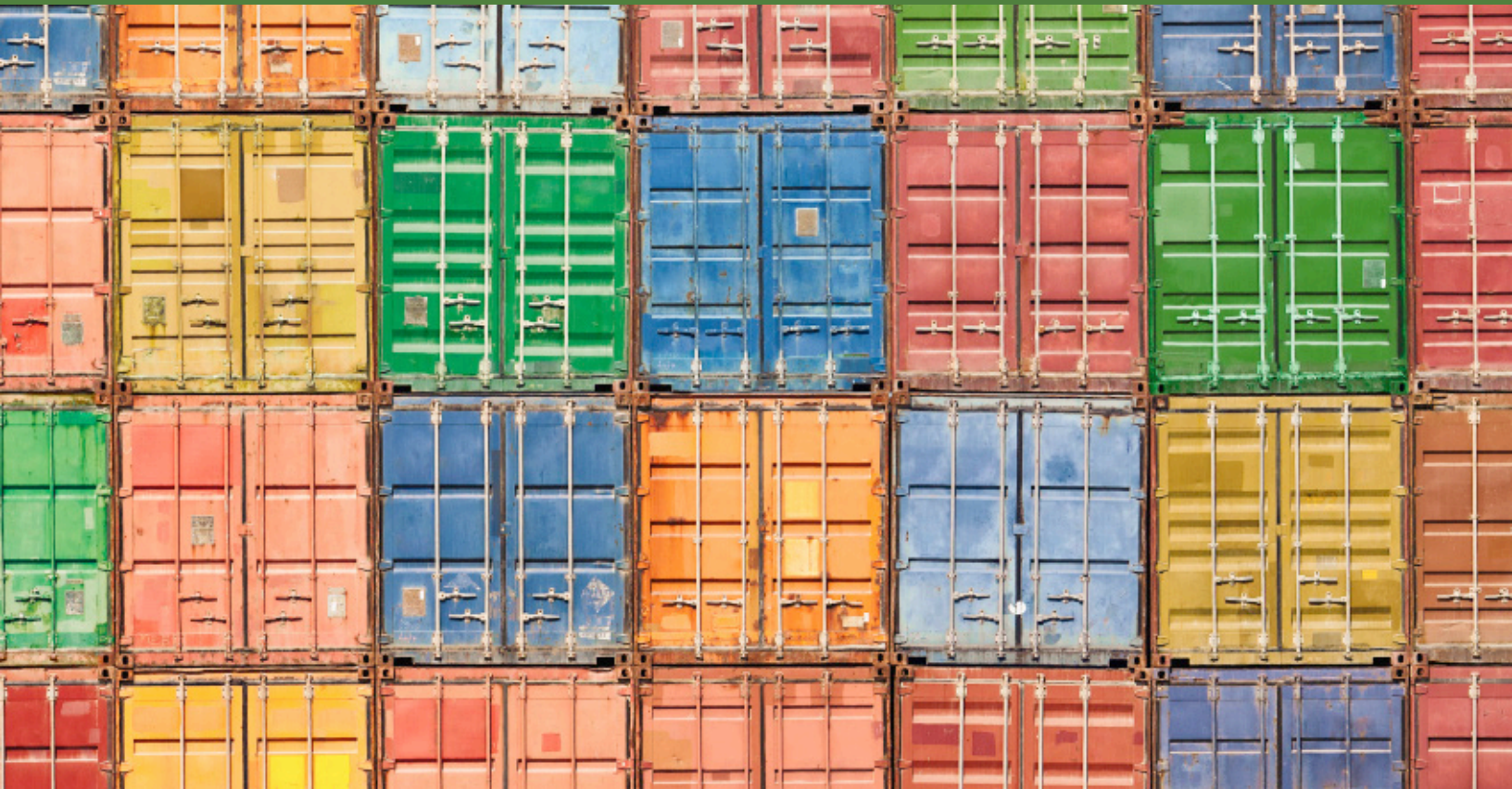




FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Footwear Customs Rulings & Analysis Handbook

2014



Innovative Customs Program



Customs Experts & Alerts

FDRA Members have access to the leading legal experts on footwear customs issues, as well as top U.S. Customs officials, to ensure they have full knowledge of customs rulings. FDRA also produces a monthly newsletter to keep professionals updated on all things related to footwear customs worldwide.

Additionally, FDRA uses its decades of customs experience to help companies understand and adapt to footwear import classifications.



