

FODRA

FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Footwear Customs Rulings & Analysis Handbook

2016



January 2016

The Customs Bulletin for December 23, 2015 includes a proposed ruling HQ H194697 that addresses the classification of footwear items claimed to be orthopedic devices...

The first of the two items is a cast sock. The item keeps the toes warm and protected while protecting the cast from dirt, grime and harmful objects. The ruling points out that the cast cover or cast wrap is suitable for wear only over a cast. As such, it meets one of the requirements for articles to be considered accessories to an orthopedic device such as a cast. Accordingly, classification was held to fall in subheading 9021.10.00 (Free).

The second article claim to be classified as an orthopedic device consisted of heat slippers. The slippers are designed to increase and sustain heat for wearers who have been diagnosed with diabetes or who have inherent problems with poor circulation.

CBP does not agree that the slippers are orthopedic devices. First, they are sold in pairs, whereas most orthopedic devices, like the cast sock, usually are sold as individual items. Second, the slippers do not prevent or correct deformities, and do not support or hold parts of the body following an operation of injury. Therefore, the slippers were not classified as orthopedic devices but as footwear in subheading 6404.19.70 (90¢ + 37.5%).

[NY N270246 \(November 20, 2015\)](#) address the classification of a woman's two strap sandal. The upper consists of textile material embellished with glued-on plastic beads. The beads were considered loosely attached appurtenances. The sole is rubber/plastics completely covered with textile material.

In submitting the ruling request, the importer provided a laboratory report showing that ISO Test 20871 was conducted and determined that the textile material met the durability standard of Additional US note 5. Accordingly, classification was found to fall in subheading 6405.20.90 (12.5%). Note if the textile material did not satisfy the durability requirement, classification would be in subheading 6404.19.37 (12.5%).

February 2016

The first is [HQ H187697 \(December 17, 2015\)](#). This ruling addresses the classification of a child's clog. The clog is a close toed\open-heel shoe. It consists of a unit molded upper an outsole. The upper has a separate heel strap attached to the side of the upper by means of plastic rivets.

The importer argued that the clog was classified in heading 6401. CBP disagreed because of the rivets and found classification in subheading 6402.99.31 (6%).

Classification in heading 6401 would have been under subheading 6401.99.80 (Free). Although it is waterproof (there are no holes in the upper), the clog is open-heel, and for that reason not considered protective.



Achieve

End-To-End Traceability and Mitigate Risk in Your **GLOBAL SUPPLY CHAIN**

Risk & Quality Management enables footwear companies to accurately determine that all trading partners are in compliance with regulatory requirements and adhere to product safety and quality controls.



FACILITY
COMPLIANCE



PRODUCT
TESTING



QUALITY
CONTROL
INSPECTION



Amber Road
POWERING GLOBAL TRADE®

For more information, please visit
www.AmberRoad.com

The second ruling, [NY N271457 \(December 18, 2015\)](#) deals with the classification of steel toe caps. The toe caps are footwear parts and will be used in the manufacture of overshoes. The importer sought classification in subheading 6406.90.90 providing for other parts of footwear CBP disagreed and found classification as parts of uppers in subheading 6406.10.90 (4.5%). The duty rate on the importers preferred classification is Free.

March 2016

Two recent classification decisions serve as a reminder that in the case of slippers, textile covering on an R/P sole need not satisfy the durability test. The rulings are [NY N271990 \(February 2, 2016\)](#) and [NY N271991 \(February 5, 2016\)](#). Both rulings describe the footwear as slippers with an outsole of R/P covered in textile. Neither ruling mentions durability nor Additional U.S. Note 5. Since the slipper uppers are MMF, classification fell in 6405.20.90 (12.5%).

April 2016

The first is a proposed ruling that appears in the Customs Bulletin for March 9, 2016. HQ H241428 would revise [NY N239002 \(March 9, 2013\)](#), which held that a collection of footwear articles was not classified as a set.

The set consists of a pair of foot wraps, a rubber strap, flats, a removable insole and a mesh bag.

The wraps are strips of knit textile that have been laminated with polyurethane. The strips are sewn together in a shape that wraps around the heel, lower ankle and foot, leaving the toes exposed. Traction dots are attached at the bottom of the wrap. The second component is a strap of rubber designed to be wrapped over the foot wrap and around the ankle to provide additional support. The third element is a pair of flats with a textile upper and a R/P sole. The flats have no closure device and are designed to be worn over the foot wraps or separately. There is also a removable insole as well as a mesh bag designed to provide a bag in which to launder the foot wraps and straps.

