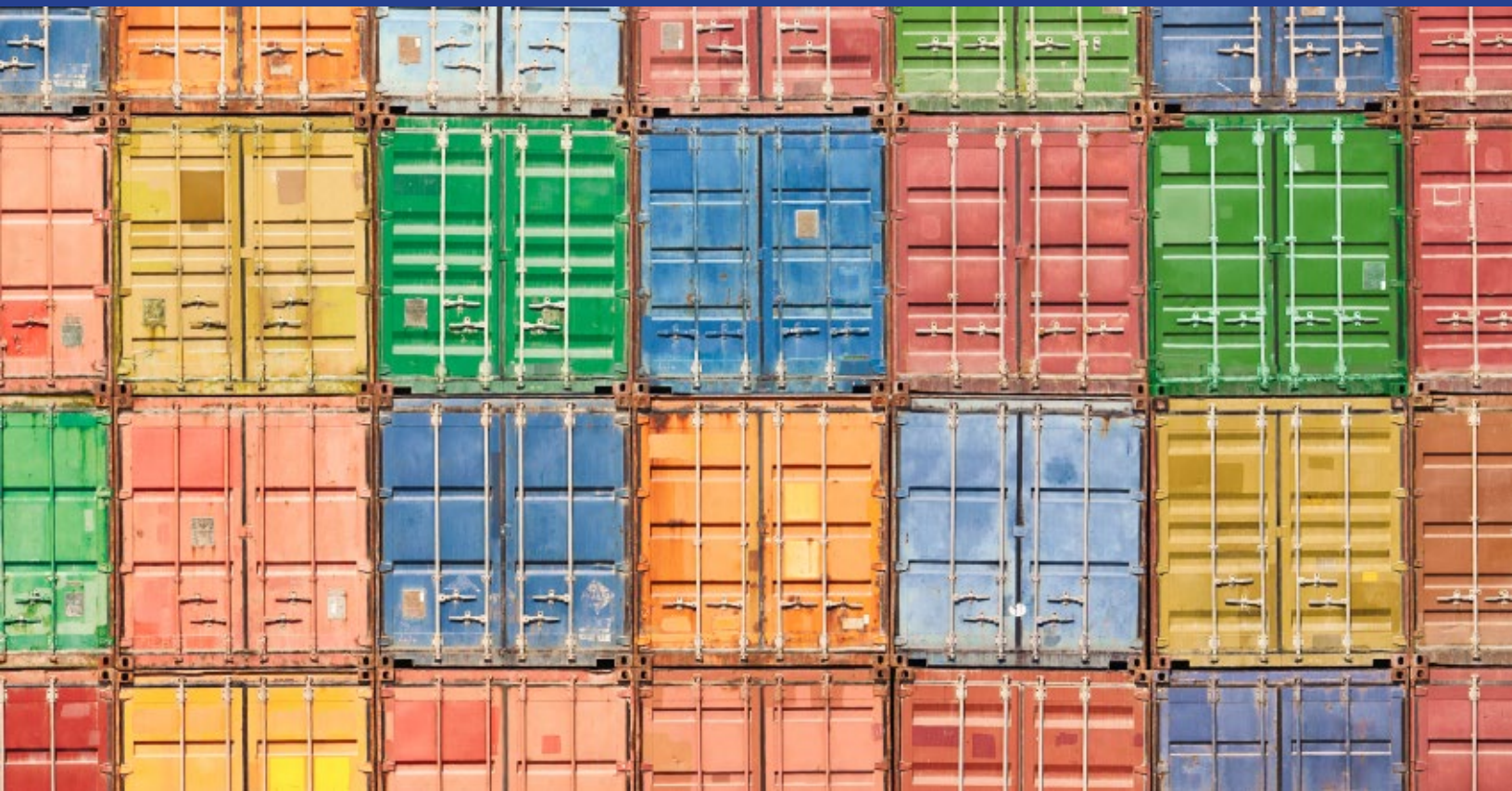




FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

# Footwear Customs Rulings & Analysis Handbook

# 2017







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## January

[HQ H237647 \(December 27, 2016\)](#) revokes what appears at first blush to be a ruling favorable to the importer. The ruling is NY [N219385 \(June 20, 2012\)](#). The footwear at issue was ballet flats, closed toe/heel slip-ons-with a rubber outsole. 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 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. Both shoes have unit-molded bottoms that overlap the upper by a quarter inch or more around more than 60 percent of the perimeter - a vanilla foxing-like band. The NY ruling simply stated that neither shoe had a foxing or foxing-like band. It is no surprise that the Headquarters Office agreed with the importer 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%.