FDRA Customs Working Group

FDRA hosts conference calls and provides key analysis documents on customs issues to its working group. The working group allows FDRA members to interact with leading customs experts to help them understand customs rulings and how to adapt to them.

Customs Document Archive

FDRA has built the largest archive for footwear customs documents, analysis, memos, and letters in the U.S. Members are able to access this archive, containing documents dating back to the 1990s, to help them understand customs issues and past rulings as they move forward on the development of new footwear.

Customs Classification Expertise Customs Rulings Clarity Customs Intelligence

Cutting-Edge Customs Tools

FDRA and Amber Road have employed an innovative app that allows footwear customs professionals to enter pictures of footwear samples and component information into a private software system. FDRA reviews the information and provides a HTS classification of the footwear within 24 hours.



FTDC

FDRA's Footwear Traffic Distribution and Customs (FTDC) Conference is the largest footwear conference of its kind in the U.S. This innovative workshop draws nearly 200 of the industry's top footwear executives, traffic and distribution specialists, customs experts, and service providers.

FDRA is the largest and only U.S. footwear association focused solely on footwear issues, like customs classifications. Email info@fdra.org for more information on how FDRA can help you.

January 2014

No noteworthy rulings.

February 2014

No noteworthy rulings.

March 2014 (Keywords: exercise shoe, sports footwear, unisex slip-on, Scrubable Silicone Boots, Molded R/P flats)

CBP recently issued the following classification rulings. The first ruling is HQ [H122364](#) (October 30, 2013).

The ruling involved an exercise shoe with uppers and outer soles of rubber and plastics ("R/P"). The outer sole is molded over the upper and forms a foxing-like band. The footwear does not have a cushioned heel portion or an outer sole that is in contact with the ground. Instead, the footwear has a large, elevated platform-type outer sole permanently affixed under the front part of the footwear that extends past the outline of the wearer's foot. The outer sole is designed to provide stability while engaging in exercise, while keeping wearer's heel from touching the ground. The footwear is imported with a product information DVD, copies of suggested training programs and a textile strap. The textile strap is designed to be wrapped around the shoes to permit the wearer to perform stretching and other exercises. The combination of these articles classified as a set with footwear imparting essential character.

The importer asserted that the correct classification of the footwear is under subheading 9506.91.00, Harmonized Tariff Schedule of the United States ("HTS") (4.6%), as equipment for general physical exercise and athletics. In the alternative, the importer argued classification is sports footwear, HTS subheading 6402.19.90 (9%).

The importer argued that the merchandise should be excluded from consideration as footwear and classified as sports equipment. To support the argument, the importer pointed out that the article is designed to perform specific exercises that target calf muscle training and is not intended to be worn as regular sports and athletic footwear. The importer also asserted that the article cannot be worn for an extended period as is typical of footwear and that the essential character and purpose of the articles is found in the parts that do not cover the foot, specifically, the part that elevates the foot and allows the wearer to exercise the leg muscles. In addressing the claim that classification falls in Chapter 95, the Headquarters Office looked to the definition of sports equipment as provided by the courts. Generally, the term is defined as merchandise that is not akin to apparel and is necessary, useful or appropriate for a sport, and that is almost exclusively protective in nature and compliments or is worn in addition to apparel worn for a particular sport. The ruling describes the subject footwear as not necessary, useful or appropriate for a sport. Additionally, the article offers no protection to the wearer.

The ruling also addresses whether the article can be classified as sports footwear. It will come as no surprise that the ruling turns down that argument since there are no projections from the outer soles of the type required for classification of sports footwear.

Ultimately, classification was held to fall in HTS subheading 6402.91.90 (20%).

NY [N248771](#) (January 15, 2014) addresses the classification of what are referred to as "Scrubable Silicone Boots". The article is a pair of unisex slip-on molded rubber or plastic shoe covers with uppers that do not cover the ankle. Velcro® is sewn to the forefoot and heel sections of the outer soles and enables the attachment of thick textile cleaning pads. The shoe covers are made in China, the Velcro® in Canada and the non-woven cleaning pads in Mexico. The shoe covers are designed to be worn over other footwear and only with the cleaning pads attached. The purpose of the article is to clean floors while worn. The components are assembled in a kit, packaged, and labeled "Assembled in Mexico".

