forth in the request letter is intended to do so, but it would likely require new interpretive decisions for many types of footwear, given that key words in the proposed note are not defined. The proposed note would provide for a "normal use" requirement relating to the footwear, under which textile materials not contributing to durability or strength, or potentially other characteristics, required during normal use of an outer sole would be ignored in determining the constituent material of the outer sole for classification purposes. The use of the words "an outer sole" in the requested note may be construed to mean that, if the textile materials in question, when a particular shoe is examined upon entry, would be non-durable for *any* outer sole, and not *the* outer sole of the particular shoe, then those textile materials are intended to be ignored in determining which

constituent material determines classification. As a result, it would seem possible that a given textile material might be durable for a particular shoe–such as one that might normally be worn indoors–but would still be disregarded because it is not durable on a shoe normally worn outdoors.

The application of such a standard to footwear covered by various existing CBP rulings would result, according to the Treasury request letter, in the reclassification of some footwear from HS heading 6405 to other provisions of chapter 64, necessitating the insertion of new subheadings to continue existing duty treatment. Such reclassification would be consistent with WCO Classification Opinions 6404.19/1 and 6404.19/2. As set forth in the request letter, the proposed note and corresponding subheadings are aimed at giving substance to the HS terms "accessories or reinforcements" for purposes of classifying footwear in chapter 64 of the HTS.[17]

After examining the proposals and submissions from interested parties in the preliminary phase of this investigation and the concerns raised about the ambiguity of the requested language, the Commission initially proposed what it considered to be a preferred approach in a revised legal note basing classification upon the *existence* of physical characteristics and not their *absence*. Thus, instead of the additional U.S. note language set forth in the request letter, the proposed recommendations as set forth in the preliminary report suggested a positively worded alternative, as follows:

> "For purposes of determining the constituent material of the outer sole pursuant to note 4(b) to this chapter, applied textile materials possessing the characteristics required for the durability of an outer sole during normal use shall be taken into account."

Parties commenting on this alternative language generally did not support the Commission proposal. One interested party[18] stated that words such as "applied" might not be susceptible of consistent meaning, and others suggested using the word "affixed" instead. Some parties suggested that the alternative language offered by the Commission did not go far enough (advocating that "normal use" should be qualified on the basis of whether a particular footwear article might be intended for indoor or outdoor use),[19] while others noted above simply indicated a preference for Treasury's language[20] and/or indicated that it corrected a situation in which foreign producers had designed footwear to obtain a lower duty rate.[21] The Commission has decided to withdraw its proposed alternative version of the note. As discussed more below, the Commission has considered the concerns raised by the parties. The Commission recognizes that the requested language is not without problems but has concluded that it is the most workable solution.

Several of the interested parties submitting views to the Commission,[22] as well as all Federal entities and officials, supported Treasury's request in both the preliminary and the final phases of this investigation, as noted above. However, some submissions (as summarized above) advocated that

[17] Treasury request letter (see app. A, p. 3).

[18] ESO (see app. G).

[19] Submissions from AAFA, FDRA, and NRF (see appendixes E, H, and I, respectively).

[20] Submissions from AAFA, FDRA, NRF, RPFMA, CBP, Members of Congress, and the U.S. Department of Commerce (see app. E, H, I, and K through N, respectively).

[21] One submission referenced U.S. Supreme Court cases that recognize "that an importer is free to arrange for the configuration of its merchandise in such fashion as to insure, at the time of importation, the most beneficial tariff treatment available." Submission by Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP on behalf of Pro Line Manufacturing Co., Wayne, NJ, June 23, 2010, pp. 5-6 (see app. J to this report).

[22] AAFA (see app. E, p. 2); RPFMA (see app. K, p. 1); FDRA (see app. H, p. 3); NRF (see app. I, p. 1).

language should be added to Treasury's note language to define the terms "durability" and "strength" or to establish a standard for measuring these characteristics,[23] while another sought a distinction based on whether particular footwear is designed for indoor or outdoor use.[24] ESO indicated that Treasury's requested note language should be modified to exclude from the scope of the new note all footwear with textile materials embedded in the outer sole, in order to comply with the WCO's decisions.[25]

Certain comments in both phases of this investigation pointed out that Treasury's proposed note had not provided definitions or suggested what standard CBP should apply with respect to "durability and strength."[26] Other submissions raised narrower concerns about Treasury's language, saying that the standard might be interpreted to mean that imported footwear of interest to them that has been treated as classifiable in heading 6405 (both by the WCO and CBP) would at some point in the future be excluded from that heading in the course of interpretive rulings, despite the language of the Explanatory Note. The legal note as requested by Treasury was also criticized as "applying a standard that would measure the ongoing condition of the article **after** importation. Put another way, the proposal would extend the status of 'condition as imported' to some indeterminate period thereafter."[27] Last, one party stated that the provisions as set out in the request letter did not reflect the WCO's opinions on the subject footwear.[28]

At least three submissions[29] cited the ambiguity inherent in the terms "normal use" and "including durability and strength" in the new note; these submissions sought bright-line tests or some extrinsic standard to specify how the requested note would be applied. These submissions did not, in the Commission's view, offer a practical solution to the concerns raised therein. Moreover, the Commission is not in a position to recommend specific testing regimes in this regard. CBP has legal authority to rule on the meaning and application of the HTS, unless Congress itself enacts specific criteria. Furthermore, importers can administratively protest Customs' tariff treatment of footwear imports when they believe that shipments have been improperly classified.

Both Treasury and CBP indicated that the proposed legal note, as set forth in the request letter, would provide a legal basis in the HTS to delineate which footwear is in their view not appropriately classified in heading 6405. While based upon the WCO classification decisions, the requested note language may be viewed as going beyond the wording of the Classification Opinions (which held that textile materials constituting accessories or reinforcements are to be disregarded in an analysis under note 4(b) to chapter 64), in that it adds criteria not specified in that opinion–namely, "normal use" (as a post-entry criterion) and "durability and strength." However, this interpretation is a matter of U.S. Government policy in which the Commission does not play a role, and the Commission confines its comment in this regard to pointing out this potential issue. The written views received in this case did not provide a basis for developing alternative language to that requested by Treasury. Based on the record in this investigation, the Commission recommends the note language proposed in Treasury's request letter.

Some interested parties may find this approach inadequate. One interested party, ESO, imports footwear made using a process that embeds textile materials in the rubber or plastic outsole when that

[23] AAFA (see app. E); C. P. International Corporation (CPI) (see app. F, p. 2); NRF (see app. I, pp. 1-2).
[24] FDRA (see app. H, p. 3).
[25] ESO (see app. G, pp. 11-13).
[26] Submissions from CPI and Pro Line (see app. F and J).
[27] Submission from Pro Line (see app. J).
[28] *Ibid*.
[29] AAFA, CPI, and Pro Line (see app. E, F, and J, respectively).

outsole is molded, but that process allows these materials to make contact with the ground in a way that is measurable for purposes of note 4(b) to chapter 64.[30] Such footwear has previously been classified in heading 6405 and appears to be within the WCO opinion that classified certain textile bottom footwear in heading 6405. However, the interested party has expressed concern that its footwear would not in fact be consistently classified in that heading under the request letter's tariff provisions. CBP has stated its view that the footwear it has examined to date would continue to be classified under heading 6405. For the present, no modifications in the requested note language seem justified based on this party's written views, given that it appears this footwear, even if reclassified, would continue to be subject to the current duty rates under the Commission's recommendations.

Other footwear imported by some interested parties appears to have various textile materials or fabrics applied to the outer sole in different ways or quantities. While it is not clear whether all such footwear has textile materials that might be considered non-durable under the proposed legal note, it would appear that the intent of the request is to shift footwear with arguably "flimsy" textiles out of heading 6405 but to classify them in subheadings that would have identical rate treatment. The Commission's recommendations for the pertinent additional U.S. note would allow this footwear to be classified in a manner that reflects international practice under the HS, but at existing duty rates.

V. NEW TARIFF LINES PROPOSED BY TREASURY

A. Treasury Proposal

In its request letter, Treasury proposed fourteen new 8-digit tariff rate lines for footwear that, in its view, would be reclassified from heading 6405 into other headings of chapter 64 by virtue of the new additional U.S. note. Treasury indicated that these changes "will ensure that footwear featuring outer soles of rubber and plastics with a layer of textile material added to the surface area of the outer sole will promote, in a rate neutral manner, uniform application of the Harmonized System Convention while mitigating the administrative burden" resulting from the General Explanatory Note.[31] Treasury indicated that it based its request on known trade in footwear that had been the subject of rulings or was identified sufficiently in liquidated entries available from CBP.[32]

B. Views of Interested Parties

The Commission received views from several interested parties that addressed Treasury's proposed tariff lines. AAFA indicated that two superior text provisions (descriptive categories followed by a colon, subordinate to which two or more tariff rate lines appear) were needed with particular language, one under heading 6402 and one under heading 6404. This language would limit subordinate tariff lines to cover only footwear having textile materials in greatest surface area in contact with the ground. AAFA indicated that the proposed note would control classification at the heading level but "is not relevant to classification of subheading level."[33]

Several other parties supported the provisions shown in the request letter in general terms or indicated support for AAFA's views.[34] Most interested parties, however, discussed the need for

[30] ESO (see app. G).

[31] Treasury request letter (see app. A, pp. 6-7).

[32] See also submission from CBP (app. L).

[33] FDRA (see app. H); NRF (see app. I).

[34] AAFA (see app. E, pp. 2-3, submission of June 25, 2010).

additional tariff rate lines but did not address the language of tariff article descriptions or the location in chapter 64 of the rate lines requested by Treasury.

C. Commission Recommendation

As indicated above, the Commission recommends that the President proclaim the tariff rate lines proposed by Treasury, subject to the modifications to article descriptions set out in appendix B.

D. Discussion and Analysis

In its request letter, Treasury proposed tariff subheadings with the article description, "Including a layer described by additional U.S. note 5 to this chapter." Certain of the proposed provisions added additional criteria so as to maintain duty treatment afforded to specific footwear (on the basis of the constituent materials of the upper) in heading 6405. The Commission has identified two problems with the proposed language.

First, the footwear in question may not always have a perceptible "layer" (in the dictionary sense of a stratum or measurable thickness of one substance either spread over a surface made of another substance or included between two strata made of other substances). Some footwear may have textile materials sprayed or flocked onto the outer sole, but these materials may not cover the entire surface so as to obscure any or all of the rubber, plastics, or other outer sole material. The proposed legal note does not define or describe how the textile materials would appear on the outer sole or specify that they must form a "layer." Nor does it require the textile "layer" to be in contact with the ground–in apparent contradiction with the intent of the note, which is to exclude some textile materials from the surface area measurement contemplated by note 4(b) to chapter 64.

Second, the proposed additional U.S. note instructs CBP to take no account of arguably "flimsy" textile materials when determining the constituent material of the outer sole, but the requested language does not in fact describe them, as noted above. Given the uncertain nature of these materials and the already complex structure of chapter 64, it seemed unlikely that the proposed article descriptions would be consistently read as having an obvious meaning and coverage. Nor did the intended scope of the new subheadings seem to align clearly with the provisions of the requested additional U.S. note.

The purpose of section 1205 is to provide for 8-digit subheadings that preserve substantial rate neutrality and to describe the subject footwear that is to be reclassified in a sufficiently clear way to inform importers of the intended scope of each provision. Once an initial transition has occurred, whether any particular shoe or boot that has been imported falls under an existing tariff rate line of heading 6405 or instead is shifted to a rate line with the same rate of duty under another heading in chapter 64, existing duty treatment should be preserved in the provisions ultimately proclaimed with the proposed legal note. The Commission agrees with Treasury's reliance upon liquidated entries and known trade as the appropriate basis for the establishment of new tariff subheadings. To that extent, Treasury's request would appear to maintain substantial rate neutrality.

With respect to the article description for proposed tariff rate lines suggested by Treasury and informally modified in an electronic message from CBP,[35] the Commission is recommending alternative

[35] Electronic mail from Myles B. Harmon, Director, Commercial and Trade Facilitation Division, U.S. Customs and Border Protection, July 2, 2010, suggesting for each tariff rate line requested by Treasury the following article description: "Including textile material described by Additional U.S. Note 5 to this Chapter, provided that such textile material occupies the

language that would, in the Commission's view, more clearly align the tariff provisions with the language of the legal note. Treasury and CBP have acknowledged that the original request language for the article descriptions did not reflect the fact that the footwear that has been allowed to enter under heading 6405 is that where, of the constituent materials in contact with the ground, textile materials make up the greatest surface area.[36] As a result, the requested descriptions would have improperly allowed footwear having less than the greatest surface area made up of textile materials to obtain the lower duty rates that would be carried forward from heading 6405, contrary to the "substantial rate neutrality" prescribed by section 1205. The Commission agrees with AAFA's concern in this regard and believes that its recommended article descriptions, as shown in appendix B to this report, substantively address this "majority textile" concern for all recommended tariff rate lines. Thus, the Commission is recommending that the new tariff subheadings for footwear being shifted out of heading 6405 have the article descriptions provided in appendix B to this report.

E. Corrections

The tariff rate lines set forth in appendix B include modifications to correct certain column 1-general and column 1-special duty rates. Specifically, the request letter proposed a general duty rate of 2.5 percent ad valorem for new subheadings 6404.19.51 and 6404.19.61. In a telephone conference on May 19, 2010, Treasury staff confirmed that the intended general rate for each subheading is 12.5 percent ad valorem. The references were verified or modified and any typographical errors were corrected in the cross-reference tables (appendixes C and D).

greatest surface area of the outer sole in contact with the ground." See attached copies of CBP submissions in app. L to this report.

[36] This point was made by AAFA and supported by FDRA and NRF in their respective submissions.

VI. ADDITIONAL TARIFF RATE LINES SUGGESTED BY INTERESTED PARTIES

A. Suggestions of Interested Parties

The Commission received views from three interested parties that requested the inclusion of additional tariff lines beyond those proposed by Treasury. The additional tariff lines would reflect asserted actual trade or the possible classifications of all types of footwear that might have textile materials on or in the outer sole.

AAFA requested numerous additional subheadings in order to preserve existing tariff treatment for certain products. It asked for ten additional subheadings addressing imported footwear with an upper of vegetable fibers, in order to preserve the existing duty rate of 7.5 percent ad valorem on those products; it stated that Treasury's request did not address imported footwear with an upper made of vegetable fibers, and that some footwear should be identified based on the material used to manufacture the upper. AAFA did not request additional subheadings with respect to certain footwear subject to a lower ad valorem duty rate than the rate applicable to heading 6405.[37] AAFA also maintained that footwear with outer soles made from textiles, described in existing HTS subheading 6402.99.40, was already being imported. NRF supports AAFA's written views.[38] AAFA's request, however, was not accompanied by liquidated Customs entry documents establishing that trade in such footwear exists, as requested by the Commission in this investigation's notice of institution.

Pro Line Manufacturing Co. likewise indicated that numerous additional tariff subheadings were needed to preserve the duty treatment now afforded under HTS heading 6405. The absence of these subheadings, according to Pro Line, would result in duty increases for a variety of footwear articles.[39] However, Pro Line did not assert that it imported the footwear articles in question or supply documentation showing liquidated entries as requested by the Commission.

FDRA's submission sought seven additional subheadings in order to cover footwear that it says is being imported with a "textile layer" and classified in heading 6405. It also suggested additional provisions with a 7.5 percent ad valorem duty rate, as did AAFA, and several others with a 12.5 percent ad valorem duty rate. In these cases FDRA said "[t]here is no justification for restricting [the duty rate in question] to a limited number of subheadings" and said that rate lines for each of these duty rates should be added.[40]

The initial submission filed by ESO during the preliminary phase of this investigation indicated that it considered the request letter's list of needed tariff rate lines to be incomplete, and said that it had developed a list of additional subheadings that would be necessary to ensure duty rate neutrality. It indicated that it would supply its list to Commission staff during the final phase of the investigation, but subsequent submissions from this firm did not include such a list or evidence of liquidated entries of the footwear concerned.[41]

B. Commission Recommendation

[37] AAFA (see app. E, submission of June 25, 2010).

[38] NRF (see app. I).

[39] Pro Line (see app. J, pp. 7-8).

[40] FDRA (see app. H).

[41] ESO (see app. G, submission of May 14, 2010, p. 15).

The Commission recommends that no additional tariff rate lines be created as requested by the interested parties based on the information provided by the requesting parties for our inquiry.

C. Discussion and Analysis

The Commission's notice of institution of this investigation requested that parties supply liquidated Customs entries in support of any request for the addition of tariff rate lines, beyond those requested by Treasury. As indicated above, the Commission agrees with Treasury that liquidated entries and descriptive information are the appropriate basis for the inclusion of tariff rate lines in any proclamation the President may issue following this investigation.

Treasury officials indicated to Commission staff that Treasury based its request for new tariff rate lines on identified liquidated customs entries involving footwear that it believes would be reclassified by the proposed note. Officials of Treasury and CBP indicated a preference to use liquidated entries as the justification for the creation of tariff rate lines. That idea was also reflected in the Commission's notice of institution of this investigation, in which parties were asked to supply such entry documents with a request for additional tariff lines. Further, these officials indicated that in the absence of any liquidated customs entries to support requests by interested parties for more tariff lines, the Commission should not suggest such additional rate lines in the current investigation and it has not done so.

Several interested parties[42] asserted that Treasury's request did not contain all the new 8-digit subheadings that would cover every type of footwear that might be imported with non-durable textile materials on the outer sole. The additional subheadings mentioned by interested parties are as follows:

> 6401.99.30, 6401.99.60, 6402.91.10, 6402.91.50, 6402.91.16, 6402.91.60, 6402.91.70, 6402.91.80, 6402.91.90, 6402.99.08, 6402.99.12, 6402.99.33, 6402.99.40, 6402.99.80, 6402.99.90, 6404.11.20, 6404.11.90, 6404.19.15, 6404.19.20, 6404.19.25, 6404.19.40, 6404.19.70, and 6404.19.90.[43]

Two interested parties, FDRA and Pro Line, supplied copies of documents, not included with their earlier submissions, that they believe support the need for additional proposed tariff lines. FDRA requested provisions for footwear it believes would fall under subheadings 6402.91.90 and 6402.99.40 if the proposed note were proclaimed. Pro Line requested a subheading for footwear it believes would fall under subheading 6401.99.10.

FDRA supplied copies of entry documents for particular footwear that has been classified in heading 6405 and indicated to Commission staff that the subject footwear would likely be reclassified by the proposed note. Commission staff forwarded copies of these documents to CBP for verification. CBP officials indicated that the information supplied on these entry documents did not allow a verification of the current or potential future classification of the footwear concerned because the documents did not clearly describe the footwear by its physical characteristics.

The Commission also received entry summary documents from Pro Line, though with no evidence of how CBP liquidated the actual entry in question. The Commission sent these documents to CBP. CBP indicated that the documents supplied by Pro Line did not allow a verification of the current

[42] Submissions by AAFA, FDRA, and NRF.

[43] Current subheadings 6402.91.90 and 6404.19.90 were cited by all interested parties commenting on the need for additional rate lines.

or potential future classification of the footwear concerned. The Commission believes that the information supplied by Pro Line in this inquiry is inconclusive and therefore does not recommend an additional tariff line.

Treasury, CBP, and USTR may wish to keep the issues raised by the interested parties in this investigation under review.

PROBABLE ECONOMIC EFFECT OF RECOMMENDED MODIFICATIONS

Section 1205(c) of the Act requires the Commission to include in its report a statement of the probable economic effect of each recommended change on any industry in the United States. The Commission finds that these recommendations will have little or no economic effect on any industry in the United States.

The Commission reached this conclusion for two principal reasons. First, the Commission regards all of the modifications to be rate neutral in that none of the modifications will alter existing customs tariff treatment.[44] Second, there is little or no domestic production of footwear that is like or directly competitive with the footwear covered by these modifications. Virtually all U.S. consumption of footwear that falls within the HTS description is imported. It is believed that China supplies the majority of the U.S. market for the subject footwear with applied or embedded textile materials on the outer sole and that little if any such footwear is produced within the United States customs territory, although some might be assembled in Caribbean countries pursuant to note 2(b) to subchapter II of chapter 98 of the HTS and effectively treated as U.S. production. The extent to which any U.S. firm may produce footwear with applied or embedded textile materials on the outer sole is unknown, but likely to be negligible or nonexistent given the apparent lack of added functionality such materials would supply.

[44] It should be noted that the rules of origin under various U.S. free trade or trade promotion agreements, as set out in pertinent HTS general notes for purposes of customs administration, must be modified following appropriate procedures under each such agreement and implemented by the parties according to their national legal regimes. These HTS general notes would need to be modified by subsequent proclamations over time after each agreement's rules are rectified internationally, in order to take into account all proclaimed tariff rate line modifications. Administrative action by CBP is undertaken during the period leading to implementation of each set of rules of origin rectifications so as to continue the tariff commitments under each agreement.

APPENDIX A

REQUEST LETTER FROM THE TREASURY DEPARTMENT

WCO CLASSIFICATION OPINIONS

FEDERAL REGISTER NOTICE INSTITUTING THE INVESTIGATION

FEDERAL REGISTER NOTICE EXTENDING THE INVESTIGATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JAN 15 2010

Mr. David B. Beck
Office of Tariff Affairs and Trade Agreements
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

RE: Proposed Modifications to the Harmonized Tariff Schedule of the United States (HTSUS) Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988; Special Classification Provisions in Chapter 64 of the HTSUS

Dear Mr. Beck:

Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §3005), the Department of the Treasury respectfully requests that the International Trade Commission (ITC) commence a Section 1205 investigation regarding the administration of Note 4(b) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS). We specifically request that the ITC recommend to the President the addition of an Additional U.S. Note and the amendment of certain classification provisions in Chapter 64 of the HTSUS relating to certain footwear featuring outer soles of rubber or plastics to which a layer of textile material has been added. These suggested measures would promote the uniform application of the Harmonized System Convention as well as alleviate unnecessary administrative burdens.

Tariff Classification of Footwear

Classifying footwear at the heading level requires consideration of the composition of the upper and the outer sole of the footwear. With regard to determining the composition of the outer sole, Legal Note 4(b) states the following: "[t]he constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments."

Customs and Border Protection (CBP) has issued a number of decisions holding that textile material added to an outer sole that is otherwise composed of rubber or plastics will be considered the constituent material of the outer sole when it covers the majority of the surface area of the outer sole in contact with the ground.[1] We have undertaken a review of these decisions in conjunction with the events which are described below.

[1] *See* Headquarters Ruling Letter 965751, dated November 18, 2002, in which CBP, responding to a Petition by Domestic Interested Party filed pursuant to 19 U.S.C. § 1516, held that such textile material should be taken into

HSC Decisions on Footwear Featuring Rubber/Plastics Outer Soles with a Layer of Textile Material Attached to the Surface Area

At the request of the United States, at its 34th Session, the Harmonized System Committee (HSC) of the World Customs Organization examined the issue of the classification of three types of footwear featuring rubber/plastics outer soles with an added layer of textile material. The Committee decided to classify the first two samples in subheading 6404.19[2] and a third sample in subheading 6405.20[3], by application of General Interpretative Rules (GRI) 1 and 6. By letter of December 3, 2004, China entered a reservation on the decisions classifying two of the samples in subheading 6404.19.[4] As a consequence, the HSC approved an amendment to the Compendium of Classification Opinions only for the sample classified in subheading 6405.20. Classification Opinion 6405.20/1 (HSC/35) describes a shoe with a textile upper and an outer sole of rubber, 52 percent of which was covered with textile flock that was partially embedded in the rubber, and provides for classification in subheading 6405.20.

The HSC ultimately reconsidered the tariff classification of the other samples at its 36th Session and confirmed that the samples were indeed classified in subheading 6404.19.[5] Amendments to the Compendium of Classification Opinions reflecting the decisions made at HSC/36 were approved by the HSC at its 37th Session.[6] In 6404.19/1 (HSC/37, March 2006), a woman's shoe with a textile upper and an outer sole of plastics, 67.5 percent of which was covered with flocking (fibers of rayon not exceeding 5mm in length) in a manner that created a design and trademark, was classified in subheading 6404.19. Similarly, in 6404.19/2 (HSC/37, March 2006), a woman's shoe with a textile upper and an outer sole of plastics, 78 percent of which was covered by a detachable knitted polyester fabric that was affixed to it at the ball of the foot and heel, was also classified in subheading 6404.19. In both of these classification opinions, the textile material on the footwear was considered to be an "accessory or reinforcement" and was therefore not taken into account in determining the constituent material of the outer sole having the greatest surface area in contact with the ground.

Unlike the footwear in Classification Opinion 6405.20/1, in which the textile flock was found to be partially embedded, the textile material on the footwear subject to Classification Opinions 6404.19/1 and 6404.19/2 was found to be merely attached, and consequently was determined not to be the constituent material of the outer sole.

In addition to the foregoing classification opinions, the HSC adopted an amendment to the General Explanatory Note (EN) (C) to Chapter 64 (GEN 64(C)) at HSC/37. GEN 64(C) now reads as follows:

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account for the purposes of Note 4(b) to Chapter 64, HTSUS, notwithstanding the fact that the textile material wears off after very limited use. CBP also issued approximately twenty rulings following this line of reasoning.

[2] Subheading 6404.19 provides for: "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other."

[3] Subheading 6405.20 provides for: "Other footwear: With uppers of textile materials."

[4] *See* Annex O/19, Doc. NC0938B3b (HSC/35 – Report).

[5] *See* Annex F/2 to Doc. NC1004E1b (HSC/36 – Report).

[6] *See* Annex O/16 to Doc. NC1059B2b (HSC/37 – Report).

> The term "outer sole" as used in headings 64.01 to 64.05 means that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements which partly cover the sole (see Note 4(b) to this Chapter). These accessories or reinforcements include spikes, bars, nails, protectors or similar attachments (including a thin layer of textile flocking (e.g., for creating a design) or a detachable textile material, applied to but not embedded in the sole).

The HSC classification opinions and GEN 64(C) reiterate that "accessories or reinforcements," covering or affixed to the outer sole, are not to be taken into account in determining the constituent material of the outer sole. As made clear in these sources, "accessories or reinforcements" can take the form of spikes, bars, nails, protectors, flocking, detachable textile material or similar items that may be positioned on the outer sole. Such "accessories or reinforcements" are subordinate in the formation of the outer sole to the extent that if they were detached, an outer sole of another material remains. The HSC classification opinions and GEN 64(C) also stated that material that is "embedded" is not regarded as subordinate in the formation of the outer sole. "Embedded" material is not an accessory or reinforcement, but part of the actual outer sole that is to be taken into account in determining the constituent material of the outer sole as described by Note 4(b) to Chapter 64, HTSUS.

It does not appear that the decisions of the HSC, as reflected in the General Explanatory Note, draw an adequate distinction between textile layers on outer soles that are to be considered accessories or reinforcements and those which are not. Rather than basing the question on the manner in which the textile layer is applied, such a distinction should be drawn based on whether the layers of textile materials possess the characteristics usually required for normal use of an outer sole, such as durability or strength. Those which do not should be considered accessories and reinforcements and should not be taken into consideration for classification purposes.

Accordingly, we respectfully request that, in light of the decisions taken by the HSC with respect to GEN 64(C) and the scope of Note 4(b) to Chapter 64 of the Harmonized System, an Additional U.S. Note be added to Chapter 64, HTSUS, to clarify that textile materials that do not possess the characteristics usually required for normal use of an outer sole (e.g., durability strength, etc.) should not be taken into account for classification purposes when added to an outer sole.

Specifically, we suggest that the following Additional U.S. Note be inserted in Chapter 64 of the Harmonized Tariff Schedule of the United States:

> "5. For purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account

shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength."

On the basis of rulings issued by CBP, the tariff classification of certain imported footwear falling under the scope of the proposed Additional U.S. Note 5 will change from subheadings 6405.20.30, 6405.20.90, and 6405.90.90 to other subheadings in Chapter 64, HTSUS.[7] Accordingly, in order to ensure substantial rate neutrality, and to reflect our understanding of current trade patterns, we respectfully request that new tariff lines be inserted into the structure of headings 6402 and 6404, HTSUS, as follows:

(A) Subdivide subheading 6402.99.60 into the following two new subheadings:

	Valued not over $3/pair:	
6402.99.61	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6402.99.69	Other	48%

(B) Subdivide subheading 6402.99.70 into the following two new subheadings:

	Valued over $3 but not over $6.50/pair:	
6402.99.71	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6402.99.79.	Other	90¢/pair + 37.5%

(C) Subdivide subheading 6404.11.40 into the following two new subheadings:

	Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:	
6404.11.41	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.49	Other	37.5%

(D) Subdivide subheading 6404.11.50 into the following two new subheadings:

	Other:	
6404.11.51	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%

[7] In particular, footwear with textile material attached to the outer sole is classifiable in subheadings 6405.10.10, HTSUS, at 10 percent *ad valorem*, 6405.20.30, HTSUS, at 7.5 percent *ad valorem*, and 6405.20.90, HTSUS, at 12.5% ad valorem.

6404.11.59	Other	48%

(E) Subdivide subheading 6404.11.60 into the following two new subheadings:

	Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:	
6404.11.61	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.69	Other	37.5%

(F) Subdivide subheading 6404.11.70 into the following two new subheadings:

	Other:	
6404.11.71	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.79	Other	90¢/pair + 37.5%

(G) Subdivide subheading 6404.11.80 into the following two new subheadings:

	Valued over $6.50 but not over $12/pair:	
6404.11.81	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.89	Other	90¢/pair + 20%

(H) Subdivide subheading 6404.19.35 into the following three new subheadings:

	Other:	
6404.19.36	Including a layer described by additional U.S. Note 5 to this Chapter and with uppers of vegetable fibers	7.5%
6404.19.37	Including a layer described by additional U.S. Note 5 to this Chapter and with uppers of materials other than vegetable fibers	12.5%
6404.19.39	Other	37.5%

(I) Subdivide subheading 6404.19.40 into the following two new subheadings:

	Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:	

6404.19.41	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6404.19.49	Other	37.5%

(J) Subdivide subheading 6404.19.50 into the following two new subheadings:

	Other:	
6404.19.51	Including a layer described by additional U.S. Note 5 to this Chapter	~~2.5%~~ → 12.5%
6404.19.59	Other	48%

(K) Subdivide subheading 6404.19.60 into the following two new subheadings:

	Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:	
6404.19.61	Including a layer described by additional U.S. Note 5 to this Chapter	~~2.5%~~ → 12.5%
6404.19.69	Other	37.5%

(L) Subdivide subheading 6404.19.70 into the following two new subheadings:

	Other:	
6404.19.71	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6404.19.79	Other	90¢/pair + 37.5%

(M) Subdivide subheading 6404.19.80 into the following two new subheadings:

	Valued over $6.50 but not over $12/pair:	
6404.19.81	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6404.19.89	Other	90¢/pair + 20%

The above-described amendments to Chapter 64 of the HTSUS will ensure that footwear featuring outer soles of rubber and plastics with a layer of textile material added to the surface

area of the outer sole will promote, in a rate neutral manner, uniform application of the Harmonized System Convention while mitigating the administrative burden of enforcing the classification principle set forth by the HSC in General EN 64(C).

Thank you for your consideration.