My speculation is that the importer challenged the NY ruling because its line included footwear with prices in excess of \$12. A 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.

This is one time that the presence of a foxing-like band is an advantage.

## February

Nothing of note for footwear.

## March

A recent New York ruling serves as a reminder that the use of leather flocking or fibers on footwear with a R/P outsoles and textile uppers is not effective.

In [NY N280949 \(December 7, 2016\)](#), CBP addressed the classification of a winter boots with a textile of upper and a R/P outsole lined with plush textile fleece. Leather fibers are applied to a majority of the area of the sole touching the ground. CBP held that the boot is classified in HTS subheading 6404.20.60 (37.5%), the same rate that would have applied without the leather fibers attached to the sole.

## April

A recent ruling illustrates that adding leather to a rubber/plastic outer sole does not reduce the duty.

The shoe in [NY N278626 \(February 21, 2017\)](#) was a waterproof boot with a textile upper. The outer sole is comprised of a thin layer of leather placed into an outsole mold and rubber compound put into the mold. The Customs Laboratory determined that the external surface area of the outer sole is majority leather. The importer sought classification in heading 6405. It was not

to be. CBP found classification in subheading 6404.20.60 (37.5%). That provision covers footwear with textile uppers and leather outsoles.

By way of contrast, in [NY N282692 \(March 2, 2017\)](#), CBP looked at a waterproof boot with a plastic upper and a rubber/plastic outer sole. The outer sole has composition leather imbedded into the sole that comprises the majority of the area in contact with the ground. CBP found classification in subheading 6405.90.90 (12.5%).

The distinction is clear; protective footwear with leather soles and plastic uppers are effective in terms of saving duty. On the other hand, leather outsoles and textile uppers do not provide a favorable rate for protective footwear.

The Rubber Plastic Footwear Manufacturers' Association (RPFMA) is currently proposing to eliminate the use of the leather outsole technique. If these interests have their way, the use of either leather or textile flocking, whether or not "durable" will be curtailed. They propose that additional note 5, Chapter 64 be amended to read as follows;

*5. For the purposes of determining the constituent material of the outer sole pursuant to Note 4(b) of this chapter, the constituent material of an outer sole consisting of rubber or plastics to which textile or other materials are attached or into which such materials are otherwise incorporated shall be deemed to be only rubber or plastics, and no account shall be taken of the textile or other materials.*

***FDRA has voiced its strong opposition to this proposal and will continue to engage with both RPFMA and policymakers to ensure this proposal does not become law.***

## May

The following is a brief summary of recent classification rulings.

[NY N283660 \(March 23, 2017\)](#) addresses the classification of a child's closed toe / closed heel, above-the-ankle, slip-on, waterproof shoe with an outer sole of rubber or plastics ("R/P"). The external surface area of the upper is 80% R/P, 20% textile around the ankle. Although not stated, we assume the textile was attached by means of stitching. The shoe exhibits pull tabs at the heel and in front of the ankle, both of which are stitched at the topline.

Customs and Border Protection ("CBP") found classification in subheading 6401.92.60 (37.5%). Classification in heading 6401 is precluded when the upper is assembled by stitching, a limitation which appears to have been overlooked here. On the other hand, there are numerous rulings where what appears to be minor stitching is ignored in finding classification in heading 6401.