CBP held that the kit is classified as a set with the essential character being imparted by the footwear. CBP held that the shoe covers and the set were classified in HTS subheading 6405.90.90 (12.5%), presumably based upon the textile outer sole (cleansing pads). Interestingly, there is no mention of Additional U.S. Note 5.

The ruling also addresses origin marking. CBP held that since the set component that imparts essential character (the shoe covers) were made in China, the correct country of origin mark is "Made in China", rather than "Assembled in Mexico". The ruling does not mention whether simply marking the package is sufficient. Generally, where an article is packaged and is not likely to be opened at point of sale, marking the package is sufficient.

Molded R/P flats were the subject of NY [N249389](#) (February 4, 2014). The shoe is a women's molded R/P slip-on lined with nylon textile. The shoe does not cover the ankle and is described as being "waterproof". CBP found classification in HTS subheading 6401.99.80 (Free). The decision is not remarkable but for the absence of an indication of why the shoe was not considered protective. Presumably, the height of the shoe was such that the wearer could not stand in two inches of water without getting wet

April 2014 (Keywords: sneaker, glittered hook, felt mill scruff, slipper)

CBP recently issued the following classification rulings.

In NY [N250402](#) (February 28, 2014), the NIS addressed the question of the classification of a sneaker with a glittered hook and loop closure at the instep and a quarter-size glittered logo on its lateral side. The importer argued that the glitter is so extensive that it precludes classification as athletic footwear.

The NIS disagreed stating that the styling of the shoe is not so excessively decorative as to eliminate classification as athletic. Since the shoe has a first cost in excess of \$12, classification fell in heading 6404.11.90 (20%).

While extensive decoration may preclude classification as athletic footwear, this ruling illustrates the fact that while extensive may not require that the entire upper be decorative, the decorative areas must be substantially greater than a strap and a quarter sized logo.

The classification what is referred to as felt mill scruff is addressed in NY [N250011](#) (March 5, 2014). The importer, who sought classification as a slipper, described it as made with one piece of lined fabric that has been folded over itself and molded into a slipper form and then stitched to itself along the outer border edge with braided cord. Tellingly, the article does not have an applied sole.

Since the article does not have an applied sole, it cannot be classified as footwear. Chapter 64 Note 1(b) states that footwear of textile material, without an outer sole glued, sewn or otherwise applied or fixed to the upper is excluded.

Accordingly, the classification was as hosiery in HTS subheading 6217.10.95 (14.6%).

May 2014 (*Keywords: low-cut slip-on casual shoe, faux fur*)

In NY [N252080](#) (April 25, 2014) the NIS division addressed the classification of a women's low-cut slip-on casual shoe with a textile upper and R/P sole. The shoe has a foxing-like band. The inside of the shoe is lined with a "very thin layer of faux fur material that does not make it substantially more protective against cold weather than any other footwear of this type." NY held that the shoe was properly classified in HTS subheading 6404.19.90 (9%).

Normally, footwear completely lined with faux fur will be treated as protective. Here that was not the case because the faux fur layer was described as "very thin". Also, it is likely that the nature of the shoe - a slip-on casual shoe - contributed to the conclusion that the footwear was not classified as protective. Nevertheless, this may be viewed as unloosening of the normally strict view that all footwear lined with faux fur or similar linings are considered protective.

June 2014 (*Keywords: UGG boots, slip-on, sport sandals, athletic footwear, girls' boots, hip high waterproof boot, faux fur, Spandura*)

The following outlines recent classification decisions involving footwear. The first relates to the classification of UGG boots. You may recall that an importer argued that particular boots were not "slip-on" because they must be pulled on with the hands. The argument

was rejected by the Court of International Trade ("CIT") and the Federal Circuit. Deckers Outdoor Corp. v. United States, Appeal 2012-1441(May 8, 2013).

The importer sought a review by the United States Supreme Court. The importer argued that the Federal Circuit paid inappropriate deference to Customs and Border Protection ("CBP") definitions, which it claimed, were merely guidelines. As a general rule, deference is accorded to an agency decision when it is subject to notice and comment rulemaking. The government argued that the importer made too much of the importance of deference in the Federal Circuit decision.

In any event, the Supreme Court declined to hear an appeal.

The second decision involves the classification of certain sport sandals. Deckers Outdoor Corp. v. United States, Appeal No. 13- 1356 (May 13, 2014). The importer argued that the sandals properly are classified as athletic footwear. The argument was turned down in a 2008 decision where the courts held that the tariff category for sports or athletic footwear required that the footwear have "enclosed uppers".