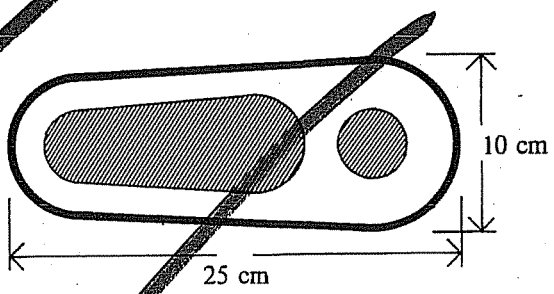
Sincerely,

Timothy E. Skud

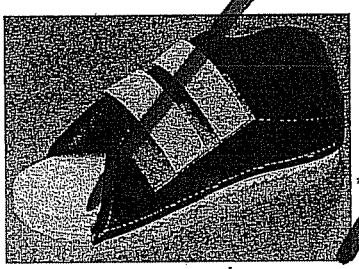
Timothy E. Skud
Deputy Assistant Secretary
Tax, Trade, and Tariff Policy

cc: Shara L. Aranoff, Chairman, U.S. International Trade Commission

6402.99 1. **Light-weight shoes,** the outer sole and the upper of which are made of pads of cellular plastics bonded together along the outside edges. This type of footwear is worn on the beach, at the pool, in the home, etc.

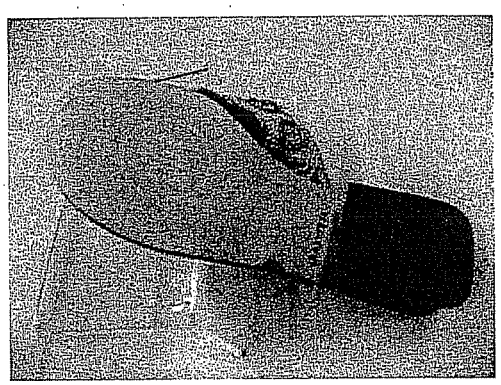


2. **Postoperative shoes,** not covering the ankle, designed for patients recovering from foot surgery or metatarsal injury. They consist of an upper of leatherette (woven textile fabric with an external layer of plastics being visible to the naked eye and embossed to simulate the grain and appearance of leather) laminated to cellular plastics with an inner lining of a knitted fabric and a sole composed of three layers: a wooden base with a PVC foam insole and a ridged plastic outer sole. These shoes, which are closed at the front by two hook and loop fasteners (Velcro strips), are massproduced.



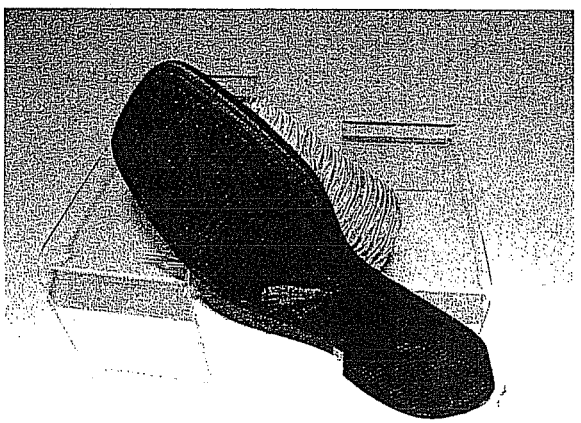
6404.19 1. **Woman's shoe,** with a textile upper and an outer sole of plastics, a portion of which is covered with flocking (fibres of rayon not exceeding 5 millimetres in length) in a manner which creates a design and includes the trade mark. The surface area of the outer sole in contact with the ground (excluding the separately attached heel) is approximately 67.5 percent textile material and 32.5 percent plastics. However, the textile material was considered to be an accessory or reinforcement and was therefore not taken into account in determining the constituent material of the outer sole having the greatest surface area in contact with the ground.

Application of GIRs 1 (Note 4 (b) to Chapter 64) and 6.



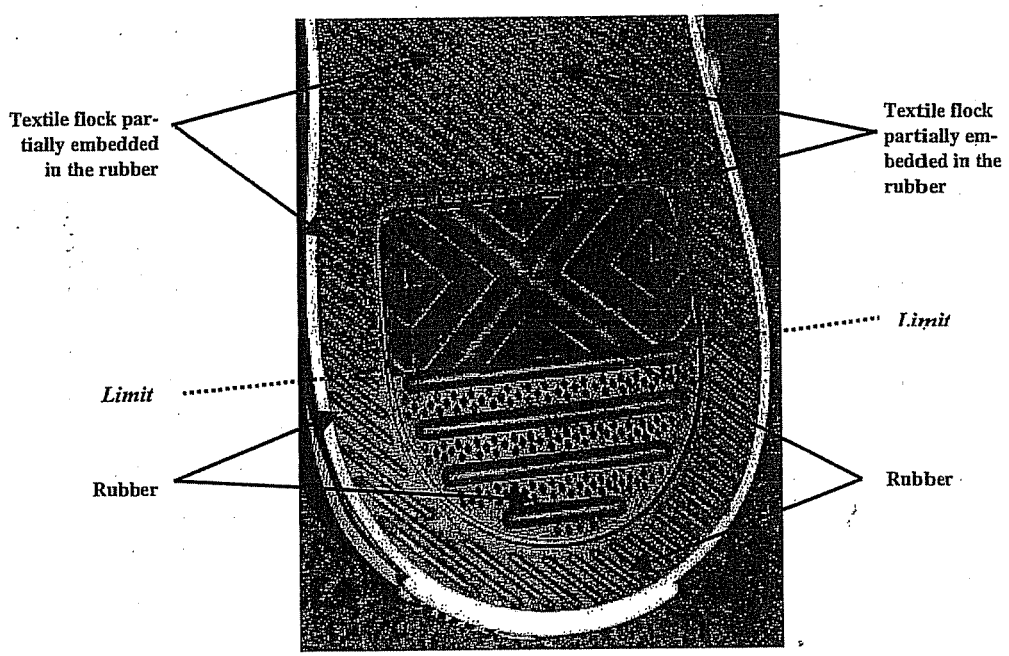
2
1. **Woman's shoe**, with a textile upper and an outer sole of plastics moulded in the piece and with a layer of knitted polyester fabric affixed to it at the ball of the foot and heel. The surface area of the outer sole in contact with the ground (including the heel) is approximately 78 percent detachable textile material and 22 percent plastics. However, the textile material was considered to be an accessory or reinforcement and was therefore not taken into account in determining the constituent material of the outer sole having the greatest surface area in contact with the ground.

Application of GIRs 1 (Note 4 (b) to Chapter 64) and 6.

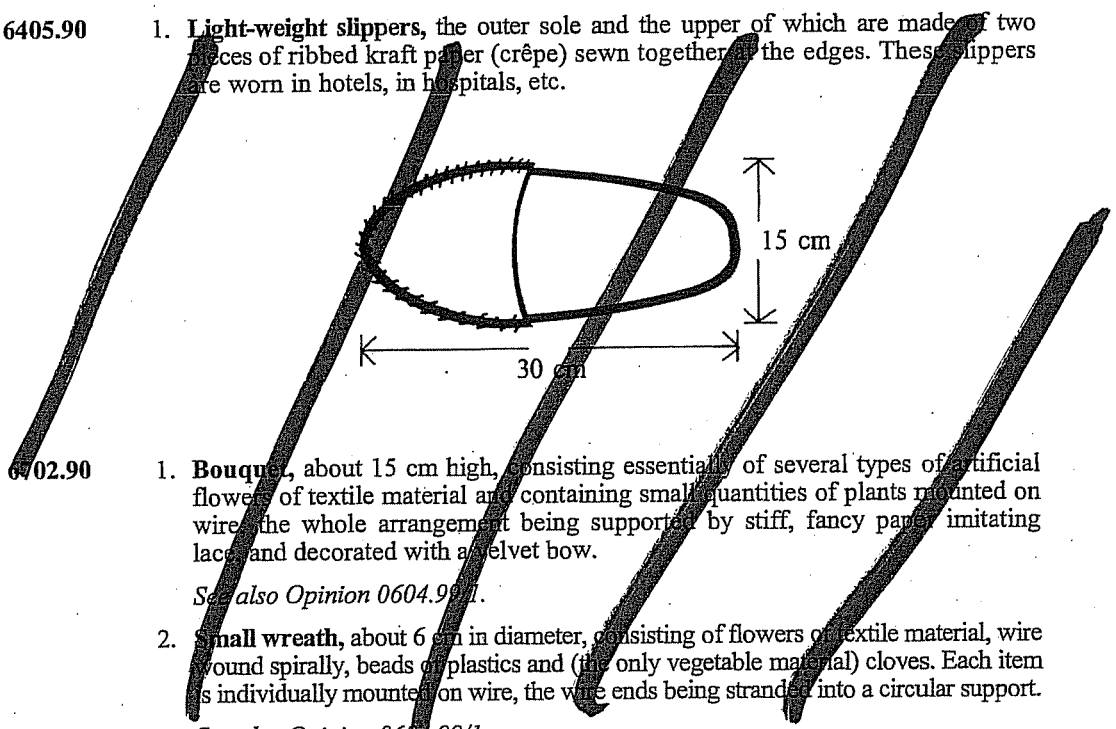


6405.20 1. **Shoe** with a textile upper and an outer sole of rubber, mainly covered with textile flock partially embedded in the rubber. This textile material covers approximately 52 % of the outer sole in contact with the ground compared to 48 % covered by rubber.

Application of GIRs 1 (Note 4 (b) of Chapter 64) and 6.



6405.90 1. **Light-weight slippers,** the outer sole and the upper of which are made of two pieces of ribbed kraft paper (crêpe) sewn together at the edges. These slippers are worn in hotels, in hospitals, etc.



6702.90 1. **Bouquet,** about 15 cm high, consisting essentially of several types of artificial flowers of textile material and containing small quantities of plants mounted on wire, the whole arrangement being supported by stiff, fancy paper imitating lace and decorated with a velvet bow.

See also Opinion 0604.99/1.

2. **Small wreath,** about 6 cm in diameter, consisting of flowers of textile material, wire wound spirally, beads of plastics and (the only vegetable material) cloves. Each item is individually mounted on wire, the wire ends being stranded into a circular support.

See also Opinion 0604.99/1

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–8]

Certain Footwear: Recommendations For Modifying the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation and opportunity to comment on proposed recommendations.

SUMMARY: Following receipt of a letter from the U.S. Department of the Treasury (Treasury), the Commission instituted investigation No. 1205–8, *Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States*, pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3005), for the purpose of submitting recommendations to the President regarding the addition of an Additional U.S. Note and the amendment of certain classification provisions in Chapter 64 of the Harmonized Tariff Schedule of the United States (HTS) relating to certain footwear featuring outer soles of rubber or plastic to which a layer of textile material has been added.

DATES:

May 14, 2010: Deadline for filing written submissions relating to proposed HTS changes requested by Department of Treasury.

May 28, 2010: Preliminary Commission report containing proposed recommendations posted on the Commission Web site at *http://www.usitc.gov/tariff_affairs/modifications_hts.htm.*

June 25, 2010: Deadline for filing written submissions to be included in final recommendations.

July 12, 2010: Transmittal of final recommendations to the President.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this collection of proposals may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Nomenclature Analyst (202–205–0663, *donnette.rimmer@usitc.gov*), or Janis L. Summers, Attorney Advisor (202–205–2605, *janis.summers@usitc.gov*), of the Office of Tariff Affairs and Trade Agreements (fax 202–205–2616). The media should contact Margaret O'Laughlin, Office of External Affairs (202–205–1819, *margaret.olaughlin@usitc.gov*). Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet Web site (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the 1988 Act) (19 U.S.C. 3005(a)) provides that the Commission shall keep the HTS under continuous review and periodically recommend to the President such modifications in the HTS as the Commission considers necessary or appropriate to accomplish five general objectives. Among these stated objectives, section 1205(a)(2) of the 1988 Act directs the Commission to consider changes to the HTS to promote the uniform application of the Harmonized System Convention and particularly the Protocol thereto, which contains the Harmonized System nomenclature structure and accompanying legal notes. Section 1205(a)(4) directs the Commission to consider changes to the HTS to alleviate unnecessary administrative burdens. Subsections (b) through (d) of section 1205 describe the procedures the Commission is to follow in formulating recommendations, including with respect to soliciting and considering views of interested Federal agencies and the public. Section 1205(b)(1) requires that the Commission give notice of proposed recommendations and afford reasonable opportunity for interested parties to present their views in writing.

In a letter dated January 15, 2010, from Timothy E. Skud, Deputy Assistant Secretary of the Treasury for Tax, Trade, and Tariff Policy, Treasury asked that the Commission conduct an investigation under section 1205 for the purpose of making recommendations to the President regarding the addition of an Additional U.S. Note and the amendment of certain classification provisions in Chapter 64 of the HTSUS relating to certain footwear featuring outer soles of rubber or plastics to which a layer of textile material has been added. The letter included Treasury's proposed language for an Additional U.S. Note and proposed changes in various U.S. tariff rate lines at the 8-digit level that take into account decisions of the Harmonized System Committee of the World Customs Organization (WCO) on the classification of particular footwear for purposes of the Harmonized System. Treasury's letter provided additional background on the tariff classification of footwear and relevant decisions of U.S. Customs and Border Protection (Customs) and noted the decisions that are the basis of Treasury's request. A copy of Treasury's letter is being posted on the Commission's Web site at *http://www.usitc.gov.*

The Harmonized Commodity Description and Coding System (HS) nomenclature, which is maintained by the WCO, provides a uniform structural basis for the customs tariffs and statistical nomenclatures of all major trading countries of the world, including the United States. The HS establishes the broadest principles of classification and levels of categories in the HTS, comprising the General Rules of Interpretation, Section and Chapter titles, Section and Chapter legal notes, and heading and subheading texts to the 6-digit level of detail. Additional U.S. Notes, further subdivisions (8-digit subheadings and 10-digit statistical annotations) and statistical notes, as well as the entirety of chapters 98 and 99 and several appendixes, are national legal and statistical detail added for the administration of the U.S. tariff and statistical programs and are not part of the international HS.

An up-to-date copy of the HTS, which incorporates the international HS in its overall structure, can be found on the Commission's Web site (*http://www.usitc.gov/tata/hts/bychapter/index.htm*). Hard copies and electronic copies on CD can be found at many of the 1,400 Federal Depository Libraries located throughout the United States and its territories; further information about these locations can be found at *http://www.gpoaccess.gov/fdlp.html* or by contacting GPO Access at the Government Printing Office at this telephone number: 866–512–1800.

The Commission will prepare a preliminary report containing proposed recommendations in order to provide notice to the public of potential HTS changes and to solicit comment and input. In preparing these proposed recommendations, the Commission will take into account Treasury's request, as well as all other appropriate legal and technical considerations relating to HTS Chapter 64, and will include where appropriate the input submitted by other agencies and interested parties. The Commission will post its preliminary report containing the proposed recommendations on its Web site at *http://www.usitc.gov/tariff_affairs/modifications_hts.htm* by May 28, 2010. The preliminary report will also include a non-authoritative cross-reference table prepared by Commission staff that will show the likely existing and future tariff classifications of the goods concerned. Any additional submissions from other agencies and the public based on the preliminary report must be filed by June 25, 2010, in order to be taken into account. The Commission will then prepare its final report and recommendations to submit to the President. Interested parties should be aware that Customs has domestic legal authority for tariff classification and that Customs may provide information, both before and after the proposed recommendations are posted, that indicates different or additional tariff classifications of some goods. Thus, the classifications that appear in the Commission's cross-reference table are subject to change during the investigation.

Written submissions should be filed in accordance with the procedures below. Interested parties should take into account the classification of the merchandise concerned under the international Harmonized System as well as domestic decisions and seek to further the goals set out by section 1205 of the 1988 Act and the Harmonized System Convention. No proposals for changes to existing U.S. rates of duty or to 10-digit statistical annotations or notes will be considered by the Commission during its review. However, the Commission will examine information concerning the rates of duty currently utilized by importers in liquidated and undisputed entries of specific footwear that is the subject of this investigation. The changes in the HTS that may result from this investigation are not intended to alter current tariff rates but instead are intended to ensure that existing tariff rates continue to be applicable following the implementation of new U.S. tariff provisions.

Written Submissions: Interested parties and agencies are invited to file written submissions relating to the recommendations that the Commission should propose based on Treasury's request. They may also file, following the posting of the Commission's proposed recommendations, submissions relating to the recommendations that the Commission must submit to the President. All written submissions should be addressed to the Secretary. Written submissions relating to Treasury's request should be received no later than May 14, 2010, and those relating to the final recommendations the Commission should submit to the President should be received no later than June 25, 2010. Submissions should refer to "Investigation No. 1205–8" in a prominent place on the cover page and/or the first page. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4)

additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties. Confidential business information received in the proposals may be made available to Customs and Census during the examination of these proposals. The Commission will not otherwise publish or release any confidential business information received, nor release it to other government agencies or other persons.

By order of the Commission.
Issued: April 8, 2010.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 2010–8360 Filed 4–12–10; 8:45 am]
BILLING CODE 7020–02–P

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17469 Filed 7–16–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 1205–8]

Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States

AGENCY: United States International Trade Commission.

ACTION: Change in date for transmitting final recommendations to the President.

SUMMARY: The Commission has changed the date on which it intends to report its final recommendations to the President in this matter from July 12, 2010, to August 9, 2010, to allow more time to consider the views submitted by Federal agencies and other interested parities.

DATES: August 9, 2010—Transmittal of final recommendations to the President.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Donnette Rimmer, Nomenclature Analyst (*donnette.rimmer@usitc.gov,* 202–205–3031) or Janis L. Summers, Attorney-Advisor (*janis.summers@usitc.gov,* 202–205–2605). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov*). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

Background: Notice of institution of the investigation and opportunity to comment on proposed recommendations was published in the **Federal Register** on April 13, 2010 (75 FR 18882). The period for filing written submissions closed on June 25, 2010.

By order of the Commission.

Issued: July 13, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–17467 Filed 7–16–10; 8:45 am]

BILLING CODE 7020–02–P

APPENDIX B

RECOMMENDED MODIFICATIONS TO THE HTS

Appendix B - Proposed Modifications to the HTS

64-1. The following new additional U.S. note to chapter 64 is inserted in numerical sequence:

"5. For the purposes of determining the constituent material of the outer sole pursuant to Note 4(b) of this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength."

64-2. Subheading 6402.99.60 is superseded by the following:

		[Other footwear with outer soles or rubber or plastics:] [Other footwear:] [Other:] [Other:] [Other:] [Other:] "Valued not over $3/pair:]			
6402.99.61		Having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this Chapter . . .	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P,PE, R,SG)	35%
6402.99.69		Other	48%	Free (AU,BH,CA, CL,E,IL,J+,JO, MA,MX,OM,P, PE,R) 9.6% (SG)	84%"
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For wo-men*			
	90	*Oth-er*			

Appendix B - Proposed Modifications to the HTS

64-3. Subheading 6402.99.70 is superseded by the following:

		[Other footwear with outer soles of rubber or plastics:] [Other footwear:] [Other:] [Other:] [Other:] [Other:] "Valued over $3 but not over $6.50/pair:]			
6402.99.71		Having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. note 5 to this Chapter . . .	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P,PE, R,SG)	35%
6402.99.79		Other	90¢/pr. + 37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 18¢/pr. + 7.5% (SG)	84%"
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For wo-men*			
	90	*Oth-er*			

Appendix B - Proposed Modifications to the HTS

64-4. Subheading 6404.11.40 is superseded by the following::

		[Footwear with outer soles...:]			
		[Footwear with outer soles of rubber or plastics:]			
		[Sports footwear...:]			
		[Other:]			
		[Valued not over $3/pair:]			
		"Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:			
6404.11.41		With an upper of vegetable materials and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P, PE,R,SG) 2.4% (MA)	35%
	30	*For men*			
	60	*For women*			
	90	*Other*			

		[Footwear with outer soles...:]			
		[Footwear with outer soles of rubber or plastics:]			
		[Sports footwear...:]			
		[Other:]			
		[Valued not over $3/pair:]			
		[Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:]			
6404.11.49		Other	37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 7.5% (SG)	66%"

64-5. Subheading 6404.11.50 is superseded by the following:

		[Footwear with outer soles...:] [Footwear with outer soles of rubber or plastics:] [Sports footwear...:] [Other:] [Valued not over $3/pair:] "Other:			
6404.11.51		With an upper of vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 2.4% (MA)	35%
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.11.59		Other	48%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 9.6% (SG)	84%"

64-6. Subheading 6404.11.60 is superseded by the following:

		[Footwear with outer soles...:]			
		[Footwear with outer soles ...:]			
		[Sports footwear...:]			
		[Other:]			
		[Valued over $3 but...:]			
		"Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:			
6404.11.61		With an upper of vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 2.4% (MA)	35%
	30	*For men*			
	60	*For women*			
	90	*Other*			

Appendix B - Proposed Modifications to the HTS

			[Footwear with outer soles...:]			
			[Footwear with outer soles ...:]			
			[Sports footwear...:]			
			[Other:]			
			[Valued over $3 but...:]			
			[Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:]			
6404.11.69			Other	37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 7.5% (SG)	66%"
	30		*For men*			
	60		*For women*			
	90		*Other*			

64-7. Subheading 6404.11.70 is superseded by the following:

		[Footwear with outer soles...:] [Footwear with outer soles...:] [Sports footwear...:] [Other:] [Valued over $3 but...:] "Other:			
6404.11.71		With an upper of vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 2.4% (MA)	35%
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.11.79		Other	90¢/pr. + 37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 18¢/pr. + 7.5% (SG)	$1.56/pr. + 66%"
	30	*For men*			
	60	*For women*			
	90	*Other*			

64-8. Subheading 6404.11.80 is superseded by the following:

		[Footwear with outer soles...:]			
		[Footwear with outer soles of rubber or plastics:]			
		[Sports footwear...:]			
		[Other:]			
		"Valued over $6.50 but not over $12/pair:			
6404.11.81		With an upper of vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 2.4% (MA)	35%
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.11.89		Other	90¢/pr. + 20%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 18¢/pr. + 4% (SG)	$1.56/pr. + 35%"
	30	*For men*			
	60	*For women*			
	90	*Other*			

64-8. Subheading 6404.19.35 is superseded by the following:

		[Footwear with outer soles...:] [Footwear with outer soles of rubber or plastics:] [Other:] [Footwear with open toes or heels...:] "Other:			
6404.19.36		With an upper of vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter fibers	7.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 2.4% (MA)	35%
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.19.37		With an upper of textile materials other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 4.1% (MA)	35%

		[Footwear with outer soles...:]			
		[Footwear with outer soles of rubber or plastics:]			
		[Other:]			
		[Footwear with open toes or heels...:]			
		[Other:]			
		[With an upper of textile materials other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter]			
	15	House slippers			
		Other:			
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.19.39		Other	37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 7.5% (SG)	66%"
	15	*House slippers*			
		Other:			
	40	*For men*			
	60	*For women*			
	80	*Other*			

64-9. Subheading 6404.19.40 is superseded by the following:

	[Footwear with outer soles...:] [Footwear with outer soles of rubber or plastics:] [Other:] [Other:] [Valued not over $3/pair:] "Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:			
"6404.19.41	With an upper of textile material other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 4.1% (MA)	35%

[Footwear with outer soles...:]
[Footwear with outer soles of rubber or plastics:]
[Other:]
[Other:]
[Valued not over $3/pair:]
[Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:]
[With an upper of textile material other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter]

15		*House slippers*
		Other:
30		*For men*
60		*For women*
90		*Other*

		[Footwear with outer soles...:]				
		[Footwear with outer soles of rubber or plastics:]				
		[Other:]				
		[Other:]				
		[Valued not over $3/pair:]				
		[Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:]				
6404.19.49		Other	37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 7.5% (SG)	66%"	
	30	*For men*				
	60	*For women*				
	90	*Other*				

64-10. Subheading 6404.19.50 is superseded by the following:

		[Footwear with outer soles...:]				
		[Footwear with outer soles of rubber or plastics:]				
		[Sports footwear...:]				
		[Other:]				
		[Valued not over $3/pair:]				
		"Other:				
6404.19.51		With an upper of textile material other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 4.1% (MA)	35%
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.19.59		Other	48%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 9.6% (SG)	84%"
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For women*			
	90	*Other*			

64-11. Subheading 6404.19.60 is superseded by the following:

	[Footwear with outer soles...:] [Footwear with outer soles of rubber or plastics:] [Other:] [Other:] [Valued over $3 but not over $6.50/pair:] "Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:			
6404.19.61	With an upper of textile material other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 4.1% (MA)	35%

	[Footwear with outer soles...:]
	[Footwear with outer soles of rubber or plastics:]
	[Other:]
	[Other:]
	[Valued over $3 but not over $6.50/pair:]
	"Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:
	[With an upper of textile material other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter]
15	*House slippers*
	Other:
30	*For men*
60	*For women*
90	*Other*

		[Footwear with outer soles...:]				
		[Footwear with outer soles of rubber or plastics:]				
		[Other:]				
		[Other:]				
		[Valued over $3 but not over $6.50/pair:]				
		[Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:]				
6404.19.69		Other . .	37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 7.5% (SG)	66%"	
	30	*For men*				
	60	*For women*				
	90	*Other*				

64-12. Subheading 6404.19.70 is superseded by the following:

		[Footwear with outer soles...:] [Footwear with outer soles of rubber or plastics:] [Other:] [Other:] [*Valued over $3 but not* over $6.50/pair:] "Other:			
6404.19.71		With an upper of textile material other than *vegetable fibers* and having an outer sole with textile materials having the greatest surface area in *contact* with the ground, but not taken into account under the terms of additional U.S. *Note 5 to this* chapter	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MX,OM,P,PE, R,SG) 4.1% (MA)	35%
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.19.79		Other	90¢/pr. + 37.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, *PE,R*) 18¢/pr. + 7.5% (SG)	$1.56/pr. + 66%"
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For women*			
	90	*Other*			

64-13. Subheading 6404.19.80 is superseded by the following:

		[Footwear with outer soles...:]			
		[Footwear with outer soles...:]			
		[Other:]			
		[Other:]			
		"Valued over $6.50 but not over $12/pair:			
6404.19.81		With an upper of textile material other than vegetable fibers and having an outer sole with textile materials having the greatest surface area in contact with the ground, but not taken into account under the terms of additional U.S. Note 5 to this chapter	12.5%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P,PE, R,SG) 4.1% (MA)	35%
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For women*			
	90	*Other*			
6404.19.89		Other	90¢/pr. + 20%	Free (AU,BH,CA, CL,D,E,IL,J+,JO, MA,MX,OM,P, PE,R) 18¢/pr. + 4% (SG)	$1.58/pr. + 35%"
	30	*For men*			
	60	*For women*			
	90	*Other*			

APPENDIX C

CORRELATION TABLE
SORTED BY PROPOSED HTS SUBHEADING

Appendix C

PROPOSED AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS) PURSUANT TO SECTION 1205 OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Correlation Table Sorted by Proposed HTS No.

Proposed HTS No.	Current HTS No.
6402.99.6100	6405.90.9000
6402.99.6915	6402.99.6015
6402.99.6930	6402.99.6030
6402.99.6960	6402.99.6060
6402.99.6990	6402.99.6090
6402.99.7100	6405.90.9000
6402.99.7915	6402.99.7015
6402.99.7930	6402.99.7030
6402.99.7960	6402.99.7060
6402.99.7990	6402.99.7090
6404.11.4130	6405.20.3030
6404.11.4160	6405.20.3060
6404.11.4190	6405.20.3090
6404.11.4900	6404.11.4000
6404.11.5130	6405.20.3030
6404.11.5160	6405.20.3060
6404.11.5190	6405.20.3090
6404.11.5900	6404.11.5000
6404.11.6130	6405.20.3030

6404.11.6160	6405.20.3060
6404.11.6190	6405.20.3090
6404.11.6930	6404.11.6030
6404.11.6960	6404.11.6060
6404.11.6990	6404.11.6090
6404.11.7130	6405.20.3030
6404.11.7160	6405.20.3060
6404.11.7190	6405.20.3090
6404.11.7930	6404.11.7030
6404.11.7960	6404.11.7060
6404.11.7990	6404.11.7090
6404.11.8130	6405.20.3030
6404.11.8160	6405.20.3060
6404.11.8190	6405.20.3090
6404.11.8930	6404.11.8030
6404.11.8960	6404.11.8060
6404.11.8990	6404.11.8090
6404.19.3630	6405.20.3030
6404.19.3660	6405.20.3060
6404.19.3690	6405.20.3090
6404.19.3715	6405.20.9015
6404.19.3730	6405.20.9030
6404.19.3760	6405.20.9060
6404.19.3790	6405.20.9090
6404.19.3915	6404.19.3515
6404.19.3940	6404.19.3540
6404.19.3960	6404.19.3560

6404.19.3980	6404.19.3580
6404.19.4115	6405.20.9015
6404.19.4130	6405.20.9030
6404.19.4160	6405.20.9060
6404.19.4190	6405.20.9090
6404.19.4930	6404.19.4030
6404.19.4960	6404.19.4060
6404.19.4990	6404.19.4090
6404.19.5115	6405.20.9015
6404.19.5130	6405.20.9030
6404.19.5160	6405.20.9060
6404.19.5190	6405.20.9090
6404.19.5915	6404.19.5015
6404.19.5930	6404.19.5040
6404.19.5960	6404.19.5060
6404.19.5990	6404.19.5080
6404.19.6115	6405.20.9015
6404.19.6130	6405.20.9030
6404.19.6160	6405.20.9060
6404.19.6190	6405.20.9090
6404.19.6930	6404.19.6030
6404.19.6960	6404.19.6060
6404.19.6990	6404.19.6090
6404.19.7115	6405.20.9015
6404.19.7130	6405.20.9030
6404.19.7160	6405.20.9060
6404.19.7190	6405.20.9090

6404.19.7915	6404.19.7015
6404.19.7930	6404.19.7030
6404.19.7960	6404.19.7060
6404.19.7990	6404.19.7090
6404.19.8115	6405.20.9015
6404.19.8130	6405.20.9030
6404.19.8160	6405.20.9060
6404.19.8190	6405.20.9090
6404.19.8930	6404.19.8030
6404.19.8960	6404.19.8060
6404.19.8990	6404.19.8090

APPENDIX D

CORRELATION TABLE
SORTED BY CURRENT HTS SUBHEADING

Appendix D

PROPOSED AMENDMENTS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (HTS) PURSUANT TO SECTION 1205 OF THE OMNIBUS TRADE AND COMPETITIVENESS ACT OF 1988

Correlation Table Sorted by Current HTS No.

