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FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Footwear Customs Rulings & Analysis Handbook

2015

January 2015

The following New York rulings may be of general interest. In NY N259275 (December 5, 2014), the NIS Division addressed the classification of a women's slip-on garden boot with uppers and outer soles of rubber and plastics. The majority of the surface area of the outer sole has a composition leather overlay. The ruling notes that the importer provided a laboratory report confirming that the composition leather consists of 60 percent or more leather by weight. Why this was deemed important is unclear since, as far as I am aware, the determination of composition leather as opposed to some other substance is not based upon relative weight. Nevertheless, the NIS Division ruled that the shoe is properly classified in subheading 6405.90.90 (12.5%).

The question of PU strip is addressed obliquely in NY N259161 (December 18, 2014). The footwear there was a women's open toe/open heel sandal with a metal buckle closure and an outer sole of rubber/plastics. The uppers consist of thin strips measuring 3 mm in width. The strips are textile covered with PU meaning they are treated as rubber/plastics for purposes of classification in Chapter 64. Accordingly, the sandal was classified in subheading 6402.99.31 (6%). Had the upper been made of thin strips entirely of PU with a width of Had the upper been made of thin strips entirely of PU with a width of 3 mm, the material would have been treated as textile not plastic. This illustrates the difference between what is referred to as plastic strip and plastic-coated textile. The rule that the strip less than 5 mm in width are treated as textile is limited to materials that are entirely plastic and does not include materials consisting of textile coated with plastic. While it may seem counterintuitive, the rule is simply this: textile coated with plastic is always plastic regardless of the width; however, strips that are entirely plastic are treated as textile when their width is less than 5 mm. Yes, this is confusing, but it is the law.

February 2015

Two recent New York rulings emphasize two classification points. The first is NY N260170 (January 13, 2015). The ruling addresses the classification of a woman's slip-on shoe with an upper made from plastic strips in a plain-weave pattern. The strips measure approximately 2.5mm in diameter. The point here is that strip of this width is treated as textile. Strip in excess of 5mm is considered plastic.

The second of the two rulings is NY N260347 (January 13, 2015). The issue there was whether labeling a shoe "sample not for resale" qualified the shoe for duty-free treatment under subheading 9811.00.60. The statement was in two locations, a watermark on the tongue and a permanent stamp on a non-removable in sole. The ruling concludes that the marking is sufficient. The point the ruling makes is that mutilation is not ruling makes is that mutilation is not always necessary and that a permanent mark, sufficient to render the footwear unsuitable for any use other than soliciting orders, is sufficient to qualify for duty-free treatment.

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March 2015

In NY N260481 (January 16, 2015), the NIS Division addressed the classification of a man's closed toe/closed heel lace-up shoe consisting of a textile upper and an outer sole of R/P. The tongue is attached to the upper on both sides with an elastic gore. According to the ruling, the functional laces must be tied and untied to use the shoe properly. CBP concluded that the shoe was not a slip-on and found classification in HTS subheading 6404.19.90. Most footwear with elastic gores is treated as slip-ons. Here, the presence of the laces and the conclusion by CBP that the laces must be tied and untied to use the shoe properly resulted in a favorable classification.

The shoe in NY N260923 (February 2, 2015) was described as a women's lace-up "athletic shoe" with an R/P outer sole and a predominantly textile upper. The shoe is said to have a foxing or foxing-like band. The shoe is also described as being lightweight with a flexible sole and having a general athletic appearance. The importer argued for classification as non-athletic footwear. The NIS Division disagreed. The ruling notes that although the shoe does not possess all the characteristics associated with athletic footwear, it does resemble such footwear in construction and styling and accordingly was classified as such. Classification was found in 6404.19.90 (20%). As non-athletic footwear, classification would have fallen in 6404.19.90 (9%).