The importer sought to reargue the case and was again turned down at the CIT and the Federal Circuit. In deciding against the importer, the Federal Circuit pointed out that it was bound by the previous case and that the importer had not shown that there was a sufficient basis to overturn the previous opinion.

The importer argued that it was able to provide new evidence showing the sandals are actually athletic footwear and that they were nothing more than an evolutionary step in improving traditional training shoes by affording greater breathability.

In [N249327](#) (February 11, 2014) the NIS division addressed the proper classification of three styles of girls' boots. One of the three styles was a slip-on boot with a rubber/plastic outer sole and textile upper. The boot is completely lined with faux fur except for the insole. CBP held that the boot was not classified as protective footwear stating: "Customs has previously ruled that footwear without a protectively lined insole is not considered to be protective against cold weather."

This is perhaps the clearest statement by CBP that in order for footwear to be considered protective against cold weather, the entire foot, including the sole, must be covered by insulated material.

The application of Additional Note 5 is addressed in [N248895](#) (May 9, 2014). The footwear at issue was a hip high waterproof boot with a molded rubber/plastics upper and a vulcanized bottom. The outer sole has a layer of "Spandura™ " a fabric known for its toughness, slip resistance and anti-skid qualities. However, according to the Customs Laboratory, the fabric does not meet the tariff's durability requirements and classification was found to lie in subheading 6401.99.10 (37.5%).

July 2014 (Keywords: children's slipper, glitter)

In NY [N254124](#), CBP addressed the classification of a children's closed toe, closed heel slipper with a textile upper and textile outsole. The outsole was completely textile with plastic traction dots.

CBP classified the slipper in HTS subheading 6405.90.90. The upper was considered rubber/plastics because it was completely obscured by rubber or plastic glitter. The ruling does not mention Additional US Note 5. As we had assumed, Note 5 only applies to situations where the textile material is superimposed on a rubber/plastic outsole. That was not the case here and Note 5 did not come into play.

August 2014 (Keywords: aquatic training shoes, water fitness, infant sized shoes, woven polyester, slip-on shoe cover, aircraft shoes)

CBP has proposed to modify HQ [H012677](#) (February 15, 2008) which deals with the classification of what are referred to as aquatic training shoes. In that ruling, the shoes were classified in HTS subheading 6404.19.90 as sports footwear.

The subject footwear consists of athletic-type shoes designed for water fitness. The shoes are marketed for use in vigorous activities such as running in water or aqua aerobics. The uppers are textile. The outsoles are rubber/plastic that overlaps the upper. The shoes feature three, semi-rigged rubber/plastic wing-like protrusions or "gills" on both sides of the uppers. The "gills" provide resistance when exercising in water. The shoe bottoms have small drain holes and are valued at over \$12.00/pair.

As noted, the footwear was classified originally as sports footwear on the ground that "gills" were similar to spikes, etc. The proposed ruling rejects that conclusion. The ruling explains why the "gills" are not spikes or the like. The ruling proposes to classify the footwear in the same provision but as athletic footwear, not as sports footwear.

Generally, aquatic type footwear water shoes and the like have been classified as non-athletic. Given the presence of the "gills" and the statement in the ruling that the shoe is specifically designed for athletic training in the water, classification as athletic footwear (training shoes) seems appropriate. Also, it does not appear that this ruling will have much of an effect on the classification of a typical water shoe.

NY [N254762](#) (July 15, 2014) addresses the classification of four samples of infant sized shoes. The upper and separate outer sole are made from woven polyester.

The footwear was classified as HTS subheading 6405.20.90 (12.5%). The interesting and important point in this ruling is that it does not mention Additional US Note 5. The ruling is further confirmation that where the outer soles are textile, not textile applied to rubber/plastic, Additional Note 5 does not apply.

The classification of textile shoe covers is addressed in HQ [H243639](#) (July 7, 2014). That ruling revokes NY [N238529](#) (March 21, 2013). The article at issue is a slip-on shoe cover used in a semi-clean environment for aircraft assembly. The shoe cover does not have an applied outer sole and is made of a textile material base with 1 mm PVC micro dots adhered to the bottom to reduce slippage.

The ruling goes on to point out that there is no line of demarcation between the upper and outer sole. Since the article lacks an applied sole, it cannot be classified in Chapter 64 pursuant to Note 1 (b). The ruling also notes that patches, dots, etc., attached to the bottom do not constitute an applied sole. Accordingly, classification was held to Fall in HTS subheading 6307.90.98 (7%).