In order to be classified as a set, merchandise must consist of products or articles put up to meet a particular need or to carry out a specific activity. The proposed ruling finds that the individual components are intended for a single purpose or for use in a single activity, specifically in conjunction with one another to provide protection and/or traction during yoga, Pilates and barre exercise activities.

CBP concludes that consumers would be unlikely to purchase the set to use the foot wraps of flats without the other. The presence of the mesh bag did not negate classification as a set even though the bag was suitable for general use.

As you know, a set is classified in the provision covering the component that imparts the essential character of the set. Here, CBP felt that the flat and the wraps were of comparable importance. When no individual component imparts essential character, classification falls in the provision that appears last in the schedule. Since the foot

wraps are classified and 6402 and the flats in 6404, the set was classified in subheading 6404.19.39 (37.5%).

The second ruling is [NY N271998 \(February 11, 2016\)](#). The ruling covers a woman's slip on, closed toe, closed heel, waterproof flat. The shoe is one-piece molded construction. A PVC bow and PVC edging are sewn along the top line.

CBP found classification in subheading 6401.99.80 (Free). Although waterproof, the shoe was not considered protective because the top of the foot is exposed.

[NY N272439 \(February 19, 2016\)](#) discusses the classification of two closed toe, open heel, molded clogs. The clogs are identical similar and each has separately attached leather straps across the top of the foot near the topline. The straps are considered accessories and make up less than 10 percent of the exterior surface area of the upper. The leather strap in one style is attached with adhesive. The leather strap on the second style is attached with metal rivets.

The first style was classified in HTS subheading 6401.99.80 (Free). The second was classified in subheading 6401.99.31 (6%). The only difference is the means of attaching the strap, adhesive or rivets. The ruling provides no explanation. Obviously, the method of attaching the strap was the deciding factor; but it is not clear whether the distinction is the fact that the hole made by the rivets means that the clog is not "waterproof" or whether rivets are not one of the manufacturing methods allowed in heading 6401. Hard to see how the classification of the second clog can be reconciled with the result in [NY N271998](#), described above.

The final ruling, [NY N272489 \(March 2, 2016\)](#), deals with footwear parts. The parts are leather boot uppers and running shoe uppers of textile, both with a waterproof bootie. Both uppers were treated as "unformed". The boot upper is not shaped at all and will be shaped and lasted after importation. The running shoe upper was closed at the bottom but there was a quarter-sized hole.

The boot upper was classified in HTS subheading 6406.10.65 (Free), and the running shoe upper in 6406.10.90 (4.5%).

The presence of the waterproof bootie, which in effect closed the upper bottoms, was not considered to transform the "unformed" uppers into "formed" uppers.

May 2016

In [NY N272940 \(March 11, 2016\)](#), the NIS Division addressed classification of a sample shoe. The shoe has "Sample not for Resale" visibly imprinted on the inside of the shoe in a conspicuous location. The ruling determined that the marking method used and the location qualifies the shoe for classification as a duty-free sample in HTS subheading 9811.00.60

[NY N273411 \(March 24, 2016\)](#) addresses the classification of an athletic shoe with a R/P outer sole and an upper which is described as being predominately cork. The shoe is classified in HTS subheading 6405.90.90 (12.5%).

June 2016

The following is a brief summary of a recent classification decision. The May 18, 2016 edition of the Customs Bulletin includes proposed HQ H246161 which deals with the proper classification of certain disposable shoe covers.

The shoe covers are the type worn by workers in healthcare and food processing over regular shoes. That shoe cover is made of a non-woven man-made fiber partially laminated to a plastic material. The plastic material is affixed to the textile only at the edges. [NY N239495 \(April 9, 2013\)](#) classified the footwear in subheading 6402.99.33 (37.5%) as protective footwear. The importer sought classification in subheading 6307.

CBP ruled that the covers were classified in Chapter 64. The importer argued that the plastic covering was not an applied sole and was a coating. The ruling points out that the plastic was attached only at the edge of the textile and for that reason was separate piece and not simply a coating. The ruling does not agree that the covers are protective because they do not cover the entire foot; the top of the foot is left mostly exposed. Accordingly, classification was held to fall in subheading 6402.99.31 (6%).

July 2016

No noteworthy rulings.

August 2016

The following discusses two recent New York rulings that, in my opinion, are incorrect.