Current HTS No.	Proposed HTS No.
6402.99.6015	6402.99.6915
6402.99.6030	6402.99.6930
6402.99.6060	6402.99.6960
6402.99.6090	6402.99.6990
6402.99.7015	6402.99.7915
6402.99.7030	6402.99.7930
6402.99.7060	6402.99.7960
6402.99.7090	6402.99.7990
6404.11.4000	6404.11.4900
6404.11.5000	6404.11.5900
6404.11.6030	6404.11.6930
6404.11.6060	6404.11.6960
6404.11.6090	6404.11.6990
6404.11.7030	6404.11.7930
6404.11.7060	6404.11.7960
6404.11.7090	6404.11.7990
6404.11.8030	6404.11.8930
6404.11.8060	6404.11.8960
6404.11.8090	6404.11.8990
6404.19.3515	6404.19.3915

6404.19.3540	6404.19.3940
6404.19.3560	6404.19.3960
6404.19.3580	6404.19.3980
6404.19.4030	6404.19.4930
6404.19.4060	6404.19.4960
6404.19.4090	6404.19.4990
6404.19.5015	6404.19.5915
6404.19.5040	6404.19.5930
6404.19.5060	6404.19.5960
6404.19.5080	6404.19.5990
6404.19.6030	6404.19.6930
6404.19.6060	6404.19.6960
6404.19.6090	6404.19.6990
6404.19.7015	6404.19.7915
6404.19.7030	6404.19.7930
6404.19.7060	6404.19.7960
6404.19.7090	6404.19.7990
6404.19.8030	6404.19.8930
6404.19.8060	6404.19.8960
6404.19.8090	6404.19.8990
6405.20.3030	6404.11.6130
6405.20.3030	6404.11.4130
6405.20.3030	6404.11.8130
6405.20.3030	6404.19.3630
6405.20.3030	6404.11.7130
6405.20.3030	6404.11.5130
6405.20.3060	6404.11.8160

6405.20.3060	6404.11.4160
6405.20.3060	6404.11.5160
6405.20.3060	6404.11.7160
6405.20.3060	6404.11.6160
6405.20.3060	6404.19.3660
6405.20.3090	6404.11.6190
6405.20.3090	6404.11.7190
6405.20.3090	6404.11.8190
6405.20.3090	6404.19.3690
6405.20.3090	6404.11.5190
6405.20.3090	6404.11.4190
6405.20.9015	6404.19.5115
6405.20.9015	6404.19.4115
6405.20.9015	6404.19.7115
6405.20.9015	6404.19.6115
6405.20.9015	6404.19.8115
6405.20.9015	6404.19.3715
6405.20.9030	6404.19.6130
6405.20.9030	6404.19.3730
6405.20.9030	6404.19.5130
6405.20.9030	6404.19.8130
6405.20.9030	6404.19.7130
6405.20.9030	6404.19.4130
6405.20.9060	6404.19.4160
6405.20.9060	6404.19.7160
6405.20.9060	6404.19.3760
6405.20.9060	6404.19.6160

6405.20.9060	6404.19.5160
6405.20.9060	6404.19.8160
6405.20.9090	6404.19.7190
6405.20.9090	6404.19.6190
6405.20.9090	6404.19.5190
6405.20.9090	6404.19.4190
6405.20.9090	6404.19.3790
6405.20.9090	6404.19.8190
6405.90.9000	6402.99.6100
6405.90.9000	6402.99.7100

APPENDIX E

SUBMISSIONS FROM THE AMERICAN APPAREL & FOOTWEAR ASSOCIATION

May 14, 2010

Secretary
United States International Trade Commission
500 E Street SW
Washington, DC 20436

RE: Investigation No. 1205-8: Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States – FR Notice Volume 75, Number 70, Page 18882 (April 13, 2010)

To Whom It May Concern:

Thank you for providing us the opportunity to provide this written submission concerning the U.S. International Trade Commission's (ITC) 1205 study regarding the classification of certain footwear with textile outsoles.

The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. Our members produce and market footwear throughout the United States and the world. In short, our members make everywhere and sell everywhere.

As you know, the ITC initiated the 1205 study in response to a January 15, 2010 letter from the U.S. Department of the Treasury requesting the study.

AAFA strongly supports Treasury's proposal.

However, AAFA believes that the text proposed by the U.S. Department of the Treasury (Treasury) needs to be clarified in order to ensure consistent application by United States Customs and Border Protection (Customs) officials and importers. Specifically, we believe Treasury's proposal is missing certain footwear categories that utilize textile outsoles today. Also, Treasury's proposal should be clarified so that it uniformly applies the correct duty rates.

AAFA urges the ITC forward Treasury's recommendations, with the clarifications detailed below, to the President at the conclusion of this study. As stated by Treasury in its letter, AAFA believes Treasury's proposal, with the clarifications detailed below, "would promote the uniform application of the Harmonized System Convention as well as alleviate unnecessary administrative burdens," while "ensure(ing) substantial rate neutrality."

1601 North Kent Street, Suite 1200, Arlington, VA 22209 www.apparelandfootwear.org p (703) 524-1864 (800) 520-2262 f (703) 522-6741

What does Treasury's Proposal Do?

It is our understanding that Treasury's proposal, if recommended by the ITC and, in turn, accepted by the President, would allow for the use of all types of textile outsoles on 13 types of footwear classified under Chapter 64 for the purposes of lowering the duty-rates for the subject footwear. These 13 types of footwear represent most, *but not all*, of the footwear product categories that utilize textile outsoles in today's market. Further, Treasury's proposal would modify the Harmonized Tariff Schedule to correctly classify, *for the most part*, the subject footwear, which, with the clarifications described below, would reduce the administrative burden for both the U.S. government and for importers while greatly improving the accuracy of the data collected by the U.S. government.

Finally, it is our understanding that the proposal would continue to allow the use of so-called "embedded" textile outsoles on ALL footwear for the purpose of lowering duty rates, as long as the footwear utilizing the "embedded" textile outsoles "possess the characteristics usually required for normal use of an outer sole, including durability and strength."

AAFA's Recommended Modifications to Treasury's Proposal

Again, AAFA supports Treasury's proposal, but we feel the ITC should make the following modifications to Treasury's proposal before the ITC makes its recommendations to the President:

Subheading Text

AAFA suggests that the superior text to the proposed subheadings be amended to read as follows:

a) Heading 6402 -

> Having an outer sole to which textile materials have been affixed, which materials have the greatest surface area in contact with the ground:

b) Heading 6404 -

> Having an outer sole to which textile materials have been affixed, which textile materials have the greatest surface area in contact with the ground and with uppers of vegetable fibers (or with uppers of textile materials other than vegetable fibers):

The purpose of the proposed changes is twofold. The first is to make it clear that the textile material must account for a majority of the area of the outer sole in contact with the ground. The proposed language, as currently drafted, could be read to require only a minimum amount of textile material on the outer sole. We assume that this interpretation is not what Treasury intended and that the intent was to continue current practice which accepts the textile material but only when it constitutes the majority of the material in contact with the ground. We would delete the term layer because it

suggests that textile material must be in the form of a layer before being attached to the outer sole.

Secondly, AAFA believes the proposed reference to footwear having a textile layer as described in Additional Note 5 (which provides that the textile outsole is to be ignored) may create confusion. Proposed Additional Note 5 focuses on the material of the outer sole in determining classification at the heading level. Additional Note 5 is not relevant to classification of subheading level. We believe deletion of the reference in the subheading language will help alleviate the mistaken notion that a textile outsole on a shoe classified in heading 6402 or 6404 must pass a test for durability or strength.

AAFA believes that the suggested changes will make the proposed recommendation easier to understand by importers and easier to administer by Customs officials.

Additional Subheadings

The subheadings which Treasury would subdivide do not include all of the types of footwear which currently are imported with a textile outsole in order to qualify for classification in heading 6405. For example, footwear of the type described in HTS subheading 6402.99.40 is imported with a textile outsole for that purpose. Accordingly, subheading 6402.99.40 should be included among those subheadings which are amended by adding a separate provision for footwear with a textile outsole. The following subheadings also fall in the same category and should be included with those footwear categories that should still be able to utilize textile outsoles for the purposes of lowering duties; 6402.91.16, 6402.91.90, 6402.99.12, 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90.

Clarifying Duty-Rates

In the case of footwear with textile uppers classified in heading 6405, there are two duty rates, 7.5 percent where the upper is a vegetable fiber and 12.5 percent where the upper is another textile material. However, only some of the 6404 subheadings in Treasury's proposal provide for the 7.5 percent rate as well as the higher rate of 12.5 percent. There is no justification for restricting the 7.5 percent rate to a limited number of subheadings. Both rates should be provided for in the new subdivisions of the listed subheadings; 6404.11.40, 6404.11.50, 6404.11.60, 6404.11.70, 6404.11.80, 6404.19.40, 6404.19.50[1], 6404.19.60, 6404.19.70, and 6404.19.80. In the case of the new subdivisions of subheadings 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90, only the 7.5 percent rate is necessary because the existing rate is less than 12.5 percent.

Implementation of Treasury's Proposal

Although it is not under the purview of this ITC study, we would also like to make two recommendations to Customs in applying Treasury's proposal to the subject footwear, if Treasury's proposal is recommended by the ITC and approved by the President.

---

[1] The rate listed in the Treasury request is 2.5%. We assume that the intended rate is 12.5%. The same comment applies to subheading 6404.19.60.

First, we urge that Customs, when applying Note 5, differentiate between footwear intended indoor use and footwear intended for outdoor use. Second, we would recommend that Customs adopt a standard test method to measure "strength and durability." AAFA believes certain standard test methods have already be used to test "strength and durability" in the European Union.

Treasury's Proposal: A Balanced Approach That Reflects the Realities of Today's Market

AAFA strongly supports Treasury's proposal, as modified above, because the proposal balances the needs of the entire U.S. footwear industry. The proposal:

- Recognizes that 99 percent of the footwear sold in the United States today is imported. In the absence of legislative changes to eliminate duties on footwear no longer made in the United States, the proposal legitimizes the use of textile outsoles to lower these significant and unnecessary import duties that serve no other purpose than to act as a hidden, regressive tax on hardworking American families,

- While still protecting the types of footwear still made in the United States by a small, yet vibrant footwear manufacturing industry.

AAFA supports Treasury's proposal. However, AAFA strongly believes that the best solution on this issue for the entire U.S. footwear industry, and for American consumers, would be for Congress to approve the *Affordable Footwear Act* (S.730).

Thank you for your time and consideration in this matter. Please contact Nate Herman of my staff at 703-797-9062 or nherman@apparelandfootwear.org if you have any questions or would like additional information.

Please accept my best regards,

Kevin M. Burke

Kevin M. Burke
President & CEO

June 25, 2010

Secretary
United States International Trade Commission
500 E Street SW
Washington, DC 20436

RE: Comments on Preliminary Commission Report, Investigation No. 1205-8: Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States – FR Notice Volume 75, Number 70, Page 18882 (April 13, 2010)

To Whom It May Concern:

Thank you for providing us the opportunity to provide this written submission in response to the U.S. International Trade Commission's (ITC) preliminary report and recommendations for its 1205 study regarding the classification of certain footwear with textile outsoles.

The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. Our members produce and market footwear throughout the United States and the world. In short, our members make everywhere and sell everywhere.

As the ITC prepares the Commission's final recommendations to the President, AAFA strongly urges the ITC to use as the basis for its recommendations the original proposal made by the U.S. Department of Treasury in its January 15, 2010 letter to the ITC, with the modifications suggested by AAFA in its May 14, 2010 submission and as outlined again in this letter.

AAFA recognizes that the ITC's preliminary recommendations don't reflect the initial comments received by the Commission. AAFA applauds the fact that the ITC's preliminary recommendations concur with Treasury's original proposal to allow a dozen types of non-controversial footwear to continue utilizing textile outsoles for the purposes of lower their duties. However, AAFA is concerned that the ITC's preliminary recommendations fail to include other types of non-controversial footwear which utilize textile outsoles in today's market (as outlined in AAFA's May 14 comments and below). As a result, the implementation of the ITC's preliminary recommendations could cause a significant disruption in trade.

Moreover, the ITC's preliminary recommendations, particularly as it regards the ITC's proposed revision of the Additional U.S. Note, and its potential implications, have raised a lot of concern and confusion in the industry.

With this in mind, before preparing its final recommendations to the President, AAFA encourages the Commission to bring together the parties representing the key industry stakeholders for a face to face meeting to ensure that all stakeholders: 1) have the full

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opportunity to explain their concerns and 2) achieve a common understanding of the proposal and recommendations. AAFA believes that there is much more common ground among the stakeholders than it might appear.

Turning again to the specific recommendations, AAFA supports Treasury's original proposal.

However, AAFA believes that the text proposed by the U.S. Department of the Treasury (Treasury) needs to be clarified in order to ensure consistent application by United States Customs and Border Protection (Customs) officials and importers. Specifically, we believe Treasury's proposal is missing certain footwear categories that utilize textile outsoles today. Also, Treasury's proposal should be clarified so that it uniformly applies the correct duty rates.

AAFA urges the ITC forward Treasury's recommendations, with the clarifications detailed below, to the President at the conclusion of this study. As stated by Treasury in its letter, AAFA believes Treasury's proposal, with the clarifications detailed below, "would promote the uniform application of the Harmonized System Convention as well as alleviate unnecessary administrative burdens," while "ensure(ing) substantial rate neutrality."

What does Treasury's Proposal Do?

It is our understanding that Treasury's proposal, if recommended by the ITC and, in turn, accepted by the President, would allow for the use of all types of textile outsoles on 13 types of footwear classified under Chapter 64 for the purposes of lowering the duty-rates for the subject footwear. These 13 types of footwear represent most, *but not all*, of the footwear product categories that utilize textile outsoles in today's market. Further, Treasury's proposal would modify the Harmonized Tariff Schedule to correctly classify, *for the most part*, the subject footwear, which, with the clarifications described below, would reduce the administrative burden for both the U.S. government and for importers while greatly improving the accuracy of the data collected by the U.S. government.

Finally, it is our understanding that the proposal would continue to allow the use of so-called "embedded" textile outsoles on ALL footwear for the purpose of lowering duty rates, as long as the footwear utilizing the "embedded" textile outsoles "possess the characteristics usually required for normal use of an outer sole, including durability and strength."

AAFA's Recommended Modifications to Treasury's Proposal

Again, AAFA supports Treasury's proposal, but we feel the ITC should make the following modifications to Treasury's proposal before the ITC makes its recommendations to the President:

Subheading Text

AAFA suggests that the superior text to the proposed subheadings be amended to read as follows:

a) Heading 6402 -

Having an outer sole to which textile materials have been affixed, which materials have the greatest surface area in contact with the ground:

b) Heading 6404 -

Having an outer sole to which textile materials have been affixed, which textile materials have the greatest surface area in contact with the ground and with uppers of vegetable fibers (or with uppers of textile materials other than vegetable fibers):

The purpose of the proposed changes is twofold. The first is to make it clear that the textile material must account for a majority of the area of the outer sole in contact with the ground. The proposed language, as currently drafted, could be read to require only a minimum amount of textile material on the outer sole. We assume that this interpretation is not what Treasury intended and that the intent was to continue current practice which accepts the textile material but only when it constitutes the majority of the material in contact with the ground. We would delete the term layer because it suggests that textile material must be in the form of a layer before being attached to the outer sole.

Secondly, AAFA believes the proposed reference to footwear having a textile layer as described in Additional Note 5 (which provides that the textile outsole is to be ignored) may create confusion. Proposed Additional Note 5 focuses on the material of the outer sole in determining classification at the heading level. Additional Note 5 is not relevant to classification of subheading level. We believe deletion of the reference in the subheading language will help alleviate the mistaken notion that a textile outsole on a shoe classified in heading 6402 or 6404 must pass a test for durability or strength.

AAFA believes that the suggested changes will make the proposed recommendation easier to understand by importers and easier to administer by Customs officials.

Additional Subheadings

The subheadings which Treasury would subdivide do not include all of the types of footwear which currently are imported with a textile outsole in order to qualify for classification in heading 6405. For example, footwear of the type described in HTS subheading 6402.99.40 is imported with a textile outsole for that purpose. Accordingly, subheading 6402.99.40 should be included among those subheadings which are amended by adding a separate provision for footwear with a textile outsole. The following subheadings also fall in the same category and should be included with those footwear categories that should still be able to utilize textile outsoles for the purposes of lowering duties; 6402.91.16, 6402.91.90, 6402.99.12, 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90.

Clarifying Duty-Rates

In the case of footwear with textile uppers classified in heading 6405, there are two duty rates, 7.5 percent where the upper is a vegetable fiber and 12.5 percent where the upper is another textile material. However, only some of the 6404 subheadings in Treasury's proposal provide for the 7.5 percent rate as well as the higher rate of 12.5 percent. There is no justification for restricting the 7.5 percent rate to a limited number of subheadings. Both rates should be provided for in the new subdivisions of the listed subheadings; 6404.11.40, 6404.11.50, 6404.11.60, 6404.11.70, 6404.11.80, 6404.19.40, 6404.19.50[1], 6404.19.60,

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[1] The rate listed in the Treasury request is 2.5%. We assume that the intended rate is 12.5%. The same comment applies to subheading 6404.19.60.

6404.19.70, and 6404.19.80. In the case of the new subdivisions of subheadings 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90, only the 7.5 percent rate is necessary because the existing rate is less than 12.5 percent.

Implementation of Treasury's Proposal

Although it is not under the purview of this ITC study, we would also like to make two recommendations to Customs in applying Treasury's proposal to the subject footwear, if Treasury's proposal is recommended by the ITC and approved by the President.

First, we urge that Customs, when applying Note 5, differentiate between footwear intended indoor use and footwear intended for outdoor use. Second, we would recommend that Customs adopt a standard test method to measure "strength and durability." AAFA believes certain standard test methods have already be used to test "strength and durability" in the European Union, particularly in the United Kingdom.

Treasury's Proposal: A Balanced Approach That Reflects the Realities of Today's Market

AAFA strongly supports Treasury's proposal, as modified above, because the proposal balances the needs of the entire U.S. footwear industry. The proposal:

- Recognizes that 99 percent of the footwear sold in the United States today is imported. In the absence of legislative changes to eliminate duties on footwear no longer made in the United States, the proposal legitimizes the use of textile outsoles to lower these significant and unnecessary import duties that serve no other purpose than to act as a hidden, regressive tax on hardworking American families,

- While still protecting the types of footwear still made in the United States by a small, yet vibrant footwear manufacturing industry.

AAFA supports Treasury's proposal. However, AAFA strongly believes that the best solution on this issue for the entire U.S. footwear industry, and for American consumers, would be for Congress to approve the *Affordable Footwear Act* (S.730).

Thank you for your time and consideration in this matter. Please contact Nate Herman of my staff at 703-797-9062 or nherman@apparelandfootwear.org if you have any questions or would like additional information.

Please accept my best regards,

Kevin M. Burke

Kevin M. Burke
President & CEO

APPENDIX F

SUBMISSION FROM
C. P. INTERNATIONAL CORPORATION

(By counsel, Oliff & Berridge, PLC)

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OLIFF & BERRIDGE, PLC

ATTORNEYS AT LAW

June 25, 2010

By Email

**CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
ATTORNEY WORK PRODUCT
COMMUNICATION**

Secretary
United Stated International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Re: C.P International Corporation
Investigation No. 1205-8
Proposed Modification to the HTUS (Certain Footwear)

To Whom It May Concern:

This submission is filed on behalf of our client, C.P. International Corporation ("CPI"), in response to a request for public comment in connection with Investigation 1205-8, Proposed Modifications to the Harmonized Tariff Schedule of the United States. We request that the following comments be addressed by the ITC to clarify the proposed modifications to Chapter 64 of the Harmonized Tariff Schedule of the United States ("HTSUS").

The ITC initiated the investigation in response to a January 15, 2010 letter from the U.S. Department of the Treasury requesting revision of the construction of Note 4(b) by providing a new Additional U.S. Note 5 to Chapter 64 as follows: "For purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength." Treasury explained that the current disparate approach to classification of textile materials based on how they are affixed to the shoe sole is not adequate and should be replaced by an approach based on characteristics usually required for normal use of an outer sole (e.g., durability, strength, etc.). In view of the fact that this change would cause some shoes to move out of heading 6405 and into headings 6402 and 6404, Treasury also recommended new subheadings under headings 6402 and 6404 that would impose the same duty rates as had been applied to such footwear when classified in heading 6405 by providing reduced duty rates for shoes with textile materials described in its Note 5 -- i.e., those that do not possess the characteristics usually required for normal use of an outer sole.

In response, the ITC proposes to adopt Treasury's recommendations with two changes. The ITC proposes to remove the negative language from Note 5 so as to achieve the intended result proposed in Treasury's letter through a positive standard as follows: "For purposes of

determining the constituent material of the outer sole pursuant to note 4(b) to this chapter, applied textile materials possessing the characteristics required for the durability of an outer sole during normal use shall be taken into account." The ITC modifies the proposed note so that classification is based upon the existence of physical characteristics, such as durability, and not their absence.

Appendix B of the ITC Preliminary Report correctly tracks the Treasury proposal by modifying subheadings under headings 6402 and 6404 to apply a lower duty rate to shoes with soles with an applied textile material that does not possess the characteristics required for the durability of the outer sole in normal use. However, Appendix B at page B-1 does not include the ITC's corresponding proposed modified version of Note 5, and in fact contradicts that ITC proposal, and thus makes interpretation of the recommended modifications to the HTSUS confusing. Specifically, Appendix B, which allegedly includes the recommended modifications to the HTSUS, scheduled to be in effect as of January 1, 2011, is ambiguous because the new Additional U.S. Note 5 to Chapter 64 does not match what is proposed in the ITC's own accompanying May 2010 Preliminary Report. The Preliminary Report at page 6 proposes Additional U.S. Note 5 with a positive standard focusing on the existence of physical characteristics rather than their absence, whereas Appendix B includes the original negative standard as recommended by the Treasury. Thus, CPI recommends that Appendix B be corrected to match the ITC's proposal in the Preliminary Report, by revising Note 5 as attached.

In addition, it remains unclear how to determine what characteristics are required for normal use of an outer sole, or what characteristics are usually required for the durability of an outer sole during normal use. The tariff schedule or explanatory notes or commentary should define such characteristics. For example, they should make clear that a different standard of "normal use" and "durability" is appropriate for shoes in different subheadings (e.g., "normal use" and "durability" for house slippers are not the same as those for work shoes). In addition, they should make clear that the "normal use" and "durability" standards to be applied are for the lowest stress "normal" environments for any given shoe type. For example, the identical shoe may be worn by a computer operator who walks only a few dozen yards in a carpeted office all day and by a mail carrier who walks miles on concrete sidewalks all day. Because the standard must be applied upon importation regardless of the ultimate consumer, the standard should be at the lowest applicable level (e.g., the computer operator version in the above examples), rather than at the higher level or some average level.

The lack of clear guidance as to "normal use" and "durability" will lead to the inability of Customs and Border Protection to fairly and uniformly apply the duties, and will lead importers to guess, innocently but perhaps incorrectly, what rates apply. Thus, a clear and simple standard should be provided and made clear in the course of the tariff schedule adjustment.

Thank you for your time and consideration in reviewing these comments. Please do not hesitate to contact us if you have any questions.

Very truly yours,

William P. Berridge

WPB:KXP/kxm

Enclosure:
Marked Preliminary Report Appendix page B-1

Appendix B - Recommended Modifications to the HTS

64-1. The following new Additional U.S. Note 5 to Chapter 64 is inserted:

"5. For purposes of determining the constituent material of the outer sole pursuant to Note 4(b) of this Chapter, ~~no account shall be taken of~~applied textile materials ~~which do not possess~~possessing the characteristics usually required for ~~normal use as~~ the durability of an outer sole ~~, including durability and strength~~during normal use shall be taken into account."

64-2. Subheading 6402.99.60 is superseded by the following:

		[Other footwear with outer soles of rubber or plastic:]			
		[Other footwear:]			
		[Other:]			
		[Other:]			
		[Other:]			
		"Valued not over $3/pair:			
6402.99.61		With an outer sole with applied textile material that does not possess the character-istics required for the durability of the outer sole in normal use	12.5%	Free (AU,BH,CA,CL, E*,IL,J*,JO,MA,MX, OM,P,PE,SG)	35%
6402.99.69		Other	48%	Free (AU,BH,CA,CL, E*,IL,J*,JO,MA,MX, OM,P,PE) 9.6% (SG)	84%"
	15	*House slippers*			
		Other:			
	30	*For men*			
	60	*For wom-en*			
	90	*Other*			

APPENDIX G

SUBMISSIONS FROM
E. S. ORIGINALS, INC.

(By counsel, Miller Chevalier)

MILLER
CHEVALIER

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May 14, 2010

Accepted as Chairman's Doc. and OTAIA on 5-18-2010

VIA COURIER

The Honorable Marilyn R. Abbott
Secretary
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States - Investigation No. 1205-8

Dear Ms. Abbott:

This submission has been filed on behalf of our client, E.S. Originals, Inc. ("ESO"), in connection with Investigation 1205-8[1] which is being conducted by the International Trade Commission ("ITC"). The investigation has been commenced at the request of the Department of the Treasury ("Treasury") pursuant to a letter to the ITC dated January 15, 2010. The investigation concerns the classification of certain footwear with outer soles that incorporate textile components. We request the ITC to consider the comments set out below in determining whether certain modifications should be made to Chapter 64 of the Harmonized Tariff Schedule of the United States ("HTSUS").

ESO is the owner of a number of patents relating to the incorporation of textile components into rubber/plastic outer soles through a molding process. In this molding process

1 Proposed Modifications to the Harmonized Tariff Schedule of the United States, 75 Fed. Reg. 18,882 (April 13, 2010).

the textile and rubber/plastic elements are permanently bonded together to form the outer soles. This occurs because through the molding process the textile components are embedded in the rubber/plastic sole components. Shoes made from ESO patented technology have been the subject of classification rulings issued by U.S. Customs and Border Protection ("Customs"), United Kingdom Customs ("UK Customs"), and the Harmonized System Committee ("HSC"). All of these rulings have consistently classified these shoes under Heading 6405, Harmonized Tariff Schedules ("HTS"). Critical to each of these decisions has been a finding that the textile sole component incorporated in the outer sole is part of the constituent material of the outer sole, and that it is not an accessory or reinforcement.

I. SUMMARY OF POSITION

The Treasury Department letter prompting this Section 1205 investigation contemplates a new durability standard to be set out in a new U.S. Note 5. If the USITC concludes that there is merit to the general approach proposed by Treasury, it should nevertheless make certain adjustments to Treasury's proposal before forwarding it to the President. In particular, a package of modifications meriting the ITC's imprimatur should not alter, or create even a theoretical risk of disturbing, the classification under HTS Heading 6405 of footwear made with ESO technology -- a classification that is consistent with the plain meaning of the HTS, with prior case law, and with rulings issued by three separate "Customs authorities." Accordingly, the proposed new Note 5 should be adjusted as follows: "For the purpose of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be

taken of textile materials that **are not molded into the sole if they** do not possess the characteristics usually required for normal use of an outer sole, including durability and strength."

II. BACKGROUND CONSIDERATIONS

A. Statutory Limits on Changes to the Tariff Structure

The current review is being conducted under Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 USC 3005) ("Section 1205"), which requires the ITC to keep the HTS under continuous review and to recommend to the President modifications to the HTS in order to reflect amendments to the Harmonized Commodity Description and Coding System that are periodically recommended by the World Customs Organization (the Customs Cooperation Council, or CCC) for adoption, or as warranted by particular circumstances. This section provides that:

> [The Commission] shall recommend to the President such modifications in the Harmonized Tariff Schedule as [it] considers necessary or appropriate–
>
> 1. to conform the [HTS] with amendments made to the Convention;
>
> 2. to promote the uniform application of the Convention and particularly the Annex thereto;
>
> 3. to ensure that the HTS is kept up-to-date in light of changes in technology or changes in patterns of international trade;
>
> 4. to alleviate unnecessary administrative burdens; and
>
> 5. to make technical rectifications.

Finally, section 1205(d) provides that the Commission cannot recommend a modification to the HTS unless the change (1) is "consistent with the Harmonized System Convention or any amendment thereto recommended for adoption"; (2) is "consistent with sound nomenclature principles"; and (3) "ensures substantial rate neutrality." Any modification that would change a rate of duty must be consequent to, or necessitated by, recommended nomenclature changes. Finally, the recommended modifications "must not alter existing conditions of competition for the affected U.S. industry, labor, or trade."

B. Prior Rulings by Customs

Customs has issued a number of rulings concerning the classification of footwear with textile sole components. These rulings have related to a number of different types of shoes, including hip waders, bowling shoes, dancing shoes, slippers, casual and athletic footwear. As a general rule, these rulings have concluded that footwear was to be classified in Heading 6405, HTSUS[2] where it had outer soles with a constituent material of textiles pursuant to note 4(b) of chapter 64 of the HTSUS.

2 See list of rulings (Attachment 1) which have been issued by Customs on textile outer sole footwear. After 2003, as a general rule, Customs has not ruled on this issue with respect to shoes to be worn outdoors.

These rulings have been consistent with long established classification principles which hold that merchandise is to be classified based on its condition as entered.[3] These Customs rulings have also been consistent with the plain meaning of the words of Note 4(b), Chapter 64, HTSUS, which directs Customs to disregard "accessories and reinforcements" in determining the constituent material of the sole. Note 4(b) provides examples of accessories and reinforcements: spikes, bars, nails, protectors or similar attachments. Customs has ruled that textile components that are placed on the bottom of the sole are not *ejusdem generis* with the examples set out in Note 4(b) and in the Explanatory Notes. Thus, a thin piece of textile material attached to the bottom of a rubber/plastic sole has been considered to be the constituent material of the sole, except in cases where the attachment of the textile has been considered to be an artifice or sham.[4]

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3 In United States v. Citroen, 223 U.S. 407 (1911), the court ruled that no penalty could be imposed against an importer where the importer arranged to have strands of pearls unstrung overseas, imported, and re-strung after entry to minimize duty. The court ruled that merchandise can be configured to obtain the benefit of favorable duty rate provisions. All that was required was proper disclosure to Customs to avoid penalties. *See also* Merritt v. Welsh, 104 U.S. 694 (1881); Seeberger v. Farwell, 139 U.S. 608 (1891); United States v. Hannevig, 10 Ct. Cust. App. 124, 128 (1920);United States v. International Forwarding Co., 15 Ct. Cust. App. 198, 201 (1927); Corporacion Argentina de Productores de Carnes v. United States, 32 C.C.P.A. 175, 184 (1945); Robert G. Lynch Co. v. United States, 49 C.C.P.A. 74, 80 (1962); Pasadena Firearms Co. v. United States, 56 Cust. Ct. 331, 337 (1966).

4 See HQ 952935 (January 6, 1993), where customs disregarded a textile sole component because it was intended to be cut away after importation and before sale to consumers.

Finally, these textile outer sole rulings are consistent with the Complete Footwear Dictionary, Rossi (2nd Ed. 2000), which defines the material of the sole as follows:

> **Outsole (or outer sole).** The outermost sole of the shoe which is directly exposed to abrasion and wear. It can consist of any of a variety of materials: leather, rubber, plastic, cork, rope, crepe, wood, etc., plus differences in thickness or degrees of flexibility, and an infinite variety of surface designs.

Thus, the common meaning of the term outer sole contemplates that it may be made of textiles, and the Customs rulings that have been issued are consistent with the common meaning of the terms of the statute.

In particular, we would like to draw your attention to Customs ruling HQ 965751 of November 18, 2002 which was issued in response to an American Manufacturers Petition concerning the classification of textile sole footwear. In this case, public comments were solicited and received by Customs, and this ruling addressed all of the claims of the domestic supplier and interpreted Note 4(b), and the terms "outer soles" and "accessories or reinforcements" which are currently under consideration in this Section 1205 ruling request. In this ruling Customs agreed that the intent of Note 4(b) was to define the term "outer soles" broadly. Customs noted that the definition of this term did not "limit the type of material which may comprise the outer sole" and did "not describe the outer sole according to its durability." Customs specifically rejected the application of durability and strength testing to determine whether the textile sole component should be considered to be an accessory or reinforcement. If the product presented to Customs for classification was not a sham, then it was to be classified

based on its condition as imported. Under this standard, textile outer sole shoes were classified under HTSUS Heading 6405.