The shoe in NY N260851 (February 3, 2015), was basically a thong The shoe in NY N260851 (February 3, 2015), was basically a thong with an R/P outer sole with a textile overlay. The upper was cotton. The importer provided a laboratory report showing that the textile on the outer sole satisfied the durability requirements of Additional U.S. Note 5. Accordingly, classification fell in 6405. As a general rule the duty rate would have been the same whether or not the textile material satisfied the durability requirements. Here, the assumption is that the thong had a price between $3.00 and $6.50. In that case, the presence of a vegetable fiber upper would not have qualified the shoe for the lower duty rate. At that price point, the only shoe eligible for the lower rate is one with uppers of textile materials other than vegetable fibers.

A children's "UGG" boot was the subject of NY N261171 (February 3, 2015). The boot has a foxing-like band. It is lined with faux fur which extends approximately one quarter inch above the topline. The vamp area of the boot is lined with a thin fleece. The NIS Division concluded that the thin textile material did not make the boot protective against the cold. As it is valued of over $12/pair, the boot's classification fell in 6404.19.90 (9%).

April 2015

The following recent Headquarters Office and New York rulings appear to be of general interest. The first of the two rulings appears in the Customs Bulletin for March 11, 2015. In HQ H237685, the Headquarters Office proposes to revoke NY N234957 (December 10, 2012), involving the classification of a rain boot. The footwear is a children's over-ankle waterproof pull-on boot. The external surface of the upper is entirely rubber. The injection molded sole is a combination of rubber and "coated leather material". The

process of adding the leather to the outsole is described as first cutting leather pieces that are then subjected to a machine perforation process that creates tiny holes, or pores, throughout the leather. The perforated leather pieces are placed into an injection molding machine. During the molding process, plastic oozes through the pores onto the surface of the leather, giving the coated leather a rubber or plastic appearance.

NY N234957 took the position that the outer sole was plastic and that classification fell in heading 6401 with duty at 37.5%. The Headquarters Office disagrees. The proposed ruling points out that an examination of a cross section of the outer sole under a microscope revealed that the plastic was only a thin coating over the leather. In the proposed ruling, the Headquarters Office used an essential character analysis and concluded that the material was leather. According to the ruling, the leather gives the outer sole its form and shape and the plastic lamination merely enhances the leather's durability and water-resistant qualities. The ruling goes on to state that leather coated with a layer of rubber or plastic is still considered to have the essential character of leather and is considered leather for tariff purposes. Accordingly, the ruling takes the position that the boots are classified in heading 6405, specifically subheading 6405.90.90 (12.5%).

The second ruling is NY N262369 (March 25, 2015). The footwear there was an espadrille with an upper of nylon and leather with the nylon being the majority. The material of the outer sole is jute and rubber/plastics. A laboratory report provided by the importer indicated that the jute was the predominant material in contact with the ground.

The NIS Division held that classification properly fell in subheading 6405.20.90 (12.5%) on the grounds that the outer sole was textile. What is interesting about this ruling is there is no mention of Additional US Note 5. While the description of the outer sole is not entirely clear in that it does not describe the plastic as a patch applied to jute sole or interspersed between the jute strands. In any case, what is important is that the jute was not subjected to the durability test of Additional US Note 5. This is consistent with what we seen in previous rulings - if the material of the outer sole is actually textile and not merely textile applied to an existing R/P outer sole, Additional US Note 5 does not come into play.

May 2015

The first is a proposed ruling, HQ H165759, which appears in the Customs Bulletin for April 29, 2015. The issue is the proper classification of a footwear upper.

The upper is textile. Two layers of material are sewn to the bottom of the upper. There are four holes, each approximately 1 1/8 inch in diameter, cut out of the outer bottom layer of the upper. The inner layer of the upper is complete. Two of the holes are partially covered by tape; the others remain open.

The issue is whether the upper is a formed upper. In NY N110715 (June 30, 2010), the NIS Division held that the upper was not formed. The Headquarters Office disagrees.

A formed upper is one which is closed at the bottom and which has been shaped by lasting, molding or otherwise but not by simply closing at the bottom. There are many rulings that hold that a fully-formed upper with a hole in the bottom is not formed. The crux of the classification dispute here is the nature of the holes. The proposed ruling points out that the perforations cut into the upper do not pierce the inner lining of the bottom, accordingly, the upper was deemed closed. The Headquarters Office proposes to rule that the uppers are classified as formed uppers in subheading 6406.1040 (7.5%).