September 2014

No noteworthy rulings.

October 2014 (*Keywords: women's low-cut athletic shoe, rubber, layer of textile, leather upper, heel, athletic*)

The following are brief descriptions of recent classification rulings.

In NY [N252090](#) (April 29, 2014), the NIS division ruled that a women's low-cut athletic shoe with a rubber/plastic outer sole and a predominantly rubber/plastic outer sole and a predominantly PU-coated leather upper was classified in subheading 6402.99.90. The ruling states that the PU-coating "is thick enough to change the external appearance from leather to plastic." This seems to us to be a somewhat new interpretation of the circumstances under which coated leather is classified as plastic. Most previous rulings on the issue have relied on an essential character analysis. A change in appearance is usually not enough to make the case that a particular material imparts essential character. In most previous rulings, other factors such as relative thickness and cost have been used in determining whether coated leather is classified as plastic or leather.

Note 5 is addressed in NY [N255541](#) (August 18, 2014). The ruling involved an athletic shoe whose rubber sole had an applied layer of textile representing the majority of the material in contact with the ground. The CBP Laboratory analyzed the outsole. The lab report revealed that three out of the three specimens retained a small amount of textile. Accordingly, the shoe was determined to have a textile outsole, and, classification was found to fall under subheading 6405.20.30 (7.5%).

In NY [N256305](#) (September 9, 2014), the NIS Division looked at the classification of an imported leather upper. The upper is lasted, glued and sewn with the exception of small, unglued flaps on either side of the upper. The upper has been stitched to a complete innersole an insole board on both sides of the forefoot and around the heel. Rigid stiffeners in the toe box and heel areas and lasting provide the upper's finished form. It is

closed. Subsequent to importation, the upper will be stitched to the midsole and glued to the outsole

The importer argued that the presence of the small portions of the upper material that are not glued or stitched to the insole means that the upper is not formed. The NIS Division disagreed. The ruling notes that with the exception of the unglued side material, as imported, the uppers have obtained their final shape by lasting. There are no holes in the bottom. The NIS concluded that the uppers are "formed" and classified in HTS subheading 6406.10.05 (8.5%).

In addition to the effect on duty, the fact that the uppers are considered formed, means that assembly into complete footwear in the United States does not change the country of origin. The country of origin of the completed footwear is the country where the uppers were formed.

The question of whether a particular shoe is athletic is addressed in NY [N256764](#) (September 19, 2014). The footwear at issue was a women's ankle-height shoe with a rubber or plastic traction outer sole. The upper is made from a lace-type textile laminated to a durable backing of knit fabric resembling netting. The shoe has a zipper closure on the back.

The importer argued that the shoe was not athletic. The ruling states that the shoe is considered "athletic" because it possesses some of the characteristics of athletic footwear, specifically a secure means of closure, foxing or a foxing-band, a flexible sole, and general athletic "experience".

This ruling illustrates that CBP expansive interpretation of what constitutes athletic footwear. The presence of the lace-type upper material and a zipper in the back seems entirely inconsistent with material and a zipper in the back seems entirely inconsistent with classification of athletic footwear and the presence of a secure means of closure is hardly indicative of athletic footwear

November 2014

No noteworthy rulings.

December 2014 (*Keywords: flip-flop thong sandal, metal mesh, woman's jogger, cotton,*)

The following New York rulings may be of general interest.

The first ruling, [N258014](#) (November 10, 2014), concerns a flip-flop thong sandal with a Y-shaped upper strap covered with securely attached metal mesh. The ruling notes that the importer did not provide external surface area measurements but, based on visual

estimates, CBP was able to determine that the shoe upper is predominately of materials other than leather textiles or other such plastics, i.e. the metal mesh. Accordingly, classification fell in HTS subheading 6405.90.90 (12.5%). Although, not stated in the ruling, we assume that the mesh had relatively small interstices so that the entire area covered by the mesh was considered metal.

The second ruling, [N258515](#) (November 6, 2014), concerned a woman's jogger with a cotton upper. The outer sole is rubber/plastic with injected textile fabric inserts. The importer asserted that the outer sole was more than 50 percent textile in contact with the ground and provided a laboratory test verifying that "the textile on the outer sole is durable when subjected to normal use". Although not stated in the ruling we assume that the ruling is referring to this specific test. This test was the ISO 20821 test.

- End -