C. HSC Action Modifying the Interpretation of Note 4(b), and Customs' Response

At some point, Customs began to question its own interpretation of Note 4(b). This could have evolved as a result of pressure from domestic producers, or because of the advent of certain footwear design developments that Customs found to be less desirable. As a result, Customs sent three footwear samples to the Harmonized System Committee (HSC) for review. As noted in Treasury's letter of January 15, 2010, the HSC held that a sample where the textile was molded into the outer sole had a constituent material of textiles.[5] The shoe reviewed by the HSC in this ruling had been made with patented technology developed by ESO, and had been the subject of rulings classifying these shoes in Heading 6405 by U.S. Customs and by U.K. Customs. Conversely, samples where the textile material could be easily peeled away, or where the textile was used to add a design in the sole, were ruled to have a constituent material of rubber/plastic because the textile materials were considered to be accessories or reinforcements under Note 4(b). In addition, the HSC amended the Explanatory Note to Note 4(b) so that these

5 The Deputy Assistant Secretary of the Treasury refers to this ruling in its letter to the ITC as Annex O/19, Doc.NC0938B3b (HSC/35—Report).

findings would be generally applied to footwear importations to the signatories to the Harmonized System Convention.[6]

Customs has failed to implement the distinctions created by the HSC, but rather has continued to consider most, if not all, textile sole components to be part of the constituent material of the sole. While the HSC decisions only directly addressed three specific situations, their broader message is clear: if the textile component is molded or embedded into the outer sole, it is to be considered part of the outer sole for classification purposes.[7] On the other hand, if the textile material is a separate layer that can be peeled away or that has been added to create a design in the outer sole, then it is an accessory or reinforcement.

Customs has not extrapolated from the HSC pronouncements and issued rulings applying this broader rationale to items not directly addressed by the HSC. Nor has Customs sent new samples to the HSC to expand the scope of its pronouncements to "fill in the gaps." Finally, even though the HSC has the authority to update the tariff "to reflect developments in technology and changes in trade patterns as well as other needs of HS users,"[8] Customs has not

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6 The Explanatory Notes, while not legally binding, may be helpful in construing a tariff provision. See, e.g., Degussa Corp. v. United States, 508 F.3d 1044, 1047 (Fed. Cir. 2007) (citing Motorola, Inc. v. United States, 436 F.3d 1357, 1361 (Fed. Cir. 2006)); Marubeni America Corp. v. United States, 35 F.3d 530, 535 n.3 (Fed. Cir. 1994); Lynteq, Inc. v. United States, 976 F.2d 693, 699 (1992).

7 This would also be analogous to the treatment of plastic coated textiles which are treated as plastic for tariff purposes. (See Note 3(a), Chapter 64, HTSUS). The union of plastic and textile creates a combined material, and the classification of products is determined based on the exterior surface of the new product.

8 See http://www.wcoomd.org/home_wco_topics_hsoverviewboxes_committees_committstrchs.htm.

asked the HSC to formally amend the HTS to create new rules concerning the classification of textile outer sole footwear.

Instead, Customs worked with Treasury to develop a different, unilateral approach, giving rise to the instant Section 1205 proceeding. The details of this proposed approach -- adoption of a durability test to determine how long the textile component will last after importation -- are difficult to square with precedent stating that goods are to be classified based on their condition as entered. It would also seem logical that if Treasury wants to impose these changes in the HTSUS, and adopt principles for the classification of footwear that differ from those used for all other products, then the proper course of action would be to submit these issues to the HSC to amend the HTS through rulings or amendments.

D. Constraints Arising from HSC Decisions and HTS Text

Regardless, if the United States is going to tackle this issue in a unilateral fashion, the steps it can appropriately take are limited by prior HSC decisions and by the text of the HTS itself. For starters, tariff classification must be based on a reasonable interpretation of the international provisions of the HS and its Explanatory Notes. Article 3, paragraph 1(a) ("Obligations of Contracting Parties") of the Convention on the Harmonized System states that each Contracting Party "shall use all the headings and subheadings of the Harmonized System without addition or modification" and "shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System. Any new U.S. notes must respect this limitation, and must conform to the HTS Notes, Explanatory Notes, and HCS rulings that exist.

The new U.S. Note 5 proposed by Treasury provides:

> For the purpose of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength.

It is clear that the proposed U.S. Note 5 is intended to modify Note 4(b), which states that accessories and reinforcements are to be disregarded in determining the constituent material of the outer sole. According to Note 4(b), as interpreted by the HSC, textile sole components that are embedded in the sole are not accessories and reinforcements and are not to be disregarded in determining the material of the sole. The new U.S. Note 5 as proposed, however, makes no distinction between textile sole components that have been molded into the sole and textile sole components that have been ruled by the HSC to be accessories or reinforcements. Our proposed language for Note 5 addresses this omission.

Moreover, the text of the HTS itself casts doubt on, and certainly limits the proper scope of, a new U.S. durability test. In this regard, Note 1(a) to Chapter 64, HTSUS, states that Chapter 64 does not include disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. Note 1(a) states that these products are classified according to their constituent material. The drafters of the HTS know how to inject a durability test when they believe it to be appropriate.

On the other hand, Note 4(b) merely states that accessories and reinforcements are to be disregarded in determining the constituent material of the outer sole. The Explanatory Note for

Note 4(b) also discusses disregarding a separate heel, as well as components of the sole that are not in contact with the ground. These authorities do not support disregarding, on "durability" or other grounds, any other components or materials in determining the constituent material of the sole. This likely explains why the HSC, when issuing product-specific rulings, made no reference to durability. The HSC decisions were based on whether the textile components were molded into the sole or whether they could be readily removed.

If the drafters of the HTS had intended other materials or components to be disregarded based on their durability and strength, then they would have said so. At the least, the United States should not promulgate a new note that presents even a theoretical possibility of yielding results that conflict with product-specific HSC rulings. Our proposed adjustment of the Note 5 text removes this possibility.

III. SUGGESTED REVISION TO THE PROPOSED NEW NOTE 5

Rather than disregarding all that has come before, a new U.S. Note 5 should be drafted in such a way as to be consistent with prior authorities by differentiating between textile sole components that are molded into the sole and those that are not. Specifically, the language suggested by Treasury should be revised as follows:

> For the purpose of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials that **are not molded into the sole if they** do not possess the characteristics usually required for normal use of an outer sole, including durability and strength.

This approach has numerous advantages. *First*, it will avoid immense commercial disruption. Importers who use embedded textile constructions should not be put at risk of seeing changes to a classification that has been expressly approved by the HSC.

Second, it will be easy to administer in a manner consistent with existing Note 4(b). Classification would be determined as follows:

- textile outer sole components that can be easily peeled off will be considered to be accessories or reinforcements and disregarded per Note 4(b);
- textile components that have been molded into the outer sole will be considered to be part of the sole, will not be considered to be accessories or reinforcements per Note 4(b), and will require no durability testing; and
- all other textile outer sole components, if they are not excluded from consideration per Note 4(b), will be subject to the durability standard in the new Note 5.

In addition, exempting the embedded textile sole construction from testing will be more administratively convenient for Customs. It will leave in place a clearly-bounded category of footwear that will continue to be classified in HTS Heading 6405, and Customs will not have to be concerned about laboratory testing of these products.

Third, it will preserve what is inarguably correct about current law, while focusing the changes on the types of textile-outer sole footwear that have given rise to concerns in the first place. Anecdotally we understand that Customs believes that some of the other methods of attaching textiles to outer soles have created products that should not be classified in HTSUS

Heading 6405. We believe that it is these constructions that have resulted in the current proposal. There is no reason to change the tariff treatment of shoes made with ESO technology when it is the classification of other footwear that is at the heart of this exercise.

While Treasury states that it would not like Customs to make classification distinctions based on the construction of footwear, construction is a common element in determining classification in the HTSUS. Many importations are accompanied by footwear detail sheets providing information as to whether the shoes have features such as "welt construction," "turned construction," or "foxing like bands." All of these construction features are complex and the subject of a plethora of decisions and rulings. The standard that we seek to apply, to differentiate molded textile sole components from other textile sole components, is not more rigorous or complicated than these other standards. It merely requires one more (easily verifiable) data element at the time of entry.

Finally, in April 2010 Customs published an Informed Compliance Publication on Footwear that has just been made available to the trade. The discussion relating to the external surface of the outer sole is included at pages 12-13. It states in relevant part that "The external surface area of the sole does not include....Thin layers of textile flocking and detachable textile materials applied to, but not embedded in the sole." Thus, Customs has accepted the HSC rulings and has incorporated them into its own publications that explain the law. This publication provides further support for our position that footwear using embedded textile outer sole constructions should not be included in any new system of durability testing.

IV. ALTERNATIVE PROPOSAL TO MAKE A NEW DURABILITY STANDARD FAIR AND PREDICTABLE

If our proposed change to Note 5 is not adopted, then it is essential that some criteria be added to make the new durability standard more predictable. If a U.S. Note containing malleable terms such as "normal use" and "durability and strength" were created without any further guidance,[9] the treatment of a large flow of trade would be left to the whim of Customs, and the results could even conflict with the HSC rulings that have been issued.

The only workable test of which we are aware that is actually applied by a customs authority to determine whether textile sole components should be considered or ignored in determining classification is the Martindale Abrasion test used in the United Kingdom. Under this test, also denominated as SATRA method #31, if the outer sole including the textile sole components, when tested as a whole, has moderate wear or less after 51,200 revolutions, the outer sole is considered to have characteristics required for normal use.

9 A statute without standards for the governing agency is considered to be void. *See, e.g.,* United States v. Dacus, 634 F.2d 441, 444 (1980) (finding that a statute "must not be so vague and standardless that it leaves judges free to decide, without any legally fixed standards, what is prohibited and what is not on a case by case basis."); see also Giaccio v. Pennsylvania, 382 U.S. 399, 402-03 (1966).

As explained above, a new U.S. durability standard should not be applied at all to footwear in which textile components have been molded into the sole. If, however, the ITC rejects this view and decides to recommend a durability standard for all textile-outsole footwear, then the language of the new Note 5 should be adjusted as follows:[10].

> For the purpose of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials that do not possess the characteristics usually required for normal use of an outer sole, including durability and strength. **A textile component shall be considered to meet this standard if the outer sole including textile sole components, when tested as a whole under SATRA method #31, has moderate wear or less after 51,200 revolutions.**

V. REVENUE NEUTRALITY

Adoption of a new U.S. Note 5 along the lines suggested by Treasury is expected to result in a change in classification for some textile-outer sole footwear from Heading 6405, where the duty rates are 7.5% or 12.5% *ad valorem*, to Headings 6402 and 6404 where duty rates are as high as 48% *ad valorem*. Treasury has proposed duty breakout provisions within Headings 6402 and 6404 to assure "duty rate neutrality." While the breakouts are helpful in achieving this goal, they are not complete. ESO has developed a list of items for which additional breakouts would be needed to ensure duty neutrality. We will be prepared to share that list with ITC staff as needed, during the second phase of the Section 1205 investigation.

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10 Our proposal is consistent with other precedent for putting test methods and standards into the body of the U.S. Notes to the HTSUS. *See* additional U.S. Note 2, Chapter 62 which identifies the standard and test method to establish water resistance for apparel classifications. *See also* Attachment 2 which contains a ruling request submitted to UK Customs, and the resulting ruling with respect to the classification of the ESO shoe. In this ruling, UK Customs stated that the textile/rubber sole was "substantial and viable as an outer sole."

* * *

We appreciate the Commission's consideration of these comments and look forward to continuing to participate as the Section 1205 investigation proceeds. Please do not hesitate to contact any of the undersigned with questions on this submission.

Respectfully Submitted,

Miller & Chevalier Chartered

John R. Magnus
Of Counsel

P. Welles Orr
Senior International Trade Advisor

Attachments (2)

ATTACHMENT 1

Attachment 1:

List of Customs Rulings Classifying Textile Outer Sole Footwear Under Heading 6405

HQ 087336 (Aug. 28, 1990) (children's slippers with soles constructed of cotton twill with PVC non-skid traction dots in the shape of Mickey Mouse's face classified under 6405).

HQ 087837 (Nov. 23, 1990) (child's slipper imported with textile-material sole, on which a pattern of rubber/plastic anti-skid "dots" is printed after importation, classified under 6405).

HQ 087201 (Dec. 18, 1990) (slippers imported with textile soles, to which rubber anti-skid dots were applied after importation, classified under 6405).

HQ 088391 (Feb. 13, 1991) (slipper with outer sole of wool felt material with plastic traction dots laid out in groups of six in a rosette pattern classified under 6405).

HQ 088533 (Mar. 25, 1991) (infant's bootie with outer sole made of cotton textile fabric with circular plastic dots adhered to it classified under 6405).

HQ 088962 (Aug. 2, 1991) (slippers with outer soles made of textile fabric which are covered with plastic/rubber traction dots classified under 6405)

HQ 950199 (Nov. 26, 1991) (bicycle shoe covers with outer sole of a nonwoven fabric impregnated with plastic and then covered on its outside surface with nontransparent plastic classified as footwear under 6405).

HQ 089250 (Dec. 27, 1991) (slippers with soles comprised primarily of textile materials classified under 6405).

HQ 953879 (Apr. 19, 1993) (chest and hip wader boots with wool felt soles classified under 6405)

HQ 953404 (Apr. 19, 1993) (chest and hip waders with soles' greatest surface area in touch with the ground being wool felt classified under 6405).

NY 803238 (Nov. 10, 1994) (bowling shoes in which one shoe has partial textile "sliding piece" outer sole, making the textile the predominate material in contact with the ground, classified under 6405).

NY 813593 (Sept. 22, 1995) (infant's shoes with applied outer soles constructed of woven man-made fabric classified under 6405).

HQ 958858 (July 24, 1997) (affirmation of NY 813593 dated Sept. 22, 1995) (infant's shoes with applied outer soles constructed of woven man-made fabric classified under 6405).

HQ 962519 (Dec. 10, 1999) (child's slipper with outer sole of over 78.4% textile material and 21.6% rubber/plastic classified under 6405).

HQ 963737 (Mar. 29, 2000) (infant shoes with textile sole and rubber traction dots found to have textile material constitute the greatest surface area in touch with the ground; classified under 6405).

HQ 963604 (Mar. 29, 2000) (infant shoe featuring an outer sole composed of textile fabric with applied rubber/plastic traction dots classified under 6405).

PD G80233 (Aug. 9, 2000) (unfinished wading boot with felt soles classified under 6405).

HQ 962095 (Dec. 15, 2000) (infant's shoe with rigid outer sole composed of textile materials to which are attached numerous, evenly-spaced PVC "traction dots" classified under 6405).

HQ 963595 (Feb. 19, 2002) (girl's slippers with outer soles composed of a textile material with an evenly spaced array of PVC traction dots classified under 6405).

HQ 964978 (Apr. 18, 2002) (women's slip-on shoe with outer sole composed of unit-molded rubber/plastics material, to which a thin layer of textile material is applied on the portion of the sole below where the ball of the foot rests, classified under 6405).

HQ 965557 (Apr. 29, 2002) (women's sandal featuring outer sole composed of a substantial unit-molded rubber/plastics material, to which a thin layer of textile material has been applied, classified under 6405).

HQ 965558 (Apr. 30, 2002) (girl's boot with outer sole composed of a substantial unit-molded rubber/plastics material to which a thin layer of textile material has been applied classified under 6405).

NY I81049 (May 2, 2002) (women's closed-toe, open-heel slipper with sewn-on textile outer sole covered with an evenly spaced pattern of small, 1/32-inch thick rubber/plastic traction dots, spaced approximately 1/4-inch apart on center, classified under 6405)

NY I81603 (May 21, 2002) (woman's closed-toe, closed-heel, slip-on shoe with a combination rubber/plastic and textile outer sole. classified under 6405).

NY I82111 (June 6, 2002) (athletic sneaker style shoe with outer sole of rubber/plastics classified under 6405).

NY I82037 (June 6, 2002) (athletic sneaker style shoe with outer sole of rubber/plastics classified under 6405).

NY I83355 (July 9, 2002) (bootie-type indoor slippers with separately sewn-on polyester fleece textile outer soles, which have pocket-like openings into which an underfoot midsole-like "scent pack" has been inserted, classified under 6405).

NY I84526 (July 31, 2002) (slip-on "aqua socks" with outer soles of rubber/plastics classified under 6405).

NY I84529 (Aug. 1, 2002) (sneaker-style shoe with outer sole of rubber/plastics classified under 6405).

NY I84491 (Aug. 6, 2002) (woman's open-toe, open-heel, slip-on shoe with molded rubber/plastic outsole with a textile-walking surface classified under 6405).

NY I84577 (Aug. 22, 2002) (thong type sandal with EVA wedge sole covered with a textile material classified under 6405).

NY I85327 (Aug. 29, 2002) (closed-toe, closed-heel, slip-on shoe with rubber/plastic outsole, which has thin sheet of woven textile fabric applied to large portions of its outer surface in contact with the ground, classified under 6405).

NY I86068 (Sept. 19, 2002) (infant slippers with textile soles classified under 6405).

NY I87289 (Oct. 29, 2002) (children's slippers with textile outer soles classified under 6405).

HQ 965751 (Nov. 18, 2002) (slippers with an outer sole composed of unit-molded rubber/plastics with nubs evenly spaced across its surface, over which is adhered a thin layer of textile fabric, classified under 6405)

NY I88579 (Dec. 11, 2002) (woman's closed-toe, closed-heel shoe with molded rubber/plastic and textile outsole classified under 6405).

NY I88845 (Dec. 12, 2002) (wading boot imported and packaged with one outer sole composed of rubber/plastics material and the other composed of textile material with metal studs or lugs classified under 6405).

HQ 562553 (Jan. 4, 2003) (tap-dance shoe with rubber soles, to which metal taps are affixed to the sole and heel, classified under 6405).

NY I89824 (Jan. 16, 2003) (bootfoot wader with rubber outsole classified under 6405).

NY J80668 (Feb. 13, 2003) (closed-toe, closed-heel, slipper with a textile material outsole, to which a non-slip rubber/plastic material has been adhered to the toe and heel surfaces in contact with the ground, classified under 6405).

NY J83322 (Mar. 18, 2003) (woman's sandal with cemented-on outer sole consisting of a rubber/plastic material bottom, to which a thin layer of textile fabric material has been applied, classified under 6405; woman's sandal with outer sole consisting of a sheet of non-woven textile fabric, which is securely and permanently glued to an underlying rubber/plastic material substrate, classified under 6405).

NY J84514 (May 30, 2003) (woman's slippers with stitched-on unit molded rubber/plastic and textile coated thermoplastic rubber (TPR) outsole classified under 6405).

NY J88815 (Oct. 8, 2003) (infant booties with a separately sewn-on textile outer sole classified under 6405).

M81457 (Apr. 17, 2006) (baby booties with textile material outer soles affixed to the uppers by sewing classified under 6405).

NY M82352 (Apr. 28, 2006) (textile slippers classified under 6405).

N021811 (Jan. 24, 2008) (pair of bowling shoes in which right shoe has a textile material sliding pad resulting in an outer sole of textile material classified under 6405).

ATTACHMENT 2

EUROPEAN COMMUNITY **APPLICATION FOR BINDING TARIFF INFORMATION (BTI)**

1. Applicant (full name and address)

☐ Stenbrook+Hooper
42, Rue du Tacitume
1000 Brussels
Belgium

Telephone Number : +32 2 230 50 59
Fax Number : +32 2 230 57 13
Customs ID :

2. Holder (full name and address) (Confidential)

E.S. Originals, Inc.
50 West 33rd Street
New York, NY 10001
USA

Telephone Number : +1 212 736 8124
Fax Number : +1 212 564 3125
Customs ID :

3. Agent or Representative (full name and address)

Telephone Number :
Fax Number :
Customs ID :

For Official use

Registration Number :
Place of Receipt :
Date of Receipt : Year ☐☐☐ Month ☐☐ Day ☐☐
BTI Application Language :

Images to be scanned : Yes ☐ # ... No ☐
Date of Issue : Year ☐☐☐ Month ☐☐ Day ☐☐
Issuing Officer :
All Samples returned : ☐

Important note

By signing the declaration the applicant accepts responsibility for the accuracy and completeness of the particulars given on this form and on any continuation sheet(s) lodged with it. The applicant accepts that this information and any photograph(s) can be stored on a database of the European Commission.

4. Reissue of a BTI

If you are applying for the reissue of a BTI, please complete this box.
BTI Reference Number :
Valid from : Year ☐☐☐ Month ☐☐ Day ☐☐

Nomenclature Code : .....

5. Customs Nomenclature

Please indicate in which nomenclature the goods are to be classified :

☐ Harmonized System (HS)
☑ Combined Nomenclature (CN)
☐ TARIC
☐ Refund nomenclature
☐ Other (Specify) : .....

6. Type of Transaction

Does this application relate to an import or export actually envisaged ?

Yes ☑ No ☐

7. Classification Envisaged

Please indicate where in your view the goods are classified.
Nomenclature Code : CN 64059090

8. Description of the Goods

Include where necessary the precise composition of the goods, the method of analysis used, the type of manufacturing process undergone, the value including the components, the use of the goods, the usual trade name and where appropriate, the packaging for retail sale in the case of sets of goods *(Please use a separate sheet if more space is required).*

- Description of goods

The merchandise subject to this application is women's footwear referenced by style number PP 759-0. This footwear is constructed with an upper of two materials; plastic and elasticized fabric. Plastic covers the toe and heel area of the upper, and textile covers the vamp area. Plastic is the material having the greatest external surface area of the upper. A complete sample of the footwear is submitted with this application.

The outer sole of style PP 759-0 is composed of textile and plastic, with a separately attached plastic heel. Textile covers the outer surface of the sole in the area where the ball of the foot will rest. The perimeter of this area is plastic. The outer sole is manufactured through a patented two-step molding process. In the initial molding process, a fabric sheet of non-woven textile material is cut to a predetermined shape and size, and then inserted into a two-die mold. The cavity of the mold is the shape of the area known as the ball of the foot. Thermoplastic resin is injected into the mold, which adheres to the backing side of the textile sheet. After the mold cools, excess fabric is cut off. At this point, the fabric piece is bonded to the plastic backing.

In the second molding process, the fabric piece with plastic backing is then placed into the second mold, the cavity of which is in the shape of the complete outer sole (excluding the raised heel). The mold is heated, which softens the plastic backing on the fabric piece. Thermoplastic resin is then injected into the cavity. This resin bonds with the plastic backing of the fabric piece. When the mold cools, the outer sole is removed. Through this process, the fabric piece has been integrally formed as part of the outer sole due to the bonding between the fabric backing and the remainder of the outer sole.

The outer sole is then assembled with the remaining components of the shoe. A visual examination of the outer sole confirms that the textile material integrally formed into the outer sole occupies the greatest external surface area of the outer sole that is in contact with the ground when the shoe is in use.

- Justification of the Classification of the Goods

The subject footwear is classified in subheading 64059090 of the Combined Nomenclature. This subheading includes footwear with uppers of plastic and outer soles of textile. Under Chapter 64 Note 4(a), the constituent material of the upper is the material having the greatest external surface area, without regard to accessories or reinforcements. A visual examination of the subject shoe confirms that plastic is the material having the greatest external surface area. The outer sole of the subject footwear is considered textile under the CN. Chapter 64 Note 4(b) provides that the constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nail, protectors or similar attachments. The textile material on the external surface of the outer soles is an integral component of the outer sole, and is dissimilar to any of the attachments listed in Note 4(b). Thus, the textile material must be taken into account in determining the material in contact with the ground.Chapter 64 Additional Note 2 provides that, within the meaning of Note 4(b), one or more layers of textile material which do not possess the characteristics usually required for normal use of an outer sole (e.g., durability, strength, etc.) are not to be taken into consideration for classification purposes. The textile material on the subject outer sole possesses the characteristics of durability and strength. Furthermore, the textile material is an integral part of the outer sole formed during the molding process, and is not a separate "layer" applied over a pre-existing outer sole.

Because the subject footwear has an outer sole of textile, it must be classified in CN heading 6405. While most footwear with plastic uppers is classified in CN heading 6402, this heading is limited to footwear with outer soles of rubber or plastic. The outer sole on the subject shoe is textile. CN Heading 6405 covers all other footwear not classified in Headings 6401-6404. Within Heading 6405, the subject footwear is described in CN subheading 64059090, which provides for footwear with uppers of plastic and outer soles of materials other than plastic, leather or composition leather.

9. Commercial denomination and additional information* (Confidential)

see separate sheet for confidential additional information

10. Samples etc.

Please indicate which if any of the following are enclosed with your application.

Description ☐ Brochures ☐ Photographs ☐ Samples ☑ Other ☑

Do you wish your samples to be returned ? Yes ☑ No ☐

Special costs incurred by the Customs authorities as a result of analysis, expert reports or the return of samples, may be charged to the applicant.

11. Other BTI Applications* and other BTI held*

Please indicate if you have applied for, or been issued with BTI for identical or similar goods at other Customs offices or in other Member States.

Yes ☐ No ☑ If yes, please give details and enclose a photocopy of the BTI :

Country of Application :	Country of Application :
Place of Application :	Place of Application :
Date of Application : Year ☐☐☐ Month ☐☐ Day ☐☐	Date of Application : Year ☐☐☐ Month ☐☐ Day ☐☐
BTI Reference :	BTI Reference :
Date of Start of Validity : Year ☐☐☐ Month ☐☐ Day ☐☐	Date of Start of Validity : Year ☐☐☐ Month ☐☐ Day ☐☐
Nomenclature Code :	Nomenclature Code :

12. BTI issued to other Holders*

Please indicate if you are aware of BTI for identical or similar products already issued to other holders.

Yes ☐ No ☑ If yes, please give details:

Issuing Country :	Issuing Country :
BTI Reference :	BTI Reference :
Date of Start of Validity : Year ☐☐☐ Month ☐☐ Day ☐☐	Date of Start of Validity : Year ☐☐☐ Month ☐☐ Day ☐☐
Nomenclature Code :	Nomenclature Code :

13. Date and Signature

Your reference :

Date : Year 2002 Month 07 Day 31

Signature :

For Official Use

** Please use a separate sheet of paper if more space is required.*

Confidential

Box 9. *Commercial Denomination and additional Information*

We have been informed by the customs authorities that in applying Additional Note 2 of CN Chapter 64, HM Customs will examine the results of a Martindale Abrasion Test using SATRA Method TM 31. Under this method, if the textile material of the outer sole exhibits moderate wear or less, the textile material is deemed sufficiently durable and will be taken into account in applying Chapter 64 Note 4(b). A sample of the subject women's shoe, style PP 759-0, was tested under SATRA Method TM 31 by Artech Testing LLC, located in the United States. Artech performed the test in consultations with SATRA. The test revealed only moderate wear of the textile material. A copy of the test results and the actual sample examined by Artech has been submitted with this BTI application. Based on these test results, the constituent material of the outer sole having the greatest surface area in contact with the ground is textile.

Separate Additional Sheet

Education & Advice Services - Tariff Classification
International Trade Operations

OTC4 2nd Floor West, Alexander House
21 Victoria Avenue Southend-on-Sea
Essex SS99 1AA
Tel: +44(0)1702 366077 Fax: +44(0)1702 367266
E-mail: classification.tso@hmce.gov.uk

HM Customs and Excise
Business Services and Taxes

E.S. ORIGINALS INC.
C/o Stanbrook + Hooper
42, Rue du Taciturne
1000 Brussels
Belgium

Your ref :
Our ref: SOC/2243/02
Date: 20 August 2002

Dear Mr Lukoff

TARIFF CLASSIFICATION OF Ladies footwear - Pat.5,787,610

Thank you for your request dated 01/08/2002 for Binding Tariff Information (BTI) for the above goods. The BTI notification is enclosed herewith.

In reaching this decision I have followed the legal procedure for Tariff classification as shown in Volume 2, Part 1, Section 3 of the Tariff. Classification is determined by the provisions of G.I.R's 1 and 6, as well as the texts of 6405 and 640590. Also Note 4(a) + (b) to Chapter 64. Shoe has been classified to an upper of plastic and an outer sole of textile. The textile on the outer sole is considered substantial and viable as an outer sole. Further information relating to classification is contained in Notice 600.

If you do not agree with this BTI decision, you can ask for a formal Departmental review. Your request should be in writing, and set out the reasons why you do not agree with the decision. If you wish to exercise your right to ask for a Departmental review, and you provided a sample, you must submit the original sample or samples with your request.

It should be sent within **45 days** of the date of this letter. Please write to:-

HM Customs and Excise
Customs & International Trade Division
Review and Appeals Team
3rd Floor North East, Alexander House
21 Victoria Avenue
Southend-on-Sea
Essex SS99 1AA

If you are not satisfied with the outcome of the formal Departmental review, you can lodge an appeal with the VAT and Duties Tribunals, which are independent of Customs and Excise. Notice 990 gives further details about your rights and about the appeals procedures.

Your sample has been retained by this office. Please note that samples which are not collected or provided with return postage will be destroyed after 60 days of the date of this letter. However, prior notification of 24 hrs must be given by phoning 01702 367271, quoting the BTI Reference Number when the sample is to be collected, whether by a courier or yourself.

CENTRAL GOVERNMENT

EUROPEAN COMMUNITY - BINDING TARIFF INFORMATION

C61
BTI

COPY FOR HOLDER

1

1 Competent customs authority

H.M. CUSTOMS & EXCISE
INTERNATIONAL TRADE OPERATIONS
ALEXANDER HOUSE, 21 VICTORIA AVENUE,
SOUTHEND ON SEA, ESSEX SS99 1AA

2 BTI reference

GB 109571664

3 Holder (name and address) confidential

E.S. ORIGINALS INC.
50 WEST 33rd STREET
NEW YORK
NY10001

4 Date of start of validity

2002/08/19

Important notice

Without prejudice to the provisions of Articles 11 and 12 of Council Regulation (EEC) No 2913/92, this BTI remains valid for 6 years as from the date of start of validity.

The information supplied will be stored on a database of the Commission of the European Communities for the purposes of the application of the above mentioned Regulation.

5 Date and reference of the application

2002/08/01

6 Classification of the goods in the customs nomenclature

6405909000

1

7 Description of the goods

LADIES HIGH-HEELED COURT SHOE. WITH UPPER OF ELASTICIZED TEXTILE AND PLASTIC, WITH THE MAJORITY BEING THE PLASTIC. WITH SOLE AND HEEL OF PLASTIC, WITH TEXTILE COVERING THE OUTER SURFACE OF THE SOLE. NOT COVERIANG THE ANKLE. WITH IN-SOLE LENGTH OF MORE THAN 24CMS. HEEL HEIGHT APPROXIMATELY 7CM. TEXTILE ON OUTER SOLE IS CONSIDERED SUBSTANTIAL AS AN OUTER SOLE.

8 Commercial denomination and additional information confidential

PAT.5,787,610

9 Justification of the classification of the goods

CLASSIFICATION IS DETERMINED BY THE PROVISIONS OF G.I.R'S 1 AND 6, AS WELL AS THE TEXTS OF 6405 AND 640590. NOTE 4(A) & (B).

10 This BTI has been issued on the basis of the following material provided by the applicant:

Description X Brochures Photos X Samples X Other

Place Southend On Sea Signature MISS M. SHAILOR

Date 19/8/02

H.M. CUSTOMS & EXCISE
International Trade Operations
Tariff Classification Service
Stamp 19 AUG 2002
Alexander House
21 Victoria Avenue
Southend-on-Sea SS99 1AA

The Notices referred to in this letter are obtainable from any Customs and Excise Advice Centre, or by telephoning the Classification Helpline on (01702) 366077.