The issue here is not duty. Footwear manufactured in the United States using a formed upper is not substantially transformed and must be marked with the origin of the formed upper. Also, under various free trade agreements, converting a formed upper to complete footwear typically does not create an "originating good".

The second ruling appears in the Customs Bulletin for April 22, 2015. It is also a proposed ruling, specifically, HQ H237638.

The issue there is the determination of the external surface area of the upper. The point of interest in the ruling is the presence of dueling laboratory reports. The test conducted by the Customs Laboratory concluded that the uppers were not more than 90% plastic when accessories were included. On the other hand, the importer submitted private laboratory reports which found that the plastic met the 90% requirement. It will come to no surprise that the Headquarters Office relies upon the Customs Laboratory reports and disregards the private laboratory report.

This is not to say that it is impossible to persuade CBP that private laboratory reports are more reliable than a Customs Laboratory report. However, it is difficult to do and at a minimum requires that you have examined the Customs Laboratory notes to determine whether an error was made. If there is a clear error, CBP will either provide a new test or will accept the private laboratory test.

Finally, the Customs Bulletin for April 8 includes proposed ruling, HQ H185722. That ruling proposes to revoke NY N161242 (May 16, 2011). The New York ruling dealt with a child's open toe/open heel sandal. The flat outer sole is a single piece of foam rubber/plastic cut into the shape of a footprint. The molded upper is a single piece that is secured by plugs to the outer sole. New York ruled that the sandal was classified in HTS subheading 6402.99.31, as sandals produced in one piece by molding.

Obviously, the Headquarters Office disagrees. The fact that the upper is secured to the outer sole by means of plugs clearly indicates that it is not molded in one piece. The Headquarters Office concludes that the appropriate classification is 6402.99.31. The shoe could not be classified as a zori because it has an adjustable heel strap.

June 2015

The following recent rulings appear to be of general interest. The first ruling, NY N263939 (May 7, 2015) involves a women's lace-up, closed toe, closed heel athletic shoe. The upper is textile and the outer sole is rubber/plastic. The shoe exhibits a foxing-like band, a traction sole, and a textile pull tab at the heel. The first cost is $12/pair. The importer argued that the shoe was not athletic. CBP disagreed and notes that the shoe possess the characteristics of athletic footwear (i.e. a secured meets of closure, a general athletic appearance, a cushioned flexible traction outer sole, etc.). CBP found classification in HTS subheadings 6405.11.90 (20%). Had CBP agreed that the shoe was non-athletic, classification would have fallen in subheading 6404.90.90 (9%). This ruling serves as another reminder that CBP sometimes takes a very broad view of what constitutes as athletic footwear.

The second ruling, NY N264140 (May 18, 2015), involves a women's rain boot with an upper of rubber/plastics. The outer sole is rubber/plastics with "visible and textile leather flocking" covering the majority of the surface in contact with the ground. The first cost exceeds $12/pair. CBP ruled that the proper classification was in subheading 6405.90.90 (12.5%).

July 2015

No noteworthy rulings.

August 2015

The first ruling, NY N264960 (June 9, 2015) concerns a woman's boot made from PVC. The boot is lined with neoprene. The outer sole is vulcanized rubber covered with reconstituted leather, which is the material in contact with the ground. Classification was found to fall in subheading 6405.90.90 (12.5%).

In HQ H237638 (June 1, 2015) CBP addressed the classification of three unisex cycling shoes. The issue was the material of the upper. The upper consisted of a textile mesh and a manmade fiber fabric coated with resin, which was considered rubber/plastic for purposes of classification in Chapter 64.

In NY N170022 (June 29, 2011), relying upon a visual examination of the shoes, New York ruled that classification fell in subheading 6402.19.90 (20%). The importer sought review by the Headquarters Office asserting that the uppers were over 90% rubber/plastics, including all accessories and reinforcements.

In support of its assertion, the importer supplied private laboratory tests. CBP then tested the shoes and the CBP Lab determined that two of the three shoes had uppers, which were less than 90% rubber/plastics, including all accessories and reinforcements. The importer responded with additional private laboratory tests, some of which showed that the rubber/plastic represented more than 90% of ESAU.