The first, [NY N276507 July 15, 2016](#) deals with a one-piece molded, closed-toe, closed-heel, slip on shoe. The shoe has two tiny holes in the instep near the top of the outer sole. Water would penetrate the shoe when the wearer is standing or walking in wet terrain, precluding classification as waterproof or protective footwear. Classification is said to fall in subheading 6402.99.31 (6%). The importer sought classification in subheading 6401.99.80 (Free).

This ruling is at odds with the numerous rulings that classify garden clogs (open-heel footwear) in subheading 6401.99.80. Water would penetrate the clogs in the same fashion as with the footwear which is the subject of the ruling.

Taken to its logical conclusion, this ruling means that all footwear classified in heading 6401 must provide protection against water.

The second ruling, [NY N267141 July 29, 2016](#) covers a chest-high fishing

wader deemed to have an upper of textiles. The outer sole is rubber/plastics with a thin layer of leather on the external surface. The ruling finds classification in subheading 6405.20.90 (12.5%).

Unless the leather is completely disregarded, classification falls in subheading 6404.20.60. (37.5%), covering footwear with textile uppers and leather soles. It is hard to understand CBP's thinking here.

September 2016

No noteworthy rulings.

October 2016

The first is a ruling that appears in the Customs Bulletin for September 21, 2016. HQ H241428 revises NY N239002 (March 9, 2013), which held that a collection of footwear articles was not classified as a set. The set consists of a pair of foot wraps, a rubber strap, flats, a removable insole and a mesh bag. New York classified the flat in 6406.19.39 (37.5%); the removable insole in subheading 6406.90.30 (5.3%); the ankle strap and the mesh bag in 6307.90.98 (7%); and, the foot wrap in 6402.99.31 (6%).

The wraps are strips of knit textile that have been laminated with polyurethane. The strips are sewn together in a shape that wraps around heel, lower ankle and foot, leaving the toes exposed. Traction dots are attached at the bottom of the wrap. The second component is a strap of rubber designed to be wrapped over the foot wrap and around the ankle to provide additional support. The third element is a pair of flats with a textile upper and a R/P sole. The flats have no closure device and are designed to be worn over the foot wraps or separately. There is also a removable insole as well as a mesh bag designed to provide a bag in which to launder the foot wraps and straps.

To be classified as a set, merchandise must consist of products or articles put up to meet a particular need or to carry out a specific activity. The proposed ruling finds that the individual components are intended for a single purpose or for use in a single activity, specifically in conjunction with one another to provide protection and/or traction during yoga, Pilates and barre exercise activities.

CBP concludes that consumers would be unlikely to purchase the set to use the foot wraps of flats without the other. The presence of the mesh bag did not negate classification as a set even though the bag was suitable for general use.

As you know, a set is classified in the provision covering the component that imparts the essential character of the set. Here, CBP felt that the flat and the wraps were of comparable importance. When no individual component imparts essential character, classification falls in the provision that appears last in the schedule. Since the foot wraps are classified and 6402 and the flats in 6404, the set was classified in subheading 6404.19.39 (37.5%).

November 2016

No noteworthy rulings.

December 2016

The November 9, 2016 edition of the Customs Bulletin includes the HQ H246161 (September 12, 2016), which deals with the classification of disposable shoe covers worn over regular shoes by workers in healthcare and food processing industries. That shoe cover is made of a non-woven man-made fiber partially laminated to a plastic material. The plastic material is affixed to the textile only at the edges. [NY N239495 \(April 9, 2013\)](#) classified the footwear in subheading 6402.99.33 (37.5%) as protective footwear. The importer sought classification in subheading 6307.

CBP ruled that the covers were classified in Chapter 64. The importer argued that the plastic covering was not an applied sole and was a coating. The ruling points out that the plastic was attached only at the edge of the textile and for that reason was separate piece and not simply a coating. The ruling does not agree that the covers are protective because they do not cover the entire foot; the top of the foot is left mostly exposed. Accordingly, classification was held to fall in subheading 6402.99.31 (6%).

Of interest is the fact that a commenter argued that the proposed ruling was wrong that the shoe covers should be classified as protective and that the proposed ruling impermissibly narrowed the meaning of the term protective.

New York [N279620 \(October 21, 2016\)](#) addresses the classification of a women's thong sandal. The thong had a Y-shaped strapped PU upper. The top portion of the strap is a heat-sealed strip of glass beads that completely obscures the underlying PU material. The glass beads represent more than 70 percent of ESAU. CBP found classification in subheading 6405. 90. 90 at 12.5% since the glass bead strip "completely obscured" the underlying PU glass was considered the material of the upper.