Yours sincerely

Maria Shallis
Miscellaneous Sector

MILLER
CHEVALIER

John Magnus
Of Counsel
(202) 626-1474
jmagnus@milchev.com

June 25, 2010

The Honorable Marilyn R. Abbott, Secretary
United States International Trade Commission
500 E Street, SW
Washington, DC 20436

Re: Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States - Investigation No. 1205-8

Dear Secretary Abbott:

This submission is filed on behalf of our client, E.S. Originals, Inc. ("ESO"), in response to the May 2010 preliminary report of the International Trade Commission ("ITC") in Investigation 1205-8 (USITC Publication 4156).[1] It supplements initial comments filed on ESO's behalf on May 18, 2010.

ESO owns patents relating to the incorporation of textile components into rubber/plastic outer soles through a molding process. Through this process, the textile and rubber/plastic elements are permanently bonded together to form outer soles, with the textile components becoming embedded in the rubber/plastic sole components. Shoes made using ESO's technology have been the subject of classification rulings issued by U.S. Customs and Border Protection ("Customs"), United Kingdom Customs ("UK Customs"), and the Harmonized System Committee ("HSC"). All of these rulings have consistently classified these shoes under Heading 6405 of the Harmonized Tariff Schedule ("HTS"). Critical to each of these decisions

[1] Proposed Modifications to the Harmonized Tariff Schedule of the United States, 75 Fed. Reg. 18,882 (Apr. 13, 2010). The ITC's preliminary report is available at: http://www.usitc.gov/tariff_affairs/hts_documents/pub4156.pdf.

has been a finding that the textile component is part of the constituent material of the outer sole, and that it is not an accessory or reinforcement.

The current ITC investigation was commenced at the request of the Department of the Treasury ("Treasury") pursuant to a letter dated January 15, 2010. The investigation concerns the classification of certain footwear with outer soles that incorporate textile components. We request that the ITC consider the comments submitted by ESO in its two submissions in preparing its final report as to whether certain modifications should be made to Chapter 64 of the Harmonized Tariff Schedule of the United States ("HTSUS").

I. SUMMARY OF POSITION

ESO opposes the amendments preliminarily recommended by the ITC. As proposed, these amendments would represent an improper use of Section 1205 and would contravene U.S. obligations under the International Convention on the Harmonized Commodity Description and Coding System (the "Convention"). Changes of the type at issue here should properly be made by the HSC, not by individual signatories. If the United States nonetheless wishes to proceed unilaterally, the changes enacted must **preclude any possible inconsistency** with past HSC rulings on footwear whose outsoles have embedded textile components. The new Note 5 included in the ITC's preliminary recommendation does not do this. ESO has suggested, and we reproduce in this letter below, adjustments that would make the proposed Note 5 more consistent with our international obligations.

II. STATUTORY SCHEME FOR AMENDING THE HTSUS

A. Background

U.S. mechanisms for amending the HTSUS are closely linked to the United States' obligations under the Convention. To keep the Harmonized System current in light of changing technology and trade patterns, the Convention created the HSC, whose main functions include:

- issuing classification decisions for goods presented by member countries;
- resolving classification disputes between member countries;
- working to ensure the uniform interpretation of the HS (e.g., by publishing the Explanatory Notes to the Harmonized System); and
- updating the Harmonized System to include changes in technology and patterns of international trade.

The Omnibus Trade and Competitiveness Act of 1988 authorized the President to proclaim, following Congressional layover, modifications to the HTSUS that are based upon ITC recommendations and are consistent with the U.S. national economic interest. The current investigation is being conducted under Section 1205 of the Act (19 U.S.C. § 3005), which requires the ITC to keep the HTSUS under continuous review and to recommend modifications in order to reflect amendments to the Harmonized Commodity Description and Coding System that are periodically approved by the World Customs Organization, or as warranted by particular circumstances. Section 1205 provides that:

> [The Commission] shall recommend to the President such modifications in the Harmonized Tariff Schedule as [it] considers necessary or appropriate

1. to conform the [HTSUS] with amendments made to the Convention;

2. to promote the uniform application of the Convention and particularly the Annex thereto;

3. to ensure that the HTSUS is kept up-to-date in light of changes in technology or changes in patterns of international trade;

4. to alleviate unnecessary administrative burdens; and

5. to make technical rectifications.

Section 1205(d) requires that changes to the HTSUS: (1) be "consistent with the Harmonized System Convention or any amendment thereto recommended for adoption"; (2) be "consistent with sound nomenclature principles"; and (3) "ensures substantial rate neutrality." Any modification that would change a rate of duty must be consequent to, or necessitated by, recommended nomenclature changes. Finally, the recommended modifications "must not alter existing conditions of competition for the affected U.S. industry, labor, or trade."

Section 1206 (19 U.S.C. § 3006) states that the President may proclaim modifications to the HTSUS proposed by the ITC under section 1205, provided that the modifications are in conformity with U.S. obligations under the Convention. Article 3, paragraph 1(a) ("Obligations of Contracting Parties") of the Convention on the Harmonized System states that each Contracting Party "shall use all the headings and subheadings of the Harmonized System without addition or modification" and "shall not modify the scope of the Sections, Chapters, headings or subheadings of the Harmonized System." Any changes implemented pursuant to Section 1205 must respect these limitations, and must conform to the HTS Notes, Explanatory Notes, and existing HSC rulings.

B. Past Use of Section 1205 to Amend the HTS

Before the current investigation, Section 1205 had been used sparingly to enact changes to the HTSUS. The six previous Section 1205 investigations completed by the ITC amended the HTSUS in order to conform it to changes made by the HSC, to implement minor technical changes to the HTSUS, and/or to add breakout provisions to the HTSUS to achieve substantial rate neutrality in light of changes made by the HSC. For example:

- Inv. No. 1205-2 was initiated when the HSC recommended certain amendments to the legal texts and Explanatory Notes of the HTS. These changes were initiated in order to correct U.S. tariff and statistical provisions for extracted oleoresins, which had been positioned under the wrong six-digit subheading.

- In Inv. No. 1205-3, modifications to the HTSUS concerning certain cough drops, cresols, jewelry boxes, and support hosiery were brought about by the HSC's Review Subcommittee and "other HSC classification decisions requiring changes to the legal text of the HS nomenclature."

- In Inv. Nos. 1205-4 and 1205-5, the bulk of the recommendations reflected decisions taken by the HSC at its various sessions. Both of these investigations were initiated in order to conform U.S. Customs' practice to particular HSC decisions.

- More recently, in Inv. No. 1205-7, the ITC stated, "The proposed changes included in this investigation are set out in a Recommendation promulgated by the World Customs Organization (WCO) on June 26, 2009, in order to update and clarify the international Harmonized System nomenclature. The Recommendation – the fourth in a series – is part of the WCO's long-term program to review periodically the HS nomenclature structure."

C. Problems with the Current Application of Section 1205

Against this background, it is apparent that the current investigation is an odd -- and potentially improper -- use of the Section 1205 mechanism.

First, the proposed changes do not conform the HTSUS to decisions made or technical changes initiated by the HSC. In fact, as explained further below, the proposed new Note 5 could produce results directly at odds with product-specific HSC rulings unless it is revised to exempt certain types of footwear from durability testing.

Second, the proposed changes do not promote uniformity. Currently, among convention signatories, only the European Union utilizes a durability standard, the Martindale Abrasion Test. As such, introducing such a test in the United States would not promote uniformity. Nor would this change correspond to an international consensus, as there has been no indication that the Convention's member states wish to impose a durability standard on the affected types of footwear.

Third, the proposed changes do not reflect changes in technology or in patterns of trade. Dating back to as early as 1990, Customs has issued a number of rulings classifying under Heading 6405 footwear that incorporates textile components into the outer sole. In 2007, the HSC ruled, consistent with U.S. Customs' classification of similar footwear, that a footwear sample with ESO's construction (textile material molded into the outer sole) was classifiable in Heading 6405.

Fourth, the proposed changes do not alleviate unnecessary administrative burdens. Administration of the current law has not engendered administrative burdens. In this regard, in April 2010 Customs published an Informed Compliance Publication, "What Every Member of

the Trade Community Should Know About: Footwear,"[2] which has recently been made available to the trade. The discussion relating to the external surface of outer soles appears on pages 12-13 and states in relevant part: "The external surface area of the sole does not include . . . . Thin layers of textile flocking and detachable textile materials applied to, but not embedded in the sole." Thus, Customs has accepted the HSC rulings and has incorporated them into its own publications that explain the law.

Fifth, the proposed changes do not make any technical rectifications to the existing HTSUS. The changes at issue here are not technical rectifications. Rather, they introduce an entirely new "durability and strength" standard to be used in classifying footwear. That standard conflicts with Note 4(b) as interpreted by the HSC.

III. PROPER CLASSIFICATION OF FOOTWEAR WITH OUTER SOLES WITH A CONSTITUENT MATERIAL OF TEXTILES

HTS Chapter 64 covers footwear and parts of footwear. Chapter 64 Note 1(a) excludes disposable footwear or shoe coverings of flimsy material without applied soles, footwear of textile material without an outer sole, and certain other footwear items from this chapter. Chapter 64 is subdivided into six headings, with headings 6401 through 6405 covering footwear, and heading 6406 covering parts of footwear. Headings 6401 through 6405, for the most part, describe products based on the material of the upper and the material of the outer sole. The terms "material of the upper" and "material of the outer sole" are defined in Notes 4(a) and 4(b).

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[2] *Available at* http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp022.ctt/icp022.pdf.

As the current investigation involves the use of textile components in the outer sole, Note 4(b) is central to the analysis. Note 4(b) provides that the constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, with no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors, or similar attachments. Customs has consistently ruled that textile components and layers of other materials placed on the bottom of the sole are not *ejusdem generis* with these examples.[3]

Headings 6401 through 6404 collectively encompass footwear with outer soles of rubber/plastic, leather, or composition leather. Footwear of chapter 64 which is not covered by Headings 6401 to 6404 is to be classified in Heading 6405, which covers "other footwear." The Explanatory Notes ("ENs") state that heading 6405 includes footwear featuring a wide variety of outer soles, including "footwear with outer soles of wood, cork, twine, or rope, paperboard,

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[3] *See, e.g.*, NY J83322 (Mar. 18, 2003) (woman's sandal with outer sole consisting of a rubber/plastic material bottom, to which a thin layer of textile fabric material has been applied, classified under 6405, and woman's sandal with outer sole consisting of a sheet of non-woven textile fabric, which is securely and permanently glued to an underlying rubber/plastic material substrate, classified under 6405); HQ 965751 (Nov. 18, 2002) (slippers with an outer sole composed of unit-molded rubber/plastics with nubs evenly spaced across its surface, over which is adhered a thin layer of textile fabric, classified under 6405); NY 188579 (Dec. 11, 2002) (woman's closed-toe, closed-heel shoe with molded rubber/plastic and textile outsole classified under 6405). In HQ 958550 (March 6, 1996) Customs made the same finding where a thin rubber sole component was added to what was otherwise a textile outer sole. ("The words 'accessories' and 'reinforcements' are followed by a limited number of defining exemplars such as spikes, bars, nails, protectors or similar attachments. To conclude that by similitude an entire external surface layer of rubber soling is included within the meaning of "similar attachments" is not only unfounded by clearly contradicts the intended meaning of Note 4(b)."). *See also* HQ 085182 (October 23, 1989) where Customs made the same finding with respect to a thin leather sole component added to what was otherwise a textile outer sole.

fur skin, textile fabric, felt, nonwovens, linoleum, raffia, straw, loofah, etc." EN 64.05 (4th ed. 2007).[4] This makes it clear that textile outer sole footwear is to be classified in Heading 6405.

The terms of the tariff are to be interpreted consistently with common and commercial meaning.[5] In this regard, the terms "outsole," or "outer sole," are defined in the *Complete Footwear Dictionary*, Rossi (2d Ed. 2000) as follows:

> The outer most sole of the shoe which is directly exposed to abrasion and wear. It can consist of any of a variety of materials: leather, rubber, plastic, cork, rope, crepe, wood, etc., plus differences in thickness or degrees of flexibility, and an infinite variety of surface designs.

This definition includes a large variety of products, including textiles, all in a variety of thicknesses, flexibility, and other features. It is consistent with the ENs, which also encompass a wide variety of products, including textile materials. Under this definition, it is clear that the materials of the outer sole which are in contact with the ground are to be counted as part of the constituent material of the outer sole.

When textile materials are molded into a rubber/plastic outer sole they form a unified outer sole, and the classification of footwear incorporating those outer soles is to be determined

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[4] The Explanatory Notes, while not legally binding, may be helpful in construing a tariff provision. *See, e.g., Degussa Corp. v. United States*, 508 F.3d 1044, 1047 (Fed. Cir. 2007) (citing *Motorola, Inc. v. United States*, 436 F.3d 1357, 1361 (Fed. Cir. 2006)); *Marubeni America Corp. v. United States*, 35 F.3d 530, 535 n.3 (Fed. Cir. 1994); *Lynteq, Inc. v. United States*, 976 F.2d 693, 699 (1992).

[5] *See, e.g., Intercontinental Marble Corp. v. United States*, 381 F.3d 1169 (Fed. Cir. 2004) ("Where a tariff term is not defined in either the HTSUS or its legislative history, the term is given its common meaning, which is presumed to be the same as its commercial meaning."); *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1357 (Fed.Cir.2001).

based on the outer surface of the outersole.[6] Such textile material sole components, when viewed alone, have been found to be not *ejusdem generis*, or of the same kind, as the examples of accessories and reinforcements listed in note 4(b). Applying the common meaning of the term outer sole, the rules of statutory construction, and the ENs, Customs has classified footwear with textiles molded into the outer soles under HTS heading 6405. Customs has made this determination without regard to the durability and strength of the materials that comprised the outer sole. *See, e.g.*, HQ 965751 (Nov.18, 2002), where Customs specifically rejected the use of such a standard to classify textile outer sole footwear.

In 2007, Customs forwarded shoes made with ESO construction to the HSC for review of classification. The HSC ruled that the footwear sample with ESO's construction (textile material molded into the outer sole) was classifiable in Heading 6405. Once again, that determination was made without any reference to the durability and strength of the materials that comprised the outer sole.[7]

[6] This would also be analogous to the treatment of plastic coated textiles which are treated as plastic for tariff purposes. (*See* Note 3(a), Chapter 64, HTSUS).

[7] The text of the Chapter 64 itself casts doubt on, and certainly limits the proper scope of, a new U.S. durability test. Note 1(a) to Chapter 64, HTSUS, states that Chapter 64 does not include disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles; rather, these products are classified according to their constituent material. Thus, it is clear that the drafters of the HTS know how to inject a durability test when they believe it to be appropriate.

IV. THE NEW SCHEME PROPOSED BY THE ITC IS INCONSISTENT WITH PROPER CLASSIFICATION AND COULD PRODUCE RESULTS AT ODDS WITH HSC RULINGS

Treasury has proposed, and the ITC included in its preliminary report, a new U.S. Note 5 reading as follows:

> For the purpose of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength.

The effect of this note is to impose a new durability test for textile materials that have been incorporated into the outer surface of a shoe's outer sole. If the textiles fail to meet this undefined standard, they are to be disregarded in determining the constituent material of the outer sole. This proposed note is a serious limitation on the plain meaning of the words of Note 4(b); it disregards the ENs that contemplate that textile outersoled footwear is to be classified in Heading 6405; and it disregards the common meaning of the term "outer sole," which includes the components that come into contact with the ground. This might be acceptable for certain sole components that are not well-integrated into the sole, but it is not acceptable for shoes made with ESO's technology, in which the textile and rubber/plastic elements are permanently bonded together.

Moreover, if ESO-type outersoles were subjected to durability testing and found to be non-durable, and the footwear in question classified outside heading 6405 as a result, there would be an explicit and irreconcilable conflict between U.S. classification and the HSC's 2007

ruling. This is precisely the opposite of the traditional, and intended, use of the Section 1205 mechanism. It would also amount to a breach of U.S. obligations under the Convention.

V. SUGGESTED REVISIONS TO PROPOSED NEW NOTE 5

If the ITC plans to make final recommendations to amend the HTSUS in this investigation, then it should, at a minimum, make an effort to be consistent with the text of the HTS and prior HSC rulings. To that end, rather than disregarding all that has come before, new U.S. Note 5 should be drafted in such a way as to be consistent with prior authorities by differentiating between textile sole components that are molded into the sole and those that are not. Specifically, the language suggested by Treasury should be revised as follows:

> For the purpose of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials that **are not molded into the sole if they** do not possess the characteristics usually required for normal use of an outer sole, including durability and strength.

This approach has numerous advantages. *First*, it will avoid immense commercial disruption. Importers who use embedded textile constructions have been using the same classification for years; that classification has been expressly approved by the HSC and should not be subject to change. *Second*, it will be easy to administer in a manner consistent with existing Note 4(b). Indeed, exempting the embedded textile sole construction from testing will be more administratively convenient for Customs; it will leave in place a clearly-bounded category of footwear that will continue to be classified in HTS Heading 6405, and Customs will not have to be concerned about laboratory testing of these products. *Third,* this approach will

preserve what is inarguably correct about current law, while focusing the changes on the types of textile-outer sole footwear that have given rise to concerns in the first place.

* * *

We appreciate the opportunity to provide this second set of written comments and look forward to working with the ITC staff on a final set of recommendations that will meet Customs' needs for an appropriate additional U.S. note to Chapter 64 while respecting precedent and the United States' international obligations.[8]

Respectfully Submitted,

Miller & Chevalier Chartered

John R. Magnus

P. Welles Orr

Attachments (1)

[8] In our first submission we stated that some additional duty breakouts and corrections should be considered to make this proposal substantially revenue neutral. We have flagged these items in attached schedule A.

SCHEDULE A

Schedule A

Additional Duty Breakouts Which are Required

1. 6402.91.60 to 91.90, and 6402.99.40 - the entire range of over the ankle rubber/plastic upper and rubber/plastic sole shoes e.g. athletic, casual, open toe, open heel, slip-on.

2. 6402.99.80 and 99.90- oxford height rubber/plastic upper and rubber/plastic sole shoes with values above $6.50/pr e.g. athletic, casual.

3. 6404.11.90 - over the ankle textile upper rubber/plastic sole shoes valued over $ 12/pr e.g. athletic, casual.

4. 6404.19.90- oxford height textile upper rubber/plastic sole shoes valued over $12/pr.

A number of break out provisions proposed in the initial report provide for a duty rate of 12.5% ad valorem, where as the duty rates on these shoes in heading 6405 could be either 7.5% or 12.5% depending on the material of the upper. The provisions for which a 7.5% duty rate are required are 6404.19.40 through 6404.19.70, which cover oxford height textile upper rubber/plastic sole shoes.

APPENDIX H

SUBMISSIONS FROM THE FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

(By counsel, McGuire Woods LLP)

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May 14, 2010

Secretary
United States International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States – Investigation No. 1205-8

Dear Ms. Abbott:

This submission is filed on behalf of Footwear Distributors and Retailers of America ("FDRA"). FDRA does not oppose the recommended modifications in principle. However, as explained in detail below, FDRA believes that the text proposed by the U.S. Department of the Treasury ("Treasury") is less clear than is necessary to ensure consistent application by United States Customs and Border Protection ("CBP") officials and importers, fails to include necessary breakouts and does not uniformly apply the correct duty rates.

FDRA is a trade association of some 125 retailers, importers, distributors and producers of footwear. FDRA members account for some three-quarters of United States retail sales and imports of footwear.

Investigation No. 1205-8 was prompted by a request from Treasury. The Treasury request addresses the classification of certain footwear with a rubber/plastic ("R/P") outsole to which a layer of textile material has been attached. Under current classification approaches, this footwear is treated as having an outer sole of textile materials and is classified in heading 6405 of the Harmonized Tariff Schedule of the United States ("HTS"), generally at duty rates

of 7.5% (vegetable fiber uppers) or 12.5% (uppers of other textile materials or R/P). Treasury has recommended the creation of Additional U.S. Note 5 which, in effect, would treat the textile material as an accessory or reinforcement such that it would not be considered in determining the material of the outer sole. At the same time, Treasury recommends several new subheadings which would carry the same duty rates as this footwear now enjoys when classified in heading 6405. The new subheadings would appear in headings 6402 and 6404. The intent is that the changes will be duty neutral.

FDRA generally supports Treasury's recommendation. However, FDRA suggests that the proposed additional note and the text of the new subheadings be revised. FDRA also urges that subheadings in addition to those suggested by Treasury be created. This is necessary to ensure that, to the extent possible, the proposed change is duty neutral.

Proposed additional U.S. Note 5. FDRA suggests that proposed additional U.S. Note 5 be revised to read as follows:

> For purposes of determining the constituent material of the outer sole pursuant to Note 4(b) of this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use, including durability and strength. The intended use (outdoor or indoor) of footwear shall be taken into account in making this determination.

The reason for the suggested change is to make sure that the use of the textile layer on footwear which is intended for indoor use is not covered by the note. CBP's position has been that use of the textile layer on indoor footwear is acceptable and that such footwear properly is classified in heading 6405. *See, e.g.*, NY N049640 (January 27, 2009). Also, adding the qualification that the note applies only to outdoor footwear will eliminate disputes as to whether the material possesses the characteristics required for normal use outdoors.

Subheading Text. FDRA suggests that the superior text to the proposed subheadings be amended to read as follows:

a) Heading 6402 -

> Having an outer sole to which textile materials have been affixed, which materials have the greatest surface area in contact with the ground:

b) Heading 6404 -

> Having an outer sole to which textile materials have been affixed, which textile materials have the greatest surface area in contact with the ground and with uppers of vegetable fibers (or with uppers of textile materials other than vegetable fibers):

The purpose of the proposed changes is twofold. The first is to make it clear that the textile material must account for a majority of the area of the outer sole in contact with the ground. The proposed language can be read to require only a minimum amount of textile material on the outer sole. We assume that this not what Treasury intended and that the intent was to continue current practice which accepts the textile material but only when it is the majority of the material in contact with the ground. We would delete the term layer because it suggests that textile material must be in the form of a layer before being attached to the outer sole.

Secondly, FDRA believes the proposed reference to footwear having a textile layer as described in Additional Note 5 (which provides that the textile layer is to be ignored) may create confusion. Proposed Additional Note 5 focuses on the material of the outer sole in determining classification at the heading level. Additional Note 5 is not relevant to classification of subheading level. We believe deletion of the reference in the subheading language will help alleviate the mistaken notion that a textile layer on a shoe classified in heading 6402 or 6424 must pass a test for durability or strength.

FDRA believes that the suggested changes will make the proposed recommendation easier to understand by importers and easier to administer by CBP officials.

Additional Subheadings. The subheadings which Treasury would subdivide do not include all of the types of footwear which currently are imported with the textile layer in order to qualify for classification in heading 6405. For example, footwear of the type described in HTS subheading 6402.99.40 is imported with a textile layer for that purpose. Accordingly, subheading 6402.99.40 should be included among those subheadings which are amended by adding a separate provision for footwear with a textile layer on the outer sole. The following subheadings fall in the same category; 6402.91.16, 6402.91.90, 6402.99.12, 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90.

In the case of footwear with textile uppers classified in heading 6405, there are two duty rates, 7.5 % where the upper is a vegetable fiber and 12.5 % where the upper is another textile material. However, only some of the proposed 6404 subheadings provide for the 7.5% rate as well as the higher rate of 12.5%. There is no justification for restricting the 7.5% rate to a limited number of subheadings. Both rates should be provided for in the new subdivisions of the listed subheadings; 6404.11.40, 6404.11.50, 6404.11.60, 6404.11.70, 6404.11.80, 6404.19.40, 6404.19.50[1], 6404.19.60, 6404.19.70, and 6404.19.80. In the case of the new subdivisions of subheadings 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90, only the 7.5% rate is necessary because the existing rate is less than 12.5%.

None of the subheadings that would be subdivided describe footwear which is considered "protective." While FDRA understands that it may not be possible to include these provisions, it does note that there is some trade in

[1] The rate listed in the Treasury request is 2.5%. We assume that the intended rate is 12.5%. The same comment applies to subheading 6404.19.60.

protective footwear with the textile layer and that the proposed change is not entirely neutral. Nevertheless, assuming the improvements suggested here are adopted, FDRA does not object to the proposed changes.

Please contact the undersigned if you have any questions on this request.

Respectfully submitted,

McGUIREWOODS LLP

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June 24, 2010

Via Courier

Secretary
United States International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States – Investigation No. 1205-8 (Preliminary)

Dear Ms. Abbott:

These comments are submitted on behalf of Footwear Distributors and Retailers of America ("FDRA") and address the recommendations set out in U.S.I.T.C. Publication 4156 (May 2010).

FDRA does not oppose the recommended modifications in principle. However, as explained in detail below, FDRA believes that the text proposed by the Commission is less clear than is necessary to ensure consistent application by United States Customs and Border Protection ("CBP") officials and importers, fails to include necessary breakouts and does not uniformly apply the correct duty rates.

FDRA is a trade association of some 125 retailers, importers, distributors and producers of footwear. FDRA members account for some three-quarters of United States retail sales and imports of footwear.

Investigation No. 1205-8 was prompted by a request from the Department of the Treasury ("Treasury"). The Treasury request addresses the classification of certain footwear with a rubber/plastic ("R/P") outsole to which textile materials have been attached. Under current classification approaches, this footwear is treated as having an outer sole of textile materials and is classified in heading 6405 of the Harmonized Tariff Schedule of the United States ("HTS"), generally at duty rates of 7.5% (vegetable fiber uppers) or 12.5% (uppers of other textile materials or R/P). Treasury recommended the creation of Additional U.S. Note 5 which, in effect, would treat the textile material as an accessory or reinforcement such that it would not be considered in determining the material of the outer sole. At the same time, Treasury recommended several new subheadings which would carry the same duty rates as this footwear now enjoys when classified in heading 6405. The new subheadings would appear in headings 6402 and 6404. The intent is that the changes will be duty neutral.

FDRA generally supports the Commission recommendation in principle. However, FDRA suggests that the proposed additional note and the text of the new subheadings be revised. FDRA also urges that subheadings in addition to those suggested by Treasury be created. This is necessary to ensure that, to the extent possible, the proposed change is duty neutral.

Proposed additional U.S. Note 5. Treasury suggested that additional U.S. Note 5 read as follows:

> For purposes of determining the constituent material of the outer sole pursuant to Note 4(b) of this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use, including durability and strength.

The Commission suggests the following text:

> For purposes of determining the constituent material of the outer sole pursuant to note 4(b) to this chapter, textile material which posses the characteristics required for the durability of an outer sole during normal use shall be taken into account.

FDRA believes that the formulation proposed by Treasury is less ambiguous. The Commission text raises a number of issues that do not arise in the Treasury proposal. For example, what does "applied" mean? Although removing the term would reduce the degree of ambiguity, FDRA strongly suggests that the Treasury proposal be employed. In addition to relative clarity, Treasury's proposed text is similar in approach to note 4(b), which it amplifies.

Regardless of which version of additional U.S. note 5 is adopted by the Commission, the following sentence should be added at the end:

> The intended use (outdoor or indoor) of the footwear shall be taken into account in making this determination.

The reason for the suggested change is to ensure the use of textile materials on the outer soles of footwear is intended for indoor use is not precluded by the note. CBP's position has been that use of textile materials on indoor footwear is acceptable and that such footwear properly is classified in heading 6405. *See, e.g.*, NY N049640 (January 27, 2009). Also, adding the qualification that the note applies only to outdoor footwear will eliminate disputes as to whether the material possesses the characteristics required for normal use outdoors.

Subheading 6402.99.40 (37.5%) provides for footwear with R/P uppers of the open toe, open heel or slip-on variety, some of which are house slippers. At present, importers add textile materials to the outer sole of these slippers when the external surface area of the upper, including any accessories and reinforcements, is less than 90 percent R/P. This means that classification falls in subheading 9405.90.90 (12.5%). Under the proposed text of additional U.S. note 5, the textile materials would be ignored and classification would revert to subheading 6402.99.40. The additional language would eliminate the increase in duty because as indoor footwear, the textile materials would be considered in determining the material of the outer sole.

This additional language will not be necessary if the Commission includes the subheadings listed in Additional Subheadings, below, in the proposed modification.

Subheading Text. The Commission proposes the following subheading text:

> With an outer sole with applied textile material that does not possess the characteristics required for the durability of the outer sole in normal use.

FDRA respectfully suggests that this text is unnecessary, inadequate and will lead to confusion. FDRA suggests that the superior text to the proposed subheadings be amended to read as follows:

a) Heading 6402 -

> Having an outer sole to which textile materials have been affixed, which materials have the greatest surface area in contact with the ground:

b) Heading 6404 -

> Having an outer sole to which textile materials have been affixed, which textile materials have the greatest surface area in contact with the ground and with uppers of vegetable fibers (or with uppers of textile materials other than vegetable fibers):

The purpose of the proposed changes is twofold. The first is to make it clear that the textile material must account for a majority of the area of the outer sole in contact with the ground. The proposed language can be read to require only a minimum amount of textile material on the outer sole. We assume that this not what Treasury intended and that the intent was to continue current practice which accepts the textile material but only when it is the majority of the material in contact with the ground.

Secondly, FDRA believes the proposed reference to durability will create confusion. The durability of the textile material is relevant in determining classification at the heading level. It is not relevant to classification at the subheading level. The mere fact that the subheadings are in headings 6402 and 6404 means that a determination that the textile material does not meet the requirements of additional U.S. note 5 has been made. There is no logical reason to require that the determination be made a second time. Indeed, as written, the subheading text means that where the textile materials satisfy the durability requirement, the footwear is classified in the "other" provision at a higher duty rate, *e.g.*, proposed subheading 6402.99.69 (48%) instead of proposed subheading 6402.99.61 (12.5%).

FDRA believes that the suggested changes will make the proposed recommendation easier to understand by importers and easier to administer by CBP officials.

Additional Subheadings. The subheadings that the Commission would subdivide do not include all of the types of footwear that are imported with a textile layer in order to qualify for classification in heading 6405. For example, footwear of the type described in HTS subheading 6402.99.40 is imported with a textile layer for that purpose. Accordingly, subheading 6402.99.40 should be included among those subheadings which are amended by adding a separate provision for footwear with a textile layer on the outer sole. The following subheadings fall in the same category; 6402.91.16, 6402.91.90, 6402.99.12, 6404.11.20, 6404.19.15, and 6404.19.90.

Duty Rate. In the case of footwear with textile uppers classified in heading 6405, there are two duty rates, 7.5 % where the upper is a vegetable fiber, and 12.5 % where the upper is another textile material. However, only some of the proposed 6404 subheadings provide for the 7.5% rate as well as the higher rate of 12.5%. There is no justification for restricting the 7.5% rate to a limited number of subheadings. Both rates should be provided for in the

new subdivisions of the listed subheadings; 6404.11.40, 6404.11.50, 6404.11.60, 6404.11.70, 6404.11.80, 6404.19.40, 6404.19.50, 6404.19.60, 6404.19.70, and 6404.19.80. In the case of the new subdivisions of subheadings 6404.11.20, 6404.19.15, and 6404.19.90, only the 7.5% rate is necessary because the existing rate is less than 12.5%.

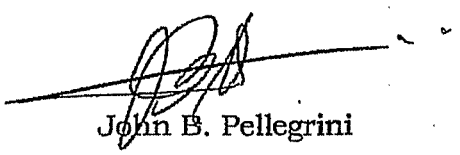
* * *

As noted above, FDRA supports the proposed modification in principle. However, it has serious reservations on the manner in which the Commission proposes to implement the modification. FDRA appreciates the opportunity to comment on the proposed modification and urges that its suggestions be adopted in the final modification.