It will come to no surprise that CBP relied upon its lab rather than the competing private laboratory tests. Generally, CBP lab reports are presumed to be correct. It is not impossible to persuade CBP that its lab tests are not controlling. However, the importer must supply very compelling evidence to rebut the CBP lab report.

Here, the laboratory reports were disregarded because, in one case, the lab report identified a style and name not in issue. The other laboratory report was deemed unreliable as it had handwritten notations, was not dated, and did not state the testing method used. Accordingly, CBP rejected the importer's lab reports with respect to the two styles.

The next ruling, HQ H237647 (proposed) appears in the Customs Bulletin for July 1. The footwear at issue was ballet flats, closed toe/heel slip-ons-with a rubber out sole. One of the uppers had a plastic upper, the second textile. In both cases, New York ruled that the footwear did not have a foxing or foxing-like band. The ruling is NY N219385 (June 20, 2012). The ruling classified the plastic upper flat in 6402.99.31 (6%) and the textile flat in 6404.19.30 (37.5%).

The importer argued that the footwear did have a foxing-like band. The Headquarters Office agreed and reclassified the footwear; the plastic flat in subheading 6402.99.80, and the textile in 6404.19.89, both with a duty rate of 90¢/pr. + 20%.

Although this resulted in higher duties for one of the shoes, the implication here is that the importer's line almost surely consisted of footwear with prices in excess of $12. That being the case, slip-on with a foxing like-band is eligible for duty at 20% where the upper is plastic and 9% where the upper is textile.

The point is that the presence of a foxing-like band on a slip-on is not necessarily a disadvantage.

The *Customs Bulletin* for July 29 includes HQ H219215 (proposed). The ruling proposes to revoke NY N212500 (April 25, 2012).

The issues relates to a pair of men's open toe/heel flip-flop thong sandal with R/P outer soles. Two components V-shaped strap upper is described as predominately leather. The New York ruling discards the portion of the leather as they are overlays and considered accessories.

The importer appealed and persuaded the Headquarters Office that the New York ruling was incorrect.

The Headquarters Office notes that there was a test establishing that the upper, including the leather component considered an accessory or reinforcement was 51.49% leather. Noting that although the overlays were not considered part of the ESAU, meaning that the upper had a textile upper, there is a provision in heading 6404 which provides for

footwear whose upper is more than 50% leather when all accessories and reinforcements are included. Clearly, this shoe falls in that provision. Accordingly, the ruling holds that the correct classification is in HTS subheading 6404.19.15 at 10.5%.

Finally, the *Customs Bulletin* for July 1 publishes HQ H165759 (June 5, 2015). This ruling was described as a proposed ruling in the May Report. It deals with uppers and whether they are formed or unformed.

September 2015

The following is a brief summary of recent CBP classification decisions. Both involve sandals and illustrate CBP's very narrow interpretation of what constitutes a zori. NY N276154 (July 24, 2015) addresses the classification of a thong sandal with a "V" shaped strap. The upper is secured to the outer sole by plugs. Measurements taken of the contoured sole indicated that the thickest point to be approximately 1.02 inches and the thinnest, 0.59 inches, a 42% difference. CBP classified the thong in subheading 6402.99.31 (6%). The thong could not be classified as a zori because the thickest point of the sole is more than 35% thicker than its thinnest point.

The second ruling, NY N267042 (August 5, 2015) held that a flip flop was classified in subheading 6402.99.49 (37.5%). The upper consisted of a molded piece in a "Y" shape and a textile strap. The presence of the textile strap meant that the shoe could not be classified as a zori, which must have a one-piece upper. Also, the presence of the textile strap, which presumably represented more 10 percent of the ESAU, meant that classification in subheading 6402.99.31 (6%) was precluded.

October 2015

The following is a brief summary of recent Customs and Border Protection ("CBP") classification decisions. NY N267673 (August 20, 2015) and NY N266871 (August 7, 2015) both involve slippers. The first ruling described the outer sole as consisting of a rubber/plastic material incorporating a non-durable textile material which covers the majority of the outer surface in contact with the ground. The upper was textile. The ruling finds classification in HTS 6404.19.37 (12.5%).