Please contact the undersigned if you have any questions on this request.

Respectfully submitted,

McGUIREWOODS LLP



John B. Pellegrini

cc: FDRA
JBP:bam

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APPENDIX I

SUBMISSION FROM THE NATIONAL RETAIL FEDERATION

National Retail Federation®

The Voice of Retail Worldwide

May 14, 2010

Secretary
United States International Trade Commission
500 E Street, SW
Washington, D.C. 20436

Re: **Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States [Investigation No. 1205-8]**

Dear Ms. Abbott:

The National Retail Federation (NRF) is filing this submission on behalf of its member companies in the U.S. retail industry that sell footwear in responds to the April 13, 2010, request by the U.S. International Trade Commission (ITC) for public comments in the above captioned investigation published on April 13, 2010, in the Federal Register (75 Fed. Reg. 18882-18884). The purpose of the ITC's investigation is to provide recommendations to the President regarding modifications to the Harmonized Tariff Schedule of the United States (HTSUS) with respect to the tariff classification of certain footwear with outer soles of rubber or plastic to which a layer of textile material has been added.

In its request to the ITC to initiate this investigation, the U.S. Department of Treasury (Treasury) proposed language for an Additional U.S. Note and changes in various U.S. tariff rate lines at the 8-digit level that take into account decisions of the Harmonized System Committee of the World Customs Organization (WTO) on the tariff classification of certain footwear. The footwear in question is currently classified under HTSUS heading 6405 at a duty rate of 7.5 percent for vegetable fiber uppers and 12.5 percent for uppers of other textile materials. The specific recommendations by Treasury call for creating an Additional U.S. Note 5 under which, textile material would be deemed an accessory or reinforcement that would, therefore, not be a factor in determining the material of the outer sole. Treasury also recommends the creation of new subheadings under HTS headings 6402 and 6404 for the subject footwear that would carry the same duty rates as currently applied for these products under heading 6405. As stated in the April 13 Federal Register notice:

> The changes in the HTS that may result from this investigation are not intended to alter current tariff rates but instead are intended to ensure that existing tariff rates continue to be applicable following the implementation of new U.S. tariff provisions.

NRF does not, in principle, oppose the modifications proposed by Treasury. However, it is essential that these changes, in practice, do not result in any change in the tariff treatment of the footwear in question by Customs and Border Protection (CBP), which is charged with administering the HTSUS and collecting duties on imported merchandise.

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NRF member companies sell millions of dollars worth of the types of footwear that would be affected by the proposed modifications. However, companies have voiced concern that the proposal as drafted is not sufficiently clear to ensure that CBP will apply the proper duty rates consistently and correctly, in which case importers could end up paying substantial additional duty costs.

Therefore, NRF endorses the clarifications proposed by the Footwear Distributors and Retailers of America (FDRA) and the American Apparel and Footwear Association (AAFA) in their submissions to the ITC on this investigation. We believe these clarifications will ensure the goal of duty neutrality while advancing the goals of uniform application of the Harmonized System Convention and alleviating unnecessary administrative burdens.

Any questions regarding these comments can be directed to NRF's Vice President and International Trade Counsel, Erik Autor, at (202) 783-7971 or by email at autore@nrf.com.

As the world's largest retail trade association and the voice of retail worldwide, the National Retail Federation's global membership includes retailers of all sizes, formats and channels of distribution as well as chain restaurants and industry partners from the U.S. and more than 45 countries abroad. In the U.S., NRF represents the breadth and diversity of an industry with more than 1.6 million American companies that employ nearly 25 million workers and generated 2009 sales of $2.3 trillion.

Sincerely,

Erik O. Autor

Erik O. Autor
Vice President, Int'l Trade Counsel
National Retail Federation

APPENDIX J

SUBMISSIONS FROM
PRO LINE MANUFACTURING CO.

(By Counsel, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP)

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WRITER'S DIRECT DIAL NUMBER
212-973-7764
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May 13, 2010

VIA FEDEX
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Attention: Office of the Secretary

Re: Pro Line Manufacturing Co.
Investigation 1205-8
Proposed Modifications to the HTUS (Certain Footwear)
Our Reference: File 10163-0050002

To Whom It May Concern:

Submission is hereby made on behalf of our client, Pro Line Manufacturing Co. of Wayne, NJ ("Pro Line") in response to a request for public comment in connection with Investigation 1205-8, Proposed Modifications to the Harmonized Tariff Schedule of the United States. 75 FR 18882 (April 13, 2010) conducted by the International Trade Commission ("ITC").

Commenced at the request of the Department of the Treasury ("Treasury Dept.") pursuant to a letter dated January 15, 2010 ("the January 2010 letter) the investigation concerns footwear with outer soles containing textile material. We request that our position, as detailed below, be considered by the ITC in determining whether the proposed modifications should be made to Chapter 64 of the Harmonized Tariff Schedule of the United States ("HTSUS").

I. BACKGROUND

Pro Line is a U.S. importer and distributor of footwear (i.e., boots) for outdoor sports activities such as hiking, camping, hunting and fishing. Most of its styles contain protection against outdoor elements such as cold and/or inclement weather. The exterior surfaces of the uppers of its products are comprised variously of textile, rubber/plastics and leather, with exterior soles of synthetic rubber. In some instances, layers of textile materials added during the molding process so as to be embedded in the rubber/plastics, comprise a portion of the outer soles, forming their exterior surfaces.

Pro Line boots are currently classifiable under Chapter 64, HTSUS, variously under Headings 6401-6404, depending upon the material of the upper and, in the case of outer soles with exterior surfaces of textile material, under subheading 6405.20.90 or 6405.90.90, HTSUS, at 12.5%. The latter classifications are governed, in part, by Note 4(b) to Chapter 64, HTSUS which provides that the "constituent material of the outer sole shall be taken to be the material having the greatest contact area with the ground"

In its January 2010 letter to the ITC, (hereafter, "the Proposal') Treasury proposed to place substantial limitations on Note 4 (b) by providing a new United States Chapter Note (Note 5) to Chapter 64, as follows:

> "For the purpose of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength."

II. STATEMENT OF POSITION

Pro Line disagrees with the recommendation of the Treasure Dept. and the resulting action currently being proposed. The Proposal is violative of section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 USC 3005; hereafter "Section 1205") because it is inconsistent with sound principles of tariff nomenclature; it is a substantive departure from prior practice and the overall structure and framework of Chapter 64, as well as contrary to the longstanding tariff principle that merchandise is to be classifiable in its condition as imported.

Additionally, rather than alleviating administrative burden, the Proposal introduces standards and criteria that are vague, unpredictable and difficult, if not impossible, to administer with any assurance of uniformity of treatment. Finally, although purporting to do so, the Proposal, as presently formulated, fails to secure revenue neutrality.

III. DISCUSSION

Under Section 1205, the ITC may recommend to the President changes to the HTS in order to reflect amendments that are periodically recommended by the World Customs Organization as warranted by particular circumstances. This section provides that:

> "[The Commission] shall recommend to the President such modifications in the Harmonized Tariff Schedule as [it] considers necessary or appropriate–
>
> 1. to conform the [HTS] with amendments made to the Convention;
> 2. to promote the uniform application of the Convention and particularly the Annex thereto;
> 3. to ensure that the HTS is kept up-to-date in light of changes in technology or changes in patterns of international trade;
> 4. to alleviate unnecessary administrative burdens; and
> 5. to make technical rectifications."

Section 1205(d) further provides that the Commission cannot recommend a modification to the HTS unless the change (1) is "consistent with the Harmonized System Convention or any amendment thereto recommended for adoption"; (2) is "consistent with sound nomenclature principles"; and (3) "ensures substantial rate neutrality."

It is Pro Lines position, as further detailed below, that the Proposal fails to meet the requirements of section 1205.

A. <u>The Proposal Is Not Consistent With Sound Principals of Tariff Nomenclature</u>

The Proposal is not consistent with sounds principals of tariff nomenclature because it breaks with a substantial body of administrative precedent as to the tariff classification of footwear. Customs has issued a number of rulings concerning the classification of footwear that have textile sole components, and such rulings have been determined in total harmony with the chapter notes, headings and overall structure of Chapter 64. These rulings have related to any number of different types of footwear, as diverse from each other as hip waders and bowling shoes.[1] Consistent with the express mandate of note 4(b) of chapter 64 of the HTSUS, CBP concluded that the footwear at issue in each instance was to be classified in Heading 6405, HTSUS.

Upon even a casual review of Chapter 64, HTSUS, it is readily evident that the overall structure of the chapter reflects objective criteria based primarily (1) on composition of the

[1] See, for example, HQ 953879 (Apr. 19, 1993- chest and hip wader boots with wool felt soles); HQ 964978 (Apr. 18, 2002- women's slip-on shoe with outer sole composed of unit-molded rubber/plastics material, to which a thin layer of textile material is applied); NY 803238 (Nov. 10, 1994- bowling shoes in which one shoe has partial textile "sliding piece" outer sole); NY I84526 (July 31, 2002- slip-on "aqua socks" with outer soles of rubber/plastics classified under 6405; HQ 087201 (Dec. 18, 1990- slippers imported with textile soles) ; HQ 953404 (Apr. 19, 1993- chest and hip waders with soles of wool felt; NY I84491 (Aug. 6, 2002- woman's open-toe, open-heel, slip-on shoe with molded rubber/plastic outsole with a textile-walking surface); NY I84577 (Aug. 22, 2002- thong type sandal with EVA wedge sole covered with a textile material; NY I82111 (June 6, 2002- athletic sneaker style shoe with outer sole of rubber/plastics to which a thin layer of textile material has been applied); NY I84526 (July 31, 2002- slip-on "aqua socks" with outer soles of rubber/plastics classified under 6405

exterior surfaces of uppers and outer soles; (2) on the relative weights of those materials and (3) on specific construction features (e.g., "welt footwear")[2]. All such criteria are readily ascertainable or verifiable.

Moreover, where elements of footwear construction are to be disregarded, the framers of the HTS have long ago addressed these issues, and have specifically named the classes of features to be disregarded (e.g., spikes, bars, nails), providing examples in some instances to further clarify the nature of a category (e.g., ankle patches, edging, eyelet stays).

Thus, while the framers clearly contemplated certain features from consideration in footwear classification, under no circumstances have any such criteria been in the nature of material of a particular composition or been based upon a standard of possessing "characteristics for normal use." Had the drafters of the HTS intended other materials, features or components to be excluded from classification determinations based on indicia of normal use such as durability and strength, then they would have said so.

Equally at odds with sound principles of tariff nomenclature, the Proposal violates the longstanding principle that merchandise shall be classified in its condition as imported by applying a standard that would measure the ongoing condition of the article **after** importation. Put another way, the proposal would extend the status of "condition as imported" to some indeterminate period thereafter.

The proposal is likewise dismissive of the tariff principle that an importer is free to arrange for the configuration of its merchandise in such fashion as to insure, at time of importation, the most beneficial tariff treatment available. See *United States v. Citroen*, 223 U.S. 407 (1911) - pearls unstrung overseas and restrung after entry to obtain favorable treatment;

[2]Even where some elements of objectivity exist, as with protective footwear, the term "protective" is clarified through reference to specific materials such as Gortex and Thinsulate.

Merritt v. Welsh, 104 U.S. 694 (1881) - importer arranges for sugar to be a designated color, usually associated with level of crystallization, to achieve favorable duty rate; Seeberger v. Farwell, 139 U.S. 608 (1891) - importer adds to cotton content of wool garment to reduce duty rate) and cases cited for the same proposition.[3]

In sum the Proposal represents a clear break from sound tariff nomenclature and administration, rejecting both a substantial body of precedent and time honored principles of tariff classification.

B. The Imposition of an Undefined Durability Standard Will Impose an Undue Burden on Both Importers and Customs and Border Protection

The standard being contemplated, possessing characteristics required for normal use (e.g., durability and strength), is highly problematic and will do little to further the goals of relieving undue administrative burden or securing transparency and predictability for the import community.

The standards being proposed are vague and uncertain in fundamental ways. Even among footwear products deemed commercially merchantable, there can be substantial differences in contemplated use and in quality and range of materials utilized. Some shoes are clearly designed, for example, for utilization in mud and inclement weather whereas others can be rendered unfit for an intended purpose with a single wearing under significant inclement conditions, such as mud and rain. What is the normal use of an outer sole in the context of the proposed U.S. Chapter Note? What period of use is contemplated and what stresses are to be applied?

[3] United States v. Hannevig, 10 Ct. Cust. App. 124, 128 (1920);United States v. International Forwarding Co., 15 Ct. Cust. App. 198, 201 (1927); Corporacion Argentina de Productores de Carnes v. United States, 32 C.C.P.A. 175, 184 (1945); Robert G. Lynch Co. v. United States, 49 C.C.P.A. 74, 80 (1962); Pasadena Firearms Co. v. United States, 56 Cust. Ct. 331, 337 (1966);

Should U.S. Note 5 be enacted as Proposed, the importing community will be left to the subjective determinations of individual CBP officers. Desired goals of transparency of legal requirements and predictability of outcome will be severely compromised. Moreover, individual CBP officers will be required to make legal determinations under vague standards upon addressing the questions set forth above. Clearly, such requirement will not ease the administrative burden in any fashion, but will make the task upon the CBP officer all the more perilous and problematic.

C. The Recommendations Proposed by Customs Are Not Revenue Neutral

As proposed, U.S. Note 5 results in a change in classification of a number of footwear products with textile soles from Heading 6405, where the duty rates are 7.5% ad valorem or 12.5% ad valorem depending upon whether the textile material is vegetable fiber or other (than vegetable fibers or wool felt), respectively, to Headings 6401, 6402 and 6404 where duty rates for otherwise applicable provisions (assuming the disregarding of the textile materials in the outer sole) can be as high as 48% ad valorem.

For some existing subheadings under headings 6402 and 6404, Treasury has proposed duty breakout provisions to implement "duty rate neutrality." This is consistent with the requirement of section 1205 that the ITC recommendations "ensure substantial rate neutrality" and is thus laudable. However, while the breakouts proposed accomplish this statutory requirement to some extent, they are far from complete. Many HTSUS provisions into which textile outer sole footwear will be reclassified will not contain duty breakouts. Thus, as presently proposed, rate neutrality cannot be ensured to any **substantial** degree.

HTSUS headings where breakouts are missing and must be added to bring the proposal into compliance with section 1205 include the following:

1. **6401.99.30 to 99.60**-waterproof footwear with outer soles and uppers of rubber or plastic designed for wear as protection against water, oil, grease, or chemicals, or cold or inclement weather.
2. **6402.91.10 and 6402.91.50**- other footwear with outer soles and uppers of rubber or plastics, covering the ankle, and designed for wear as protection against water, oil, grease, or chemicals, or cold or inclement weather.
3. **6402.91.60 to 91.90, and 6402.99.40** - the entire range of over the ankle rubber/plastic upper and rubber/plastic sole shoes *e.g.* athletic, casual, open toe, open heel, slip-on.
4. **6402.99.08 and 6402.99.33**- other footwear with outer soles and uppers of rubber or plastics, not covering the ankle, and designed for wear as protection against water, oil, grease, or chemicals, or cold or inclement weather.
5. **6402.99.80 and 99.90**- oxford height rubber/plastic upper and rubber/plastic sole shoes with values above $6.50/pr *e.g.* athletic, casual.
6. **6404.11.90** - over the ankle textile upper rubber/plastic sole shoes valued over $ 12/pr *e.g.* athletic, casual.
7. **6404.19.20** - other footwear with outer soles of rubber or plastics and uppers of textile material, designed for wear as protection against water, oil, grease, or chemicals, or cold or inclement weather.
8. **6404.19.40 and 19.70**- oxford height textile upper rubber/plastic sole shoe duty reduced to 12.5% only, whereas current duty rates in heading 6405 can be 7.5% or 12.5%.
9. **6404.19.90**- oxford height textile upper rubber/plastic sole shoes valued over $12/pr.

The failure to add these breakouts will result in duty increases for many footwear items that are currently assessed at lower duty rates under heading 6405, thus failing to ensure substantial revenue neutral as required by Section 1205 and violating our obligations under the General Agreement on Tariff and Trade ("GATT") to which the United States is a signatory.

IV. CONCLUSION

Pro Line respectfully registers its objections to the enactment of the Proposal. Pro Line submits that the Proposal does not satisfy the mandates of section 1205. It is not in harmony with important principles of tariff nomenclature including classification in condition as imported and an importer's right to fashion its merchandise in the most advantageous way available. It is also at odds with the overall structure and framework of Chapter 64, HTSUS, and is inconsistent with the overwhelming weight of precedent and interpretation for footwear classification.

Additionally, the Proposal introduces standards and criteria that are vague, unpredictable and difficult, if not impossible, to administer with any assurance of uniformity of treatment, thus constituting a material burden on administration. Finally, the Proposal, as presently formulated fails to secure revenue neutrality to any substantial degree.

On the basis of these objections, Pro Line requests that the ITC reconsider and withdraw the Proposal, or that the Proposal be substantially modified to satisfy the objections raised herein. Please contact the undersigned should you require any clarification or additional information.

Sincerely,

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP

Edward B. Ackerman

Enclosure

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June 23, 2010

VIA FEDEX
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

Attention: The Honorable Marilyn R. Abbott, Secretary

Re: Pro Line Manufacturing Co.
Investigation No. 1205-8
Proposed Modifications to the HTSUS (Certain Footwear)
Our Reference: 10163-0050002

Dear Secretary Abbott:

Enclosed please find an original and 14 copies of the submission made on behalf of our client, Pro Line Manufacturing Co. of Wayne, NJ, on May 13, 2010, in response to a request for public comments in connection with Investigation No. 1205-8, Proposed Modifications to the Harmonized Tariff Schedule of the United States (75 Fed. Reg. 18882, dated Apr. 13, 2010).

As it is not clear from the ITC's Preliminary Report (USITC Publication 4156)[1] that our May 13 comments have yet to be considered, we are resubmitting those comments for consideration in advance of the June 25 deadline for public comments on the Preliminary Report.

[1] Available at http://www.usitc.gov/tariff_affairs/hts_documents/pub4156.pdf.

Please contact the undersigned should you require any clarification or additional information.

Sincerely,

GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP

Edward B. Ackerman

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APPENDIX K

SUBMISSIONS FROM THE RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION

(By counsel, Arent Fox)

Arent Fox

May 14, 2010

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via hand delivery

Secretary
United States International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Re: Rubber and Plastic Footwear Manufacturers Association (RPFMA)

Dear Secretary:

Enclosed are RPFMA's comments in response to your April 13, 2010 Notice Regarding Certain Footwear; Recommendations for Modifying the Harmonized Tariff Schedule of the United States - Investigation No. 1205-8.

Sincerely,

Marc L. Fleischaker

Enclosure

COMMENTS OF THE
RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION
IN RESPONSE TO
THE APRIL 13, 2010 NOTICE OF THE
INTERNATIONAL TRADE COMMISSION REGARDING
CERTAIN FOOTWEAR: RECOMMENDATIONS
FOR MODIFYING THE HARMONIZED TARIFF SCHEDULE
OF THE UNITED STATES — INVESTIGATION NO. 1205-8

These comments are submitted on behalf of the Rubber and Plastic Footwear Manufacturers Association ("RPFMA"). The RPFMA is the trade group that speaks for the principal domestic producers of protective footwear and rubber-sole fabric-upper footwear, as well as suppliers of components to the industry. The names and locations of the RPFMA members are attached as Exhibit 1. All of these companies are domestic manufacturers, although competitive circumstances and generally reduced tariff rates have made it necessary for many of them to manufacture some products overseas.

The RPFMA appreciates the opportunity to submit its views on this very important investigation, which is essential to the continuing manufacture of rubber footwear in the United States. More than 90 percent of production for the United States market already occurs overseas, and unless the Note proposed by the Treasury Department is adopted, much of the remaining U.S. production will shift overseas as well. Therefore, RPFMA views the prompt adoption of this proposal to be of utmost importance to the maintenance of a domestic rubber footwear manufacturing industry. The Recommendation is also fully justified by United States and international law, and should be adopted as quickly as possible.

BACKGROUND AND FACTS

The Notice responds to a request from the Department of Treasury that the ITC conduct an investigation under Section 1205 of the Omnibus Trade and Competitiveness Act of 1988, 19 USC 3005, regarding the addition of an Additional U.S. Note and the amendment of certain classification provisions in Chapter 64 of the Harmonized Tariff Schedule of the United States ("HTSUS") relating to certain footwear featuring outer soles of rubber or plastic to which a layer of textile material has been added. We suggest that basic to this investigation is an analysis of the reason for adding textile to the outer soles, as well as the utility of the added textile. This review demonstrates that the added textile is no more than a subterfuge to hide the true nature of the outsole, which remains rubber and plastic. The simple fact is that there is no meaningful durability or strength added by the textile layer.

The purpose of the added textile layer is made clear by the patent applications submitted by the current patent holder. It appears that the current relevant patents are No. US 2002/0152638 A1 (published on October 24, 2002), US 2002/0166261 A1 (published on November 14, 2002), US 2003/0009919 A1 (published on January 16, 2003), US 6,571,491 B2 (dated June 3, 2003), US 6,944,975 B2 (dated September 20, 2005), and US 7,179,414 B2 (dated February 20, 2007). The assignee of the patent in each case is E.S. Originals, Inc. in New York City. The patent application in each case recognizes that the true purpose of the patent is to obtain a lower tariff for the product. For example, in the October 24, 2002 publication, the "Background of the Invention" includes the following:

> **[0005]** The outsole is an important component of the shoe for an additionally entirely unrelated reason which has gone unrecognized in

> the art of shoe sole construction. As the economics of most countries become more and more internationalized, international commercial transactions invoke national customs tariffs that generally must be paid when goods are shipped....
>
> **[0006]** ...Footwear is generally classified in a given heading based upon the material of the upper and the material of the outersole. Consequently, the outsole plays an important role in determining the rate of duty which is to be applied to the specific footwear article. Depending upon the material which is used to manufacture the upper and the sole, the rate of the duty may vary significantly. For example, the rate of duty may range from 37.5% ad valorem for many common types of footwear to 3% ad valorem for certain types of sandals and similar footwear....
>
> **[0007]** Over many years, manufacturers have focused their attention on improving the traction properties of shoe outsole construction, but have not recognized that a price advantage can be had by combining materials in the outer shoe sole construction.
>
> **[0008]** What is needed in the art and has heretofore not been available is an outsole and method of manufacture thereof which offers slip resistance and other desirable properties in addition to providing a competitive advantage to the manufacturer based on its construction.

Similar or identical language is used in each of the patent applications. In fact, the product as often utilized is not meaningfully different from the product without the textile addition. The textile addition adds little or no slip resistance, and wears off quickly after the shoe is used, making it apparent that the purpose of the textile addition is not to add strength or durability, but simply to create a lower tariff rate and a competitive advantage. Independent tests conducted as long ago as 2003 and as recently as 2010 reflect the fact that there is no utility to the textile addition. See Report for New Balance Athletic Shoe, Inc. Outsole With Textile Covering, March 5, 2003, attached as Exhibit 2, and Report of Genfoot Inc., May 5, 2010, attached as Exhibit 3. This failure to increase slip resistance and lack of general utility has been recognized by the Harmonized

System Committee of the World Customs Organization, and been rejected as a valid basis for tariff differentiation by the European Union.

HISTORY OF HIGH TARIFFS FOR CERTAIN RUBBER FOOTWEAR

The domestic manufacture of rubber footwear continues largely because of the judgment exercised by responsible U.S. officials over the past fifty years. The duty rates on the products in this industry are high: 37.5% for waterproof footwear and 20% and more for fabric upper soled footwear. Because of the demonstrated import sensitivity of this industry, and because of the ability of imports, principally from the Far East, to nonetheless obtain a large majority of the U.S. market, our duty rates have remained untouched through the Kennedy Round, the Tokyo Round and the Uruguay Round of multilateral trade negotiations. Similar favorable treatment has been maintained in every regional and bilateral trade representation. For example, in NAFTA, this industry received a phase-out of 15 years, and in the pending Korean negotiation, there is a proposed 12 year phase-out, with no duty cuts for the first eight years.

Notwithstanding the lack of tariff cuts, there are only 5 significant waterproof footwear producers and 1 athletic footwear producer (New Balance) remaining in this country. These surviving entities intend to remain as domestic manufacturers as long as the duty structure is intact, and is not undermined by the kind of non-substantive manufacturing changes that this proceeding is intended to address.

Because of the engineering that has occurred here via implanting a small amount of fabric onto rubber soles, the tariff rate for rubber footwear with textile implanted has been reclassified so as to carry a dramatically lower tariff, thus imperiling the survival of the remaining domestic rubber footwear producers. As demonstrated, the fabric addition

serves no purpose other than to obtain the lower tariff rate. It does nothing to change the normal use of the sole, such as by improving durability, strength or the value of the consumer product. The European Union has addressed and corrected this problem by adopting an additional note to Chapter 64 of the Harmonized System. Thus, in the United Kingdom Trade Tariff Chapter 64, Additional Notes 2 requires that the following standard be met when determining the constituent material of an outer sole: "Within the meaning of Note 4(b), one or more layers of textile material which do not possess the characteristics usually required for normal use of an outer sole (e.g., durability, strength, etc.) are not to be taken into consideration." A copy of the Chapter 64 Notes of the UK Trade Tariff is attached as Exhibit 4. This interpretation has not been challenged in the World Trade Organization. The ITC's proposed change of the HTSUS closely mirrors the UK's Additional Notes 2 language.

We anticipate that comments from some importing interests may oppose the proposed adoption of Additional Note 5, or will seek to reduce its impact by providing exceptions for certain added textiles despite those textiles not possessing characteristics usually required for normal use of an outer sole. We urge the ITC to resist any such efforts and approve Additional Note 5 as currently drafted. As noted, the language is virtually identical to the language used by the European Union in addressing the concern of camouflaging rubber and plastics outer soles with textiles. Adoption of Additional Note 5 as drafted will be a consistent and accepted approach to addressing this problem.

THE PROPOSAL IS SUPPORTED BY LEGAL PRECEDENT

Chapter 64, Note 4 of the Harmonized Tariff Schedules of the United States contains two provisions for ascertaining the "constituent material" of two different parts

of footwear. Note 4(a) sets for the measurement directive for the upper, while Note 4(b) provides a measurement directive for the outer sole in order to determine its "constituent material." Each Note provides that the material is to be construed as "the material having the greatest ... surface area," (either externally or in contact with the ground), and "no account being taken of accessories or reinforcements...." The import of this language is that the "constituent material" of the outer sole cannot be a material which is an unnecessary and non-essential outer sole add-on. The proposal under consideration is consistent with this provision of the HTSUS, as well as the common dictionary definition of "constituent." As the Department of Treasury emphasized in its January 15, 2010 letter to the ITC encouraging this investigation, the ITC proposal simply implements this fundamental threshold requirement.

The proposal also is consistent with the long established legislative and regulatory history designed to protect the domestic rubber and plastic footwear industry. See, *e.g.*, *Nissho Iwai American Corp. v. United States*, 967 F. Supp. 517, 21 CIT 544 (1997), aff'd, 143 F. 3rd 1470 (Fed. Cir. 1998). It is simply contrary to the goals of our legislators and regulators over many years to permit a non-essential add-on to undermine the higher duties that have been essential to the legislatively-mandated protection of the domestic industry.

CONCLUSION

The recommended modification of the HTSUS is consistent with international law, domestic law and common sense. Non-functional additions to products simply to achieve lower duties should not be allowed, particularly when the higher duties have been sanctioned by our government legislatively, administratively and judicially for more than

half a century. This type of tariff engineering undermines the legislative intent, and should not be sanctioned by the agencies implementing federal law. Therefore, we welcome the ITC's initiation of this proceeding, and strongly encourage it to proceed with a report and recommendations that are consistent with the legislative intent and the suggestions made by the Department of the Treasury.

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On Behalf of the Rubber and Plastics Footwear Manufacturers Association

RPP/394823.1

RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION MEMBERSHIP LIST

America's Choice Products LLC
4900 Lighthouse Drive
Newport, AR 72112

Apex Mills Corporation
168 Doughty Blvd.
Inwood, NY 11096

ATP Manufacturing LLC
761 Great Road
North Smithfield, RI 02896

Bixby International Corp.
1 Preble Road
Newburyport, MA 01950

Dela Incorporated
175 Ward Hill Ave.
Ward Hill, MA 01835

Draper Knitting Co., Inc.
28 Draper Lane
Canton, MA 02021

Emtex Inc.
42B Cherry Hill Drive
Danvers, MA 01923

Genfoot America Inc.
673 Industrial Park Road
Littleton, NH 03561

Jones & Vining
1115 W. Chestnut Street
Brockton, MA 02301

Majilite Corporation
1530 Broadway Road
Dracut, MA 01826

Newgrange Group, LLC
767 Great Road
North Smithfield, RI 02896

New Balance Athletic Shoe, Inc.
Brighton Landing
20 Guest Street
Boston, MA 02135-2088

Norcross Safety Products
1136 2nd Street
Rock Island, IL 61201

Onguard Industries, LLC
1850 Clark Rd.
Havre de Grace, MD 21078

Packaging Corporation of America
1210 Moores Lane
Cutchogue, NY 11935

Shawmut Corporation
208 Manley Street
W. Bridgewater, MA 02379

Sheehan Sales Associates, Inc.
142 Canal Street
Salem MA 01970-4650

Tingley Rubber Corporation
1 Cragwood Rd., Suite 303
South Plainfield, NJ 07080

Worthen Industries, Inc.
3 E. Spit Brook Road
Nashua, NH 03060

Report for New Balance Athletic Shoe, Inc.

Outsole with Textile Covering

Report Completed : March 5, 2003

Introduction

I have been retained by New Balance Athletic Shoe, Inc. as an expert in a case involving a black rubber outsoles with red textile covering on the outsole. I have read the two reports completed by Artech Testing Footwear Division and this report constitutes my interpretation of these results.

Qualifications

I hold a Ph.D. in Biomechanics and currently I am employed as a Professor of Biomechanics in the Department of Exercise Science at the University of Massachusetts Amherst. My research concerns lower extremity mechanics and the relationship between these mechanics and overuse injury. I have served as a consultant for several footwear manufacturers not including New Balance. As a consultant, I have evaluated the frictional characteristics of many footwear models using a test apparatus similar to that used in this test.

Summary of Opinions

In the initial tests conducted by Artech in December, 2002 through January, 2003 on the outsole with fabric with further tests conducted in February, 2003 on the same outsoles minus the fabric. The outsoles of concern were evaluated for slip resistance, taber resistance and NBS abrasion. Slip resistance (i.e. friction) is tested under both wet and dry conditions using two different techniques. Taber resistance is an abrasion test as is the NBS test. Each of these is a standard test of outsoles recognized by ASTM.

1. *Slip Resistance*

In general terms, footwear are designed to have a slip resistance of 0.5 or better to a maximum of 1.0. A known normal load is applied to the outsole and the force necessary to initiate movement is recorded. The ratio of these forces produces a coefficient of friction; hence a value that ranges between 0 and 1. A coefficient of friction value of 0.3 is generally considered a slip hazard. A coefficient of friction value of 0.5 is the standard for resistance to slipping.

The values on both types of tests on the original outsole with the fabric on the bottom ranged from 0.25 to 0.38 in the dry conditions. This would put the outsole in the category of a slip hazard. That is, the potential to slip during locomotion is much greater than it would be in a standard outsole. When the fabric was removed and the outsole was tested, the coefficient of friction values ranged from 1.08 to 1.02 indicating that they were significantly better in resistant to slips than when the fabric was attached.