In N266871 the slipper had a sewn-on rubber/plastics outer sole covered with knit textile. The material in contact with the ground was the textile. Classification was found in subheading 6405.20.90 (12.5%). The importer had suggested classification in subheading 6404.19.37. The ruling rejects the importer's suggested classification noting that the textile portion constituted the material in contact with the ground. There is no mention of durability or of Additional US Note 5. It is difficult to reconcile the two rulings. There have been indications that in the case of indoor footwear (slippers) textile durability would be ignored. That may be what occurred in N266871 but that does not explain the different result reached in N267673.

NY N267221 (August 20, 2015) addressed the classification of a girl's closed-toe, closed-heal, slip-on. The shoe was one-piece molded construction. The importer sought classification in subheading 6402.99.27 (3%), covering sandals and similar footwear produced in one piece by molding. CBP disagreed and classified the footwear in subheading in 6404.99.31 (6%). The basis of the decision is that the shoe does not have an open toe, open heel or an outer sole held to the foot with footwear straps and, therefore, was not deemed to be a sandal or similar footwear.

In NY N266909 (August 10, 2015) CBP addressed the In NY N266909 (August 10, 2015) CBP addressed the classification of various shoe covers. The shoe covers are elasticized to secure them to the foot and they are intended to be worn over shoes. The majority of the shoe covers were one piece, constructed of rubber/plastic and classified in HTS subheading 3926.90.99 (5.3%). One of the shoe covers had a clearly defined outer sole and for that reason was classified in Chapter 64. The cover was made from a textile material with an applied layer of rubber/plastics. Accordingly, classification was held to be in subheading 6404.19.20 (37.5%), as protective footwear.

November 2015

In NY N267795 (September 8, 2015), the NIS Division addressed the classification of two men's sneaker-type shoes. The shoes have textile uppers, foxing-like bands and rubber/plastic outsoles. The first cost exceeds $12.

CBP found classification in subheading 6404.19.90 (9%) on the grounds that "the outer soles do not possess the necessary traction". Classification as athletic was precluded, even though the ruling acknowledges that the shoes have the general appearance of athletic footwear. The ruling does not include a description of the outer sole.

NY N268510 (September 17, 2015) deals with the classification of a woman's open toe, closed heal, slip-on shoe with an upper made from cork lacquered with polyurethane. CBP found classification in subheading 6405.90.90 (12.5%) inasmuch as the upper was considered to be made of cork.

Slippers were the subject of NY N268510 (September 17, 2015). The slippers are said to have textile upper, which are fully insulated. The outer soul is described as textile with plastic overlays. There is no mention of whether the plastic represents the majority of the material in contact with the ground or whether the outer soul is basically rubber/plastic covered with textile. The fact that the ruling requests classification in heading 6404 suggests that the outer soul was rubber/plastic covered in textile.
Classification fell in subheading 6405. 20. 90 (12.5%).

There is no mention in the ruling of Note 5 or the durability of the textile material on the sole. Presumably, that is because the shoe was an indoor shoe and durability is not an issue.

Note, even though the slipper was insulated, it would not be classified as protective

because it is an indoor shoe and that would have been the case if the shoe had a rubber/plastic sole and was classified in heading 6404, as claimed by the importer in the ruling request.

The issue in NY N267298 (August 31, 2015) was whether the imported uppers were considered "formed". Both uppers were textile. One of the two has a 2.5 inch seam that joins the top to the bottom of the upper. Because the seam could be closed with simple stitching, CBP classified the upper as "formed" in subheading 6406.10.40 (7.5%). The second upper had a quarter-sized hole cut from the bottom. This upper was considered not-formed as long as the material used to close the hole is not included in the same shipment as the upper. Classification fell in subheading 6406.10.90 (4.5%).

Keep in mind that footwear manufactured in the United States with imported "formed" uppers is considered to have originated in the country where the uppers produced.

December 2015

No noteworthy rulings.