In the wet conditions, the results of the tests on the original outsole with the fabric indicated values ranging from 0.12 to 0.51. The 0.12 value certainly indicates that this outsole is a slip hazard. The 0.51 value indicates to me that there was a possibility that the fabric absorbed some of the water and thus the coefficient of friction value was only moderately a non-slip hazard. However, when the fabric was removed and the outsole tested in wet conditions, the coefficient of friction values ranged from 0.67 to 0.87 indicating that the outsole without the fabric was significantly more resistant to slipping than the outsole with fabric.

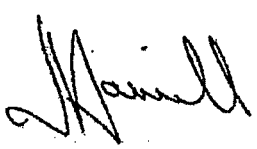
2. *Abrasion*

The abrasion tests indicate the longevity of the outsole to constant wear. The greater the number of cycles with little damage to the outsole, the longer the outsole will last under normal use. In the initial abrasion test on the outsole with the fabric, there was complete wear through the fabric after only 800 cycles. This was significantly different than the test on the outsole without the fabric. The outsole without the fabric showed almost no wear after a comparable number of cycles.

Conclusion

It is my opinion, after viewing the test results, that the addition of the fabric to the outsole on the ground contact surface adds nothing to the outsole in terms of functionality. In fact, the addition of the fabric to the outsole is less functional than the same outsole without the fabric in terms of frictional and abrasion qualities. That is, with the fabric, the outsole is certainly detrimental to performance and may indeed create harmful situations for the wearer of such an outsole.

Report submitted by:



Joseph Hamill, Ph.D.

Designation: D 3389 – 05

Standard Test Method for Coated Fabrics Abrasion Resistance (Rotary Platform Abrader)[1]

This standard is issued under the fixed designation D 3389; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

This standard has been approved for use by agencies of the Department of Defense.

1. Scope

1.1 This test method covers the determination of the wear resistance of fabrics coated with rubber or plastics to abrasion. The abrasion is measured by mass loss.

1.2 The values stated in SI units are to be regarded as the standard. The values given in parentheses are for information only.

1.3 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

2. Referenced Documents

2.1 *ASTM Standards:* [2]

D 618 Practice for Conditioning Plastics for Testing

D 4483 Practice for Evaluating Precision for Test Method Standards in the Rubber and Carbon Black Manufacturing Industries

3. Summary of Test Method

3.1 Abrasion resistance of fabrics coated with rubber or plastics is measured by subjecting the specimen to the rotary-rubbing action of two abrasive wheels under controlled conditions of pressure by the use of the rotary platform abrader. This action is maintained by the use of abrasive wheels.

4. Significance and Use

4.1 Abrasion resistance tests are intended to measure the wear resistance properties of a material. This may be correlated to expected end use performance.

5. Apparatus

5.1 *Abrasion Apparatus*, comprised of a removable flat circular specimen holder, a pair of pivoted arms to which the abrasive wheels are attached, a motor for rotating the specimen holder, a vacuum unit and nozzle for removal of abraded particles during test, and a counter for indicating the revolutions of the specimen holder. The specimen holder shall be mounted to produce a circular surface travel of an essentially flat specimen in the plane of its surface at a uniform angular velocity. The abrasive wheels, which are attached to the free end of the pivoted arms, shall rotate and have, when resting on the specimen, a peripheral engagement with the surface of the specimen, the direction of travel of the periphery of the wheels and of the specimen at the contacting portions being at acute angles, and the angle of travel of one wheel periphery being opposite to that of the other. Motion of the abrasive wheels, in opposite directions, shall be provided by rotation of the specimen and the associated friction there from.

5.1.1 The specimen holder shall be supported by an adapter that is motor-driven and that provides motion for the circular travel of the specimen holder.

5.1.2 A clamping ring shall be used to secure the specimen to the specimen holder.

5.1.3 The abrasive wheels shall be mounted on independently pivoted arms, which provide free-floating action to compensate for any minor unevenness in the specimen and to ensure uniform pressure of the abrasion wheels against the specimen at all times.

5.1.4 The apparatus shall be provided with a vertical-force adjustment (weights) for varying the vertical force of the abrader wheels on the specimen. The pivoted abrader arms without auxiliary masses or counterweights apply a vertical force against the specimen of 2.45 N (250 gf) per wheel. Auxiliary masses may be used to apply a vertical force against the specimen of 4.9 N (500 gf) per wheel or 9.8 N (1000 gf) per wheel.

5.1.5 *Wheel Bearings*—The abrader wheel bearings, that is, the two pairs of bearings installed in the free end of the pivoting arms to support the abrader wheels, should not stick when caused to spin rapidly by a quick driving motion of the

[1] This test method is under the jurisdiction of ASTM Committee D11 on Rubber and is the direct responsibility of Subcommittee D11.37 on Coated Fabrics and Rubber Thread.

Current edition approved May 1, 2005. Published May 2005. Originally approved in 1975. Last previous edition approved in 1999 as D 3389 – 94 (1999).

[2] For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

forefinger. The degree of freedom of rotation of these bearings, however, is not critical.

5.1.6 *Platform Position*—The vertical distance from the center of the pivot point of the abrader arms to the top of the specimen holder shall be approximately 25 mm (1.0 in.). This measurement is specified to prevent possibility of errors incurred by installing a thrust bearing or the like to support the specimen platform. Adaptations shall be made such that the platform will remain at the above-specified level. The specimen platform shall rotate in the plane of its surface. If it fails to do so and exhibits a tendency to wobble, the holder and adapter shall be replaced or a thrust bearing installed to support the specimen holder.

5.1.7 *Platform Speed*—The speed of rotation of the platform shall be 7.5 ± 0.21 rad/s (72 ± 2 rpm) for 110 V/60 Hz or 6.9 ± 0.21 rad/s (60 ± 2 rpm) for 230 V/50 Hz operation.

5.2 *Auxiliary Apparatus*—Refacing discs are required for the resurfacing of rubber-based wheels. An abrasion wheel resurfacing device is recommended for resurfacing vitrified wheels, and correcting out-of-round wheel conditions.

5.3 *Balance*, suitable for weighing to the nearest 1 mg.

5.4 *Abrasive Wheels*—A wheel that is 13 mm (0.5 in.) thick and approximately 50 mm (2 in.), but no less than 44.4 mm (1.75 in.) in diameter, which is manufactured in different grades of abrasive quality.

6. Test Specimens

6.1 Unless otherwise specified, make five tests on each sample of coated fabrics.

6.2 Cut circular test specimens approximately 110 mm (4½ in.) in diameter. Cut a 6-mm (¼-in.) hole in the center of the specimen. Take care in cutting out specimens. Use the best portion of the sample to be tested. It should be free of holes, blisters, or other imperfections.

7. Procedure

7.1 Condition the specimens in accordance with Practice D 618, paragraph 3.1.2. For thin flexible materials, adhere the specimen to a suitable substrate; use of cardboard has been found to be satisfactory.

NOTE 1—When adhesives are used to adhere the specimen, ensure that it does not have any adverse effect on the specimen. If a solvent-based system is used, allow the assembly to condition a minimum of 12 h or until the assembly maintains constant mass.

7.2 Install the wheels on their respective flanged holders as indicated by the manufacturer. Selection of abrasive wheels to be made by the customer and supplier. If no wheel is specified, the H-18 or equivalent is recommended.

7.3 Determine the original mass of the specimen or the assembly, or both. Place the test specimen with its coated side up over the rubber mat on the specimen holder. Secure the washer and knurled nut in place to hold the center of the specimen. Place the ring clamp over the specimen and tighten the screw of the ring clamp. Install auxiliary mass or counterweights as agreed upon by the customer and supplier. If no load is specified, 1000 gf is recommended. Place mounted wheels against specimen.

7.4 Adjust the vacuum suction and nozzle height as agreed upon between the customer and supplier. If none is provided, use a vacuum nozzle height of 6.5 mm (0.25 in.) above the specimen surface, with a vacuum level of 100.

7.5 The tester is equipped with a counter that operates in conjunction with the turntable. Set the counter at zero.

7.6 Start the abrader and run to the end point or the required number of cycles as specified by the customer and supplier. The end point shall be determined by the exposure of the first yarn using a lighted magnifying glass. The specimen shall be checked periodically for yarn exposure. The quality and the thickness of the coating may influence the required vertical force needed to measure the wear resistance of the coating (unless previously specified). After establishing the required vertical force, test no less than five specimens for each sample. Do not abrade through the base fabric. This test method is for determining the wear resistance properties of the coating only.

7.7 Periodically, stop the test to remove any abrasive particles left on the specimen surface. A frequency of 300 cycles is recommended. The vacuum, cleaner, and compressed air may be used for this purpose. Wipe the rubber mat clean after each test.

7.8 At the conclusion of the test, weigh the specimen and report the mass loss as milligrams loss per revolution.

8. Calculation

8.1 Record the number of cycles taken from the counter.

8.2 If mass loss is also desired, follow the calculation procedure in Section 10, using the number of cycles noted from 8.1.

9. Report

9.1 Report the following information:

9.1.1 Test conditions,

9.1.2 Number of specimens tested,

9.1.3 Type of wheels,

9.1.4 Total revolutions and vertical force used, and

9.1.5 Mass loss per revolutions, mg.

9.1.6 Report when yarn exposure occurred on specified number of cycle's test, if applicable.

10. Calculation

10.1 Calculate the loss in mass as follows:

Mass loss per revolution, g = original mass (before test) – final mass (after test)/number of revolutions

Example:

12.3596 Original Mass, g

12.2829 Final Mass, g

0.0767 Mass Loss, g for 500 revolutions

$$g = \frac{0.0767 \times 1000\ \text{mg/g}}{500} = 0.153\ \text{mg per revolution}$$

11. Precision and Bias [3]

11.1 This precision and bias section has been prepared in accordance with Practice D 4483. Refer to Practice D 4483 for terminology and other statistical calculation details.

[3] Supporting data have been filed at ASTM International Headquarters and may be obtained by requesting Research Report RR: D11-1044.

TABLE 1 Type 1 Precision

Material	Average	Within Laboratories			Between Laboratories		
		Sr	*r*	*(r)*	*SR*	*R*	*(R)*
Material A	0.62	0.0784	0.2219	36.047	0.2636	0.7461	121.204
Material B	0.21	0.0248	0.0701	34.013	0.1413	0.3999	193.940
Material C	0.78	0.0548	0.1552	19.852	0.2554	0.7228	92.451
Pooled Values[A]	0.53	0.0571	0.1615	30.213	0.2271	0.6427	120.228

NOTE:
Sr = repeatability standard deviation.
r = repeatability = 2.83 of the square root of the repeatability variance.
(r) = repeatability (as percentage of material average).
SR = reproducibility standard deviation.
R = reproducibility = 2.83 of the square root of the reproducibility variance.
(R) = reproducibility (as percentage of material average).

[A] No values omitted.

11.2 A Type 1 (interlaboratory) precision was evaluated in 1985. Both repeatability and reproducibility are short term; a period of a few days separates replicate test results. A test result is the value, as specified by this test method, obtained on five determinations or measurements of the property or parameter in question.

11.3 Three different materials were used in the interlaboratory program. These materials were tested in four laboratories on two different days.

11.4 The results of the precision calculations for repeatability and reproducibility are given in Table 1, in ascending order of material average or level, for each of the materials evaluated.

11.5 Repeatability, *r*, varies over the range of material levels as evaluated. Reproducibility varies over the range of material levels evaluated.

11.6 The precision of this test method may be expressed in the format of the following statements, which use what is called an "appropriate value" of *r*, *R*, *(r)*, or *(R)*, that is, that value to be used in decisions about test results (obtained with the test method). The appropriate value is that value of *r* or *R* associated with a mean level in Table 1 closest to the mean level under consideration at any given time, for any given material in routine testing operations.

11.7 *Repeatability*—The repeatability, *r*, of this test method has been established as the appropriate value tabulated in Table 1. Two single test results, obtained under normal test method procedures, that differ by more than this tabulated *r* (for any given level) must be considered as derived from different or nonidentical sample populations.

11.8 *Reproducibility*—The reproducibility, *R*, of this test method has been established as the appropriate value tabulated in Table 1. Two single test results obtained in two different laboratories, under normal test method procedures, that differ by more than the tabulated *R* (for any given level) must be considered to have come from different or nonidentical sample populations.

11.9 Repeatability and reproducibility expressed as a percentage of the mean level, *(r)* and *(R)*, have equivalent application statements as above for *r* and *R*. For the *(r)* and *(R)* statements, the difference in the two single test results is expressed as a percentage of the arithmetic mean of the two test results.

11.10 *Bias*—In test method terminology, bias is the difference between an average test value and the reference (or true) test property value. Reference values do not exist for this test method, since the value (of the test property) is exclusively defined by the test method. Bias, therefore cannot be determined.

12. Keywords

12.1 abrasion; coated fabrics; mass loss; plastics; rubber

Designation: D 1630 – 94 (Reapproved 2000)

Standard Test Method for Rubber Property—Abrasion Resistance (Footwear Abrader)[1]

This standard is issued under the fixed designation D 1630; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ε) indicates an editorial change since the last revision or reapproval.

This standard has been approved for use by agencies of the Department of Defense.

1. Scope

1.1 This test method covers the determination of the resistance to abrasion of vulcanized rubber or other compounds, or both, used for the soles and heels of footwear. It is not recommended for materials less than 2.5 mm (0.1 in.) in thickness.

1.2 Values stated in SI units are to be regarded as the standard. Values in parentheses are for information only.

1.3 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

2. Referenced Documents

2.1 *ASTM Standards:*

D 2240 Test Method for Rubber Property—Durometer Hardness[2]

D 4483 Practice for Determining Precision for Test Method Standards in the Rubber and Carbon Black Industries[2]

3. Significance and Use

3.1 It is recognized that when comparing different types of rubber, the ranking in service may not follow the ranking from the test results.

3.2 This test method should not be used as a measure of abrasion resistance for compositions that differ markedly from the standard reference compound. For example, misleading results are obtained in polyurethane compositions compared with the standard reference compound.

3.3 Some samples will bounce (chatter) over the paper instead of running smoothly. The results obtained on these samples are very inaccurate and should be interpreted with care. If samples give data that is inconsistent, they should be cut after the test is run to check for voids. If any voids are present the results should be discarded and the test repeated using samples free from voids.

4. Test Conditions

4.1 Unless otherwise specified, the standard temperature for testing shall be 23 + 2°C (73.4 + 3.6°F). Since humidity affects the sandpaper, the relative humidity should be controlled at 50 + 5 %. The samples should be conditioned at this temperature and humidity for at least 24 h prior to running.

5. Apparatus

5.1 *Abrasion Machine*— The footwear abrader referred to as the National Bureau of Standards model is shown in Fig. 1 and consists of the following components:

5.1.1 *Metal Drum*, rubber-coated or metal-surfaced, 150 mm (6 in.) in diameter. The drum is rotated at a rotation rate of 5.7 ± 0.6 rad/s (45 ± 5 r/min) by means of an electric motor with a reducing mechanism. The number of revolutions of the drum is indicated by a counter attached to one end of the shaft.

5.1.2 *Arms*, three, each pivoted at one end and having a mass suspended from the other end. The mass is attached so that a downward force of 22 N (5 lbf) is exerted directly on the specimen in contact with the abrasive.

5.1.3 *Dial Thickness Gages*, three, graduated to read 0.02 mm (nonmetric gages to measure 0.001 in.) and attached to a bridge so that one gage contacts one arm at a point directly over the specimen. The bridge is hinged at one end to allow the arms to swing back for mounting the specimen.

5.1.4 *Compressed Air*, free from moisture and grease, for cleaning the surface of the abrasive. The air is delivered to a manifold or nozzle where the pressure shall be maintained at 210 ± 35 kPa (30 ± 5 psi). A suitable suction may be used to remove abraded particles.

5.1.5 *Arm Stop*, one for each arm.

5.1.6 *Rubber Bands or Metal Clamps*, for holding a strip of abrasive paper in position around the rotating drum. The ends of the abrasive paper are cut at an angle of about 80° to the length of the paper and when in place, permit a clearance of about 1.5 mm (0.063 in.) but no overlap.

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[1] This test method is under the jurisdiction of ASTM Committee D11 on Rubber and is the direct responsibility of Subcommittee D11.15 on Degradation Tests.

Current edition approved Feb. 15, 1994. Published April 1994. Originally published as D 1630 – 61. Last previous edition D 1630 – 83.

[2] *Annual Book of ASTM Standards*, Vol 09.01.

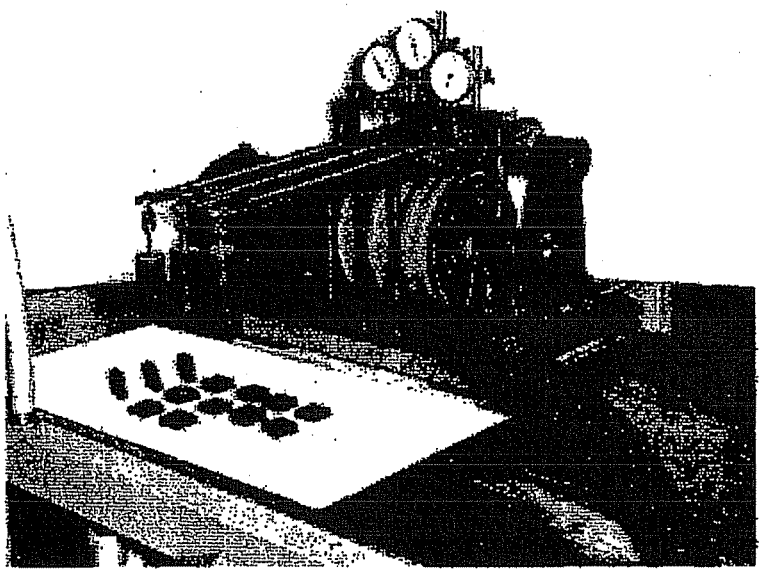

FIG. 1 Abrasion Test Machine

5.2 *Abrasive*—A controlled abrasive consisting of 425 μm 40 grit, No. 1½ garnet paper 150 mm (6 in.) in width.[3]

NOTE 1—Caution: Use of abrasive paper different than that recommended will lead to incorrect results.

6. Reference Compound

6.1 Formulation standard reference compound[4] shall conform to the following formula and cure specifications.

Materials	Parts by Mass
Natsyn 2200[5]	100
Pliolite S6B[5]	2.5
Stearic Acid	2.0
N762 Black (SRF)	40
N330 Black (HAF)	5.0
Octylated diphenylamine	1.0
2-(Morpholinothio)benzothiazole	0.8
Zinc Oxide	20
Sulfur	2.0

NOTE 2—Levels of carbon black can be adjusted to provide a reference compound that meets the specifications listed in 7.1.

6.2 *Cure*—The standard reference compound shall be cured at 160 ± 1°C (320 ± 2°F). The time of cure may be varied with each individual lot of compounds to give the proper state of cure and uniform abrasion.

6.3 *Hardness*—The Shore A Hardness of properly cured standard reference compounds shall be 62 ± 3, as determined by Test Method D 2240.

6.4 *Uniformity*:

6.4.1 Comparison of a newly prepared (D) reference compound with previous reference compounds (A, B, and C) shall be made as follows:

6.4.1.1 The number of revolutions per 2.5 mm (0.1 in.) of wear of the new reference compound shall be obtained concurrently with the last three reference compounds in accordance with the requirements in Table 1. Repeat the experiment a total of four times.

6.4.2 The composite average value for compounds A, B, and C and the average value for D shall be calculated.

6.4.3 A newly prepared reference compound shall be considered acceptable when the difference between the number of revolutions per 2.5 mm (0.1 in.) for the new compound D and the same arithmetic average of the three previous reference compounds, A, B, and C does not exceed ± 5.0 % (in number of revolutions of wear).

6.4.4 Standard reference compounds more than 6 months old shall not be used. The standard reference compounds shall be stored in an airtight container out of direct light and at room temperature or lower.

7. Break in Compound

7.1 The standard break in compound shall be a nonblack toplift compound prepared under carefully controlled conditions and conforming to the requirements as follows:

[3] Abrasive paper, 40 Grit Garnet, may be obtained from Liberty Abrasives, Inc., 708 Indian Hills Mound, Goodlettsville, TN 37072, (615) 851-0770. When ordering paper, the order should state the following:

FASTCUT Belt Paper
G 040 B155 F16574
Roll 6 in.

[4] RMA Standard Reference Compound shall be provided in the form of a strip 200 mm (8 in.) long and 25 mm (1 in.) wide with one face concaved to the contour of the abrasive wheel. The RMA Reference Compound will be obtained from the Smithers Scientific Services, 425 W. Market St., Akron, OH 44303, in package form. The minimum amount which may be ordered is one standard package containing 20 strips.

[5] Available from Goodyear Tire and Rubber Co., Akron, OH 44316.

TABLE 1 Requirements for Comparing Reference Compounds[A]

Run	Arm		
	1	2	3
1	A	B	C
2	B	A	D
3	C	D	A
4	D	C	B

[A] A, B, and C represent the previous three standards in chronological order; D represents the new standard.

Shore D Hardness	55 to 60
Tensile Strength, min	7.0 MPa (1000 psi)
Elongation, min	200 %
Abrasion Index	30 to 35

7.1.1 A break-in compound designated as RMA break in compound shall be used.[6] The order should specifically state that the compound is to be used for break in of the abrasive paper in connection with tests on the National Bureau of Standards abrasion machine.

7.2 The standard break in compound shall be stored out of direct light and at room temperature or lower.

8. Test Specimen

8.1 Unless otherwise specified in the detail specification, the specimen shall consist of a portion of the test sample or unit, 25 by 25 mm (1 by 1 in.) and approximately 6 mm (0.25 in.) in thickness.

8.2 Unless otherwise specified in the detail specification, materials thinner than 6.4 mm (0.25 in.) shall be plied up, using thin pieces, accurately aligned, to obtain the desired thickness; the surfaces of the pieces shall be in contact throughout.

9. Procedure

9.1 *Preparation of the Test Specimen*—If the material is too thick or has a fabric backing, surface coating, or an uneven surface that may interfere with the abrasion test, buff it to the dimensions specified in 8.1. If the specimen is too thin, prepare it as specified in 8.2.

9.2 Before the start of any test when new abrasive paper has been applied to the apparatus, mount a specimen of the standard break in toplift compound on each arm of the testing machine and run the machine for 500 revolutions.

9.3 Discard the standard break in toplift compounds used for this break in. Following this, mount a specimen of the standard reference compound on each arm of the testing machine and run the machine for 500 revolutions as a second break in of the paper. Discard the standard reference compounds used for this second break in. No more than 18 runs of three specimens each (excluding standard reference compounds run before each six tests) shall be made on one abrasive paper after the break in runs.

9.4 One specimen from the standard reference compound shall be mounted on each arm of the machine. Rotate the drums at a speed of 4.7 ± 0.5 rad/s (45 ± 5 r/min) with the air pressure turned on, and allow the machine to run until the surface of the specimen is worn to the shape of the drum. At this point, stop the machine and lock the gage bridge in place. Set the gages and the revolution counter to zero. Start the machine again and run until approximately 2.5 mm (0.1 in.) thickness has been abraded from the specimens as recorded on the gages. Stop the machine, and record the number of revolutions and the gage readings for each specimen. From the data obtained, calculate the number of revolutions required to abrade 2.5 mm thickness from each specimen and record the value as $R2$. Take the thickness readings with the drum as near as practical in the same position as it was when the gages were set at zero.

9.5 Remove the standard reference samples from the machine. Mount one test specimen each on each arm of the machine. Test these specimens as described in 9.3. Record the number of revolutions required to abrade 2.5 mm (0.1 in.) thickness from each test specimen as R_1. Make a minimum of one and a maximum of six runs of test specimens, after which make a second run of standard reference specimens.

10. Calculation

10.1 Express the abrasive resistance of the specimen by an abrasive index which shall be calculated as follows:

$$\text{Abrasive Index} = \frac{R_1}{R_2} \times 100 \quad (1)$$

where:

R_1 = number of revolutions required to abrade 2.5 mm (0.1 in.) of the test specimen, and

R_2 = average number of revolutions required to abrade 2.5 mm (0.1 in.) thickness of the reference compound run before and after the test specimens.

11. Report

11.1 The report shall include the following:

11.1.1 The abrasive index of the test specimens, as the average of the values obtained; record to the nearest one unit,

11.1.2 Type of specimen used, and whether it was plied up, and

11.1.3 Type of paper used.

12. Precision and Bias

12.1 The interlaboratory program to determine a Type 1 precision (Class I Specimens) was run on three compounds with eight laboratories participating. The control compounds and break-in compounds were supplied along with specimens of the three compounds. The three compounds were chosen to give a wide range of values. They were a natural rubber shoe soling material, a natural rubber/polybutadiene material and a nitrile compound. There were two determinations for each compound made for each of three days. A determination consists of running three specimens, one on each arm. The program was conducted in June of 1989. This precision and bias section has been prepared in accordance with Practice D 4483.

12.2 The precision results in this precision and bias section give an estimate of the precision of this test method with the materials (rubbers used in the particular interlaboratory program) as described in the following. The precision parameters

[6] Available from the Goodyear Tire and Rubber Co., Windsor, VT 05089.

TABLE 2 ASTM Test Method D 1630 Type 1 Precision[A]—Abrasion Index

Material	Mean Level	Within Laboratories[B]			Between Laboratories		
		s_r	r	(r)	s_R	R	(R)
Natural Rubber (NR)	48.3[C]	4.3	12.1	25.0	12.2	34.6	71.6
NR/Polybutadiene	130.8	5.6	15.6	11.9	25.2	71.5	54.6
Nitrile Rubber	210.5	20.3	57.3	27.2	70.6	199.9	94.9
Pooled or Averaged Values	129.9	12.4	35.0	26.9	43.9	124.2	95.8

[A] This is short-term precision (days).
[B] Symbols are defined as follows:
s_r = Within laboratory standard deviation.
r = Repeatability (in measurement units).
(r) = Repeatability (in percent).
S_R = Between laboratory standard deviation.
R = Reproducibility (in measurement units).
(R) = Reproducibility (in percent).
[C] Mean level values as abrasive index (unitless ratio).

should not be used for acceptance/rejection testing of any group of materials without documentation that they are applicable to those particular materials and the specific testing protocols that include this test method.

12.3 The results of the precision calculations for repeatability and reproducibility are given in Table 2 in ascending order of material average (Abrasion Index), for each of the materials evaluated.

12.4 The precision of this test method may be expressed in the form of the following statements that use what is called an *appropriate value* of r, R, (r), or (R), that is, that value to be used in decisions about test results (obtained with the test method). The appropriate value is that value of r or R associated with mean level in Table 2 closest to the mean level under consideration at any given time, for any given material in routine testing operation.

12.5 *Repeatability*— The repeatability, r, of this test method has been established as the appropriate value tabulated in Table 2. Two single test results, obtained under normal test method procedures, that differ by more than this tabulated r (for any given level) must be considered as derived from different or nonidentical sample populations.

12.6 *Reproducibility*— The reproducibility, R, of this test method has been established as the appropriate value tabulated in Table 2. Two single test results obtained in two different laboratories, under normal test method procedures, that differ by more than the tabulated R (for any given level) must be considered to have come from different or nonidentical sample populations.

12.7 Repeatability and reproducibility expressed as a percentage of the mean level, (r) and (R), have equivalent application statements as above for r and R. For the (r) and (R) statements, the difference in the two single test results is expressed as a percentage of the arithmetic mean of the two results.

12.8 *Bias*—In test method terminology, bias is the difference between an average test value and the reference (or true) test property value. Reference values do not exist for this test method since the value (of the test property) is exclusively defined by the test method. Bias, therefore, cannot be determined.

13. Keywords

13.1 abrader; abrasion; abrasive; footwear; garnet paper; NBS abrader; sandpaper

ARTECH TESTING, L.L.C.
FOOTWEAR DIVISION
14554 LEE ROAD • CHANTILLY, VA 20151-1632
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WWW.ARTECHLAB.COM

Test Report for:
New Balance Athletic Shoe, Inc.
5 South Union Street
Lawrence, MA 01841

Report Date: January 6, 2003
Starting Date: December 30, 2002
Test Completion Date: December 30, 2002

Attention: Elvis Campana

Report No.: F20462

Authorization: Testing was authorized by Elvis Campana telephone conversation of 12/19/02.

Customer Sample ID: FMR-379 Black rubber outsoles w/red textile covering

Request: Evaluate the submitted outsoles in the fabric area for the following properties to determine the wear durability of the fabric:

1. Slip Resistance
2. Taber Abrasion
3. NBS Abrasion

Test Results: **Slip Resistance**
Specimens were tested for slip resistance under dry and wet test conditions using the Mark II and James machine. A surface that produces a slip resistance value of 0.5 or greater is classified as slip resistant.

Taber Abrasion:
The fabric had severe wear after 100 abrasion cycles and after 200 cycles holes exposing the polymer. After 500 cycles 90% of the fabric was abraded off exposing the polymer. Outsoles are usually run for a minimum of 2,000 cycles, but due to the amount of severe wear of the test specimen after 800 cycles, the testing of the submitted outsole specimen was terminated. The amount of wear is evaluated on a specimen's visual appearance.

NBS Abrasion:
The fabric specimen after 5 cycles had severe wear and after 10 cycles almost complete wear. The NBS index value for the submitted sample indicates that the fabric will wear faster than normally expected. Polymers that produce an NBS index value of 100 or greater are classified as having high NBS abrasion resistance.

Report No.: F20462

The test results and pictures of the abraded specimens are attached.

ARTECH Testing, L.L.C.
Report Approved By:

Ruth Payne
Technical Service Representative

ARTECH TESTING, L.L.C.

Test Data

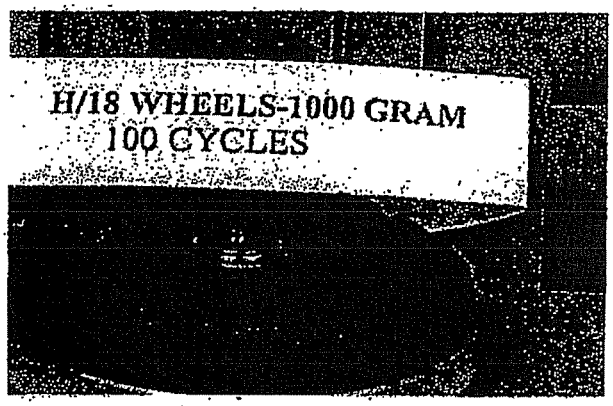
Report No.: F20462
Co.: New Balance Athletic Shoe Inc.

Report Date: January 6, 2003
Starting Date: December 30, 2002
Test Completion Date: December 30, 2002

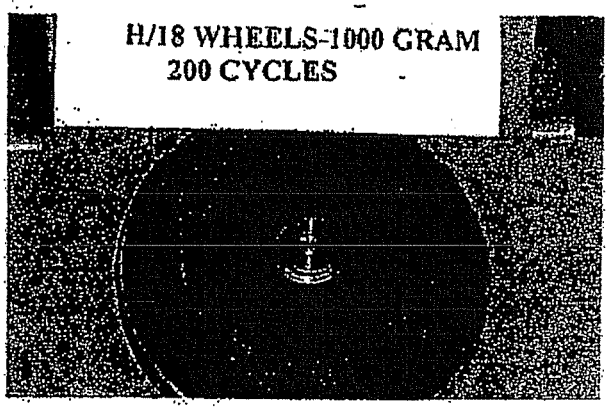
Item Tested:	Test Method	FMR-379 Red Fabric Outsole
Coefficient of Friction - Dry - Wet	ASTM F 1677 –96 (Mark II)	 0.25 0.12
Coefficient of Friction - Dry - Wet	ASTM F 489 –96 (James)	 0.38 0.51
Taber Abrasion (H/18-1000 grm) Appearance after - 100 cycles - 200 cycles - 400 cycles - 500 cycles - 600 cycles - 800 cycles	ASTM D 3389-99	 Severe wear Pin holes Almost complete wear 90% of fabric worn 95% of fabric worn Complete wear
NBS Abrasion - NBS Index	ASTM D 1630-99	 15

Report No.: F20463
Co.: New Balance Athletic
Test Performed: TABER ABRASION

INITIAL - Specimen

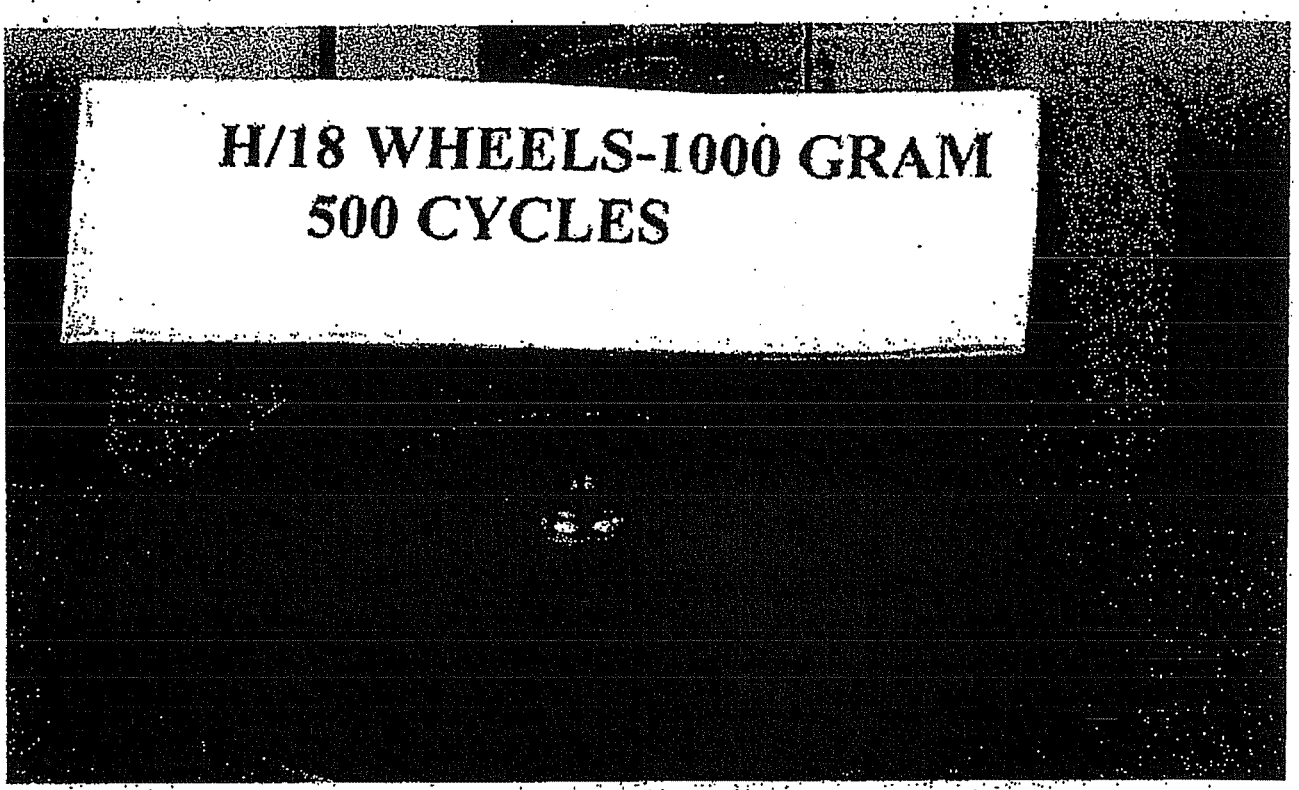


Appearance after 100 abrasion cycles
Severe wear of fabric

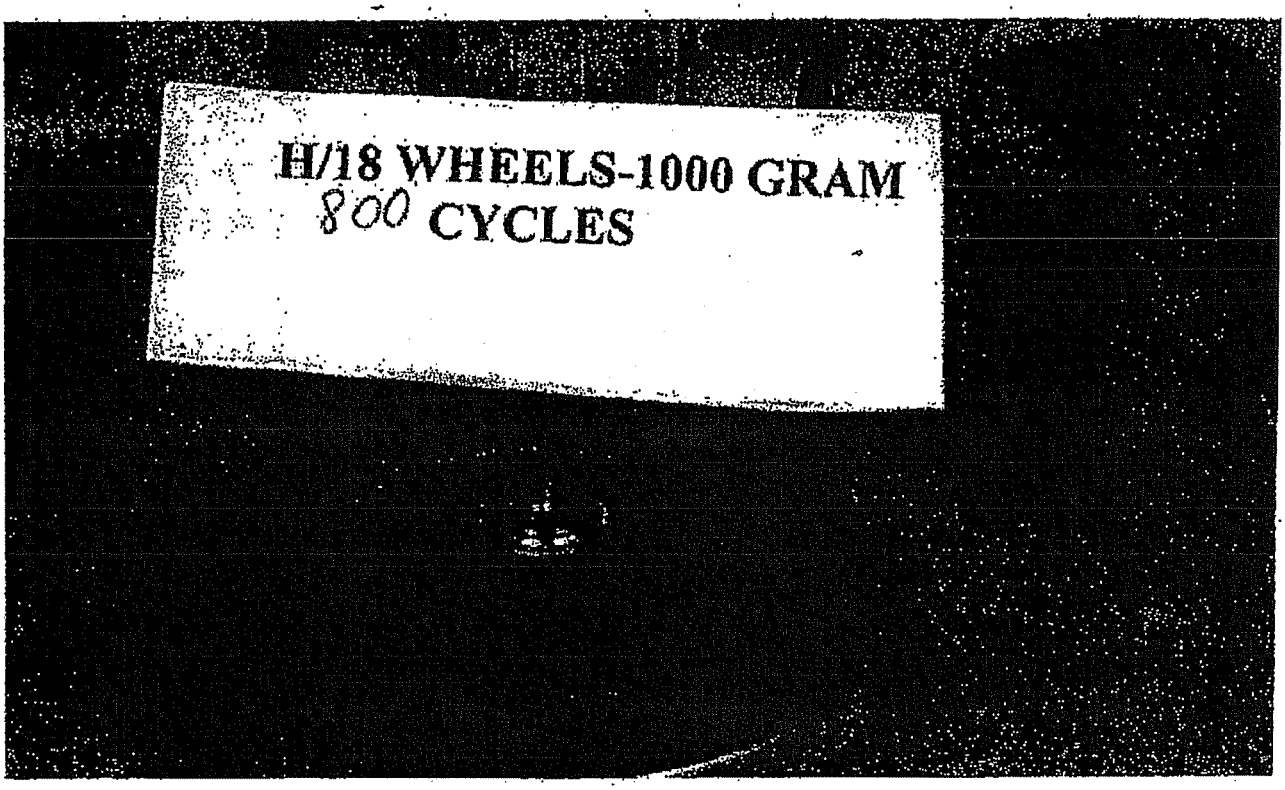


200 Abrasion cycles
Fabric has holes (circles around holes) exposing base material.

400 abrasion cycles
Almost complete wear of fabric in the abraded area



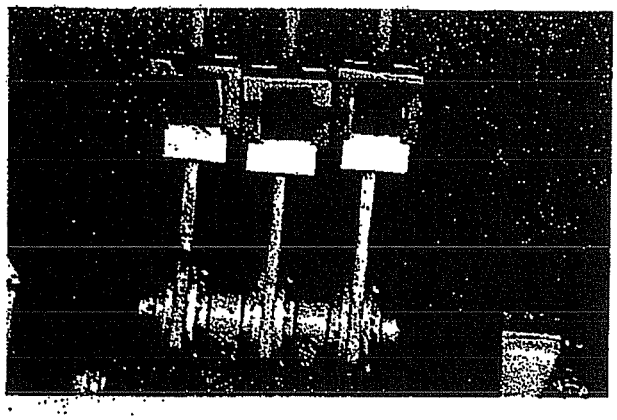
500 Abrasion cycles

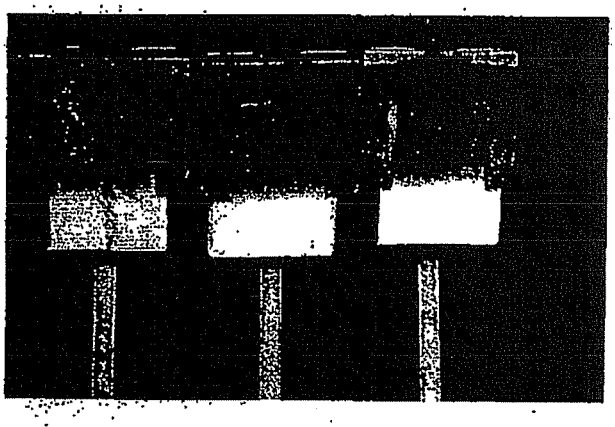


800 Abrasion cycles

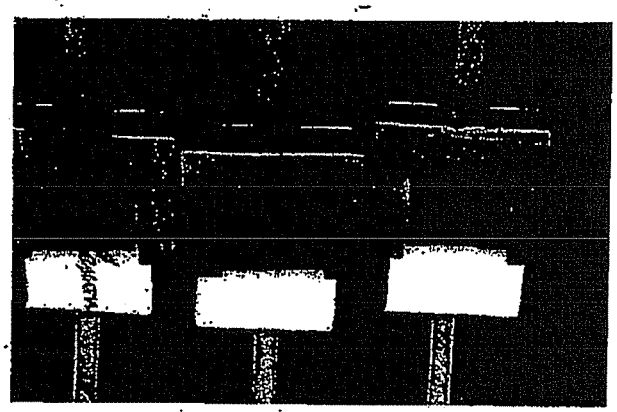
Report No.: F20463
Test Performed: NBS Abrasion

Initial - Specimen

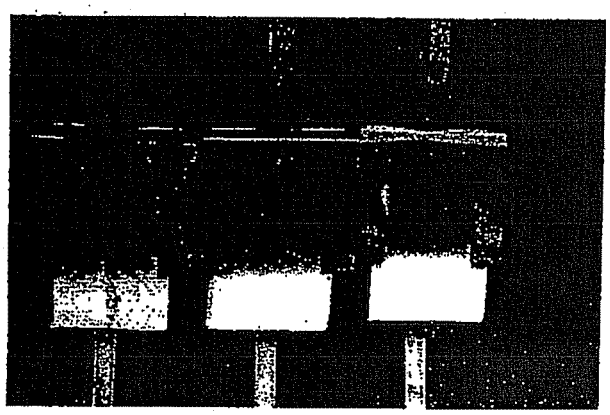




5 Abrasion cycles



10 Abrasion cycles



25 Abrasion cycles

GENFOOT

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Littleton, NH 03561 USA
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Wednesday May 5, 2010

The Abrasion test was performed on the outsoles of two vulcanized rubber boots. Both samples were in women's size, and had similar sole pattern designs. One boot had an all rubber sole, while the second had a light fabric mesh imbedded into the rubber.

The Abrasion method is DIN 53516

The Abrasion results of the 2 boots were so close, the results were considered negligible.

The conclusion: The thin fabric mesh does not improve the abrasion of the footwear.

Regards,

Rita Manouk
Production planning and purchasing manager
Genfoot inc.

Exhibit 3

UK Trade Tariff

Chapter

This page shows you information on the chapter you have selected, including a list of the headings which fall under the chapter

Tariff home **Import view for 15/6/09**

Section XII	SECTION XII - Footwear, headgear, umbrellas, sun umbrellas, walking-sticks, seat-sticks, whips, riding-crops and parts thereof; prepared feathers and articles made therewith; artificial flowers; articles of human hair (chapter 64 - 67)
Chapter 64	CHAPTER 64 - FOOTWEAR, GAITERS AND THE LIKE; PARTS OF SUCH ARTICLES

View chapter notes

Headings in this chapter

No.	Description	Footnotes	Your notes
6401	Waterproof footwear with outer soles and uppers of rubber or of plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes		
6402	Other footwear with outer soles and uppers of rubber or plastics		
6403	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather		
6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials		
6405	Other footwear		
6406	Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof		

Chapter notes

1. This chapter does not cover:

(a) disposable foot or shoe coverings of flimsy material (for example, paper, sheeting of plastics) without applied soles. These products are classified according to their constituent material;

(b) footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (Section XI);

(c) worn footwear of heading 6309;

(d) articles of asbestos (heading 6812);

(e) orthopaedic footwear or other orthopaedic appliances, or parts thereof (heading 9021); or

(f) toy footwear or skating boots with ice or roller skates attached; shin-guards or similar protective sportswear (Chapter 95).

2. For the purposes of heading 6406, the term 'parts' does not include pegs, protectors, eyelets, hooks, buckles, ornaments, braid, laces, pompons or other trimmings (which are to be classified in their appropriate headings) or

buttons or other goods of heading 9606.

3. For the purposes of this chapter:

(a) the terms 'rubber' and 'plastics' include woven fabrics or other textile products with an external layer of rubber or plastics being visible to the naked eye; for the purpose of this provision, no account should be taken of any resulting change of colour; and

(b) the term 'leather' refers to the goods of headings 4107 and 4112 to 4114.

4. Subject to note 3 to this chapter:

(a) the material of the upper shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet stays or similar attachments;

(b) the constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.

Subheading note

1. For the purposes of subheadings 6402 12, 6402 19, 6403 12, 6403 19 and 6404 11, the expression 'sports footwear' applies only to:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bars or the like;

(b) skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes.

Additional notes

1. Within the meaning of note 4(a), 'reinforcements' is taken to mean all pieces of material (e.g., plastics or leather) attached to the external surface of the upper to give additional strength, whether or not also attached to the sole. After the removal of reinforcements, the visible material must have the characteristics of an upper and not lining.

Account is to be taken of sections covered by accessories or reinforcements when deciding on the composition of the upper.

2. Within the meaning of note 4(b), one or more layers of textile material which do not possess the characteristics usually required for normal use of an outer sole (e.g. durability, strength, etc.) are not to be taken into consideration for classification purposes.

Arent Fox

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June 22, 2010

Secretary
United States International Trade Commission
500 E Street, S.W.
Washngton, D.C. 20436

Re: Investigation 1205-8 (*Certain Footwear; Recommendations for Modifying the Harmonized Tariff Schedule of the United States*)

Dear Secretary:

Enclosed, on behalf of the Rubber and Plastic Footwear Manufacturers Association (RPFMA), is our comment regarding Investigation 1205-8 .

Sincerely,

Marc L. Fleischaker

Enclosure
cc: Janis L. Summers, Esquire

COMMENTS OF THE RUBBER AND PLASTIC FOOTWEAR MANUFACTURERS ASSOCIATION IN RESPONSE TO INVESTIGATION NUMBER 1205-8 (PRELIMINARY) ENTITLED "CERTAIN FOOTWEAR: RECOMMENDATIONS FOR MODIFYING THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES"

These comments are submitted on behalf of the Rubber and Plastic Footwear Manufacturers Association ("RPFMA"). The RPFMA is the trade group that speaks for the principal domestic producers of protective footwear and rubber-sole fabric upper footwear, as well as suppliers of components to the industry. All of these companies are domestic manufacturers, although competitive circumstances and generally reduced tariff rates have made it necessary for many of them to manufacture some products overseas.

The RPFMA submitted comments to the ITC in response to the initial April 13, 2010 Notice issued by the ITC. We have now reviewed the Preliminary Report issued by the Commission on May 28, and submit these comments in response to that report.

The RPFMA appreciates the Commission's recognition of the validity of the Treasury Department's recommendation that an Additional U.S. Note be inserted in Chapter 64 of the Harmonized Tariff Schedule of the United States ("HTSUS") to reflect the fact that certain importers of footwear are adding textile material to the outer sole of certain footwear that comes off the outer sole soon after use, and does not add in any material way to the strength or durability of the footwear. However, we strongly believe that, as presently proposed, the effort to phrase the Additional Note in positive rather than negative language undermines the objective the ITC shares with the Treasury Department. It effectively eviscerates the purpose for the Note, namely, to close the textile outer sole tariff loophole. Accordingly, we strongly urge the

Commission to review and revise its preliminary recommendation, and to adopt the recommendation made by the Treasury Department.

The proposed ITC Note states as follows: "For purposes of determining the constituent material of the outer sole pursuant to note 4(b) to this chapter, applied textile materials possessing the characteristics required for the durability of an outer sole during normal use shall be taken into account." We believe that there are a number of major flaws in this language that justify a return to the Treasury proposal.

First, the proposed Note adds the word "applied" before "textile materials." That qualification does not appear either in the Note proposed by Treasury, or in the Note utilized by the European Union to accomplish the same desired result. The addition of the word "applied" can be interpreted to mean that textile material that is embedded in the sole, but still does not add strength or durability to the footwear, would be considered sufficient to obtain the lower tariff rate. The word "applied" thus introduces a new element into what constitutes the constituent material of an outer sole, namely, the manner in which the textile is affixed to the outer sole. The term could be construed to be applied only to textile materials affixed to the outer sole by some type of adhesive process. If so construed, textile materials fully or partially embedded in the outer sole would not be subject to the proposed new Note. Yet, how the textile was placed on the outer sole should be irrelevant. Whether the textile material possesses the characteristics of an outer sole in normal use should be the standard by which any textile on the outer sole, regardless of how affixed, is measured. The Preliminary Investigation Report does not indicate why the word "applied" was added, but it severely undermines the potential accomplishment of the purpose sought by the Treasury Department, which the ITC purports to endorse.

Second, the proposed Note uses the word "durability," but it does not use the word "strength" as recommended by the Treasury Department. Again, there is no explanation for this omission in the Preliminary Investigation Report. However, it risks encouraging new techniques to avoid the higher tariff rate without any apparent benefit. Again, this is not consistent with the European Union's resolution of the problem occasioning this proceeding.

Third, while the ITC is with good reason seeking to limit misinterpretation of the language of the Note and resulting litigation, in fact the proposed Note would have precisely the opposite effect. The proposed Note does not explain in any respect how the "applied textile materials ... shall be taken into account." Instead, the proposal simply says they shall be taken into account, which raises the question of how much textile material should be added in order to be taken into account. This turns the Note proposed by the Treasury Department on its head, perhaps even permitting the lower tariff rate if the added textile material does not undermine the durability of the outer sole as initially constructed, even if there were a negative effect on "strength." For example, textile material which simply wears away but leaves an intact rubber/plastics outer sole could arguably satisfy the proposed reworded ITC Note because the durability of the outer sole would remain unchanged by virtue of the continuing presence of the rubber/plastics material. In contrast, in the Treasury's proposed Note, which mirrors the European Union language, for a textile material to be considered the constituent material of the outer sole, the textile material itself must possess the characteristics usually required for normal use of an outer sole.

In addition to this difficulty in interpreting the language of the proposed Note, the reworded ITC Note raises the specter of a possible challenge to the WTO or the WCO. As long as the United States closely follows the European Union lead on fixing the textile outer sole

loophole, it would be difficult to contend that the U.S. was avoiding its obligations to adhere to the Harmonized System changes. That is why the proposed Treasury Note is virtually identical to the EU Note which protects their domestic footwear industry from footwear imports which camouflage the constituent material of their outer soles with textile. If the U.S. Note significantly deviates from the language of the European Union, it could readily become an easier target to attack.

For these reasons, we urgently request the ITC to return to the language that has been recommended by the Treasury Department. If the Commission is concerned about the recommended language, we would suggest that it review and possibly adopt the exact language of the European Union, reflected in Special Note Two used in Great Britain and attached to our previous comments. A third option if the ITC wishes to establish a positive standard without changing the focus or intent of the Treasury proposal would be the following language: "For purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, textile materials on or in the outer sole are only to be taken into account if the textile materials possess the characteristics usually required for normal use of any outer sole, including durability and strength." A fourth option would be for the Commission to use the language drafted to add Note 8 to Chapter 64 of the Harmonized Tariff Schedule as proposed in the pending Congressional legislation (S. 730), as follows: "For purposes of this Chapter, the constituent material of an outer sole of rubber or plastics to which textile materials are attached or into which such materials are otherwise incorporated shall be deemed to be only of rubber or plastics."

While we support the Treasury Department's recommendation, any of these other three options would be far preferable to the Preliminary Recommendation of the ITC, and would

accomplish the goal sought by the domestic industry, the Treasury Department, and acknowledged by the ITC.

The RPFMA appreciates the opportunity to comment on the Preliminary Investigation Report. We are available to respond to any questions that the Commission may have.

Submitted By:

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On Behalf of the Rubber and Plastic Footwear Manufacturers Association

RPP/405761.1

APPENDIX L

SUBMISSIONS FROM U.S. CUSTOMS AND BORDER PROTECTION

U.S. Department of Homeland Security
Washington, DC 20229

U.S. Customs and
Border Protection

JUN 23 2010

Marilyn R. Abbott
Secretary of the Commission
United States International Trade Commission
Washington, D.C. 20436

RE: Comment on Investigation No. 1205-8 (Preliminary); Certain Footwear Recommendations for Modifying the Harmonized Tariff Schedule of the United States pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988

Dear Ms. Abbott:

This is in response to the above-captioned investigation commenced by the United States International Trade Commission (ITC) pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §3005) regarding the administration of Note 4(b) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS). Notice of the investigation was provided in Federal Register Vol. 75, No. 70, dated April 13, 2010. We respectfully provide the following technical comments which relate to the manner in which U.S. Customs and Border Protection (CBP) would administer Additional U.S. Note 5 to Chapter 64, HTSUS, as proposed by the ITC.

As you know, classification of footwear at the heading level requires consideration of the composition of the upper and the outer sole of the footwear. With regard to determining the composition of the outer sole, Note 4(b) to Chapter 64, HTSUS, states the following: "[t]he constituent material of the outer sole shall be taken to be the constituent material having the greatest external surface area, no account being taken of accessories or reinforcements such as ankle patches, edging, ornamentation, buckles, tabs, eyelet states or similar reinforcements".

In its letter requesting the ITC to commence the instant Section 1205 investigation, the Treasury Department suggested that the following Additional U.S. Note 5 (herein after referred to as the "Treasury Note") be inserted into Chapter 64, HTSUS:

> For the purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the

characteristics usually required for normal use of an outer sole, including durability and strength."[1]

The practical effect of the "Treasury Note", if implemented, would be to require that non-durable textile materials be disregarded for the purposes of identifying the constituent material of the outer sole in the same manner that "accessories and reinforcements" identified in Note 4(b) to Chapter 64, HTSUS are disregarded. Our view is that the "Treasury Note" above is administrable.

In its report, the ITC concluded that it seemed desirable to modify the "Treasury Note" in order to base the classification on the existence of durable textile material on the exterior surface of the outer sole rather than the absence of such textile material. Accordingly, the Preliminary Report sets forth the following proposed Additional U.S. Note to Chapter 64, HTSUS, (herein after referred to as the "PR Note") which attempted to achieve the same result as the "Treasury Note":

> "For purposes of determining the constituent material of the outer sole pursuant to note 4(b) to this chapter, applied textile materials possessing the characteristics required for the durability of an outer sole during normal use shall be taken into account."[2]

We appreciate the effort to provide a simpler formulation of the note. However, for the reasons which follow, our view is that the "PR Note" drafted by the ITC does not succeed in providing the same result as that suggested in the request letter. Under the "PR Note", textile materials that possess the characteristics usually required for normal use of an outer sole (i.e. durability and strength) would be taken into account for classification purposes. However, the "PR Note" is silent with respect to the treatment of footwear featuring outer soles with an exterior surface of textile materials that do **not** possess the characteristics usually required for the normal use of an outer sole. This uncertainty, while perhaps not intended by the note, would create problems in the administration of the note.

The second difficulty with the "PR Note" is that it only covers "applied" textile materials. By contrast, the "Treasury Note" submitted with the request covers materials regardless of their method of attachment. Since the intention of the "PR Note" is to achieve the same result as that proposed in the "Treasury Note", reference to "applied" textile materials should be avoided.

In light of the foregoing, we believe the text of the note as originally suggested would best reflect the intended scope and would be easier for CBP to administer.

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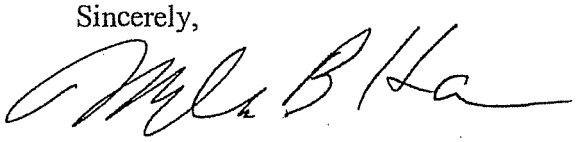
[1] In addition to the proposed "Treasury Note", the Treasury Department set forth multiple subheadings throughout Chapter 64, which would need to be amended to include a provision for footwear "[i]ncluding a layer described by Additional U.S. Note 5 to this Chapter".

[2] The subheading text corresponding with the "PR Note" provides for the following: "With an outer soles with applied textile material that does not possess the characteristics required for the durability of the outer sole in normal use."

Thank you for your consideration.

Sincerely,



Myles B. Harmon, Director
Commercial and Trade Facilitation Division

cc: Ms. Shara L. Aranoff, Chairman, U.S. International Trade Commission

[redacted]

From: HARMON, MYLES B [myles.harmon@dhs.gov]
Sent: Friday, July 02, 2010 2:59 PM
To: Summers, Janis; Traci.Altman@do.treas.gov; Rimmer, Donnette; Beck, David B.; Bruce_Hirsh@ustr.eop.gov; OROURKE, IEVA K; CONNOR, GREGORY; BROUSSARD, JEAN R
Cc: Timothy.Skud@do.treas.gov
Subject: RE: 1205-8 footwear and Vacuums

All:

[redacted]

The Treasury-proposed Additional U.S. Note 5 to Chapter 64 is slightly modified as follows:

"For the purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength."

New proposed text for the new subheadings to Chapter 64 consequent to the implementation of proposed Additional U.S. Note 5:

Text for the carve-outs

"Including textile material described by Additional U.S. Note 5 to this Chapter, provided that such textile material occupies the greatest
surface area of the outer sole in contact with the ground".

[redacted]

Myles B. Harmon
Director, Commercial and Trade Facilitation Division Office of International Trade U.S. Customs and Border Protection
202 325-0276 (phone)
202 325-0155 (fax)
myles.harmon@dhs.gov
-----Original Message-----

APPENDIX M

SUBMISSION FROM MEMBERS OF CONGRESS

Congress of the United States
Washington, DC 20515

July 2, 2010

The Honorable Deanna Tanner Okun
Chairman
United States International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

Dear Chairman Okun:

We understand that the United States International Trade Commission is preparing to transmit its final recommendations to the President with respect to investigation number 1205-8, entitled "Certain Footwear: Recommendations For Modifying the Harmonized Tariff Schedule of the United States." As Members of Congress representing states in which hundreds of Americans are employed by domestic footwear manufacturers, we write to express support for comments submitted by the Rubber and Plastic Footwear Manufacturers Association (RPFMA) on June 22, 2010.

Genfoot, Inc. and New Balance are among the few remaining domestic shoe manufacturers. Genfoot's facility in Littleton, New Hampshire employs 150 workers, while New Balance employs nearly 1,000 individuals at its three manufacturing facilities in Maine and over 1,200 at its design and manufacturing headquarters in Massachusetts. These are skilled jobs that bring direct economic benefit to our states and communities during a period of high unemployment and stagnant growth.

While other footwear manufacturers have outsourced production jobs, these two companies have continued to invest in manufacturing here at home. The viability of their operations, however, has depended on duty rates Congress adopted many years ago on the recommendation of the U.S. Trade Representative. These duty rates have remained in place in the Kennedy, Tokyo, and Uruguay Rounds of trade negotiations, and the office of the U.S. Trade Representative has consistently recognized that they level the playing field and are essential to the preservation of jobs at these plants.

But some international manufacturers have devised a way around these tariffs. By adding a small amount of textile material onto the sole of certain rubber footwear, they have successfully had their footwear reclassified as a textile product, and therefore subject to a much lower duty rate. If allowed to continue, we believe that the domestic footwear industry, which provides critical production jobs in our states, could be seriously injured by competing imports.

In its comments submitted in response to the Commission's preliminary report issued on May 28th, the RPFMA expressed deep concerns about what it views as major flaws in the Additional Note proposed by the Commission and asked the Commission to revise the language to reflect recommendations made by the Treasury Department earlier this year. Specifically, the RPFMA believes the Commission's proposed language "effectively eviscerates the purpose for the Note, namely, to close the textile outer sole tariff loophole." The RPFMA suggested several options for improving the proposed language, and we strongly urge the Commission to carefully review these comments and revise its recommendations before transmitting a final report to the President.

The Commission has an opportunity to ensure that the proposed Additional Note will be effective in protecting U.S. jobs against unfair trade practices – and we hope you will utilize this occasion to consult closely with the RPFMA. We look forward to working with you to save hundreds of jobs and prevent importers from skirting tariff rates that protect domestic footwear.

Sincerely,

Olympia J. Snowe
United States Senator

John F. Kerry
United States Senator

Judd Gregg
United States Senator

Susan M. Collins
United States Senator

Jeanne Shaheen
United States Senator

Scott P. Brown
United States Senator

Michael H. Michaud
Member of Congress

Paul W. Hodes
Member of Congress

Chellie Pingree
Member of Congress

cc. The Honorable Charlotte R. Lane, Commissioner, ITC
The Honorable Daniel R. Pearson, Commissioner, ITC
The Honorable Shara L. Aranoff, Commissioner, ITC
The Honorable Irving A. Williamson, Commissioner, ITC
The Honorable Dean A. Pinkert, Commissioner, ITC

APPENDIX N

SUBMISSION FROM THE U.S. DEPARTMENT OF COMMERCE

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

July 13, 2010

Marilyn R. Abbott
Secretary of the Commission
United States International Trade Commission
500 E Street, S.W.
Washington, D.C. 20436

RE: Comment on Certain Footwear: Recommendations for Modifying Tariff Schedule of the United States; Investigation No. 1205-8 (Preliminary)

Dear Ms. Abbott:

This concerns the above-captioned investigation by the United States International Trade Commission (ITC) regarding the administration of Note 4(b) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS).

The current wording of Note 4(b) to Chapter 64 of the HTSUS has created a textile outer sole tariff loophole that has adversely impacted U.S. producers of rubber and plastic footwear. I understand that the Department of the Treasury has proposed language for an additional U.S. Note be inserted to Chapter 64 of the HTSUS to close this loophole. ITC's preliminary recommendation is to concur with Treasury's intent; however, the ITC has offered modified language which would effectively allow the existing tariff loophole to remain in place. I also understand that U.S. Customs and Border Protection concurs with the proposed language provided by Treasury.

On behalf of the Office of Textiles and Apparel, which works to maintain the competitiveness of the U.S. rubber and plastic footwear industry, I would like to register my support for Treasury's language for an additional U.S. Note to Chapter 64, in its existing form. I believe this would dispel any ambiguities in the current HTSUS for the subject footwear, and eliminate any tariff loopholes that could subsequently disadvantage U.S. manufacturers of rubber and plastic footwear.

Sincerely,

Kim Glas
Deputy Assistant Secretary for
Textiles and Apparel

cc: David B. Beck

N-1