[NY N283764 \(March 23, 2017\)](#) looks at the classification of a man's lace-up shoe with a thick rigid outer sole of R/P. The upper is comprised of 80% polyurethane. The FOB exceeded \$12/pair. Although the importer sought classification in heading 6404, presumably hoping for a 9% duty rate. It was not to be, CBP ruled that the upper was R/P not textile. Accordingly, classification fell in subheading 6402.99.90 (20%).

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In [NY N284012 \(April 3, 2017\)](#) the importer try to persuade CBP that a slip on, thong sandal with a "V"-shaped upper consisting of two sewn pieces of R/P was a zori. The sandal also had a textile thong that accounted for less than 10% of the ESAU.

Needless to say, CBP did not agree and found classification in subheading 6402.99.31 (6%). Among the seven requirements for classification as a zori is an upper that consists of a single, molded piece of R/P.

The fourth ruling is [NY N284080 \(April 4, 2017\)](#). The shoe at issue is a woman's, below the ankle slip on. Elasticized fabric is attached to the textile upper on the same plane as the balance of the upper. The upper need only be spread apart to put on or remove the shoe. Although the shoe has laces, they are considered non-functional. The ruling indicates that the shoe is a slip on and that classification lies in subheading 6404.19.90 (9%).

Although the shoe is a slip on, classification did not fall in subheading 6404.19.39 (37.5%) because of the presence of a foxing-like band.

## June

The following is a brief summary of recent classification rulings.

The initial ruling, [NY N284223 \(April 11, 2017\)](#), deals with women's, open toe/open heel, below-the-ankle, platform wedge sandals with outer soles of rubber/plastics. The leather uppers are attached in four places on either side of the platform/wedge bottoms by riveted, magnetized, metal pegs. The wedge bottoms consist of plastic that is wrapped with a thin layer of cork, stacked leather, or wood. Each has a wrapped, cushioned insole and holes with metal inserts that correspond to the pegs of the uppers. All of the uppers are removable and interchangeable with the wedge bottoms. The uppers will be imported with corresponding bottoms. Some leather uppers will be imported separately. All of the uppers are valued over \$2.50 per pair.

When imported together, the combination of uppers and corresponding bottoms will be classified as complete footwear in subheading 6403. 99. 90 (10%). Although not stated, this classification applies only when there is an equal number of uppers and corresponding bottoms in a shipment.

When imported separately, the uppers are classified in subheading 6406.10.10 (Free).

[NY N284486 \(April 13, 2017\)](#) classified a woman's "flip-flop" in subheading 6405.20.30 (7.5%). The shoe has a Y-shaped upper consisting of a 55/45 cotton/polyester fabric. The outer sole is textile with widely spaced rubber/plastic traction dots. Based upon the classification determined by CBP, it is apparent that textile was the majority material in the contact with the ground.

## July

The following is a brief summary of recent classification rulings.

The first of the rulings appears in the *Customs Bulletin* for June 7, 2017. In HQ H 242873 (Proposed), CBP would revoke NYRL N22103 (July 18, 2012). That ruling held that certain foot sleeves were classified as hosiery in HTS subheading 6115.96.90 (14.6%). The foot sleeves cover various areas of the foot for purposes of cushioning only and may not be worn without socks or shoes to cover them. There is no fabric covering on the toes, heels, or ankles. The importer argued that the sleeves were not hosiery or substitutes for hosiery. CBP agreed. According to CBP, the sleeves do not sufficiently cover the area of the foot or toes to warrant classification as hosiery. CBP held that the foot sleeves were classified and in subheading 6307.90.98 (7%).

NYRL N276490 (June 2, 2017) addressed the classification of an in-line skate boot. The boot has a leather upper and has provision for the attachment of an aluminum chassis. The boot will be imported and offered for sale with and without the chassis, but without wheels. CBP ruled that the absence of wheels required classification in Chapter 64 as sports footwear, specifically in HTS subheading 6403.19.70. (Free). With wheels, classification would fall in Chapter 9J.

Slippers are the subject of NYRL N28517 (June 13, 2017). The slippers have a textile upper and a R/P outsole with textile flocking. The slipper has a fleece lining. The ruling does not indicate whether the fleece lining covers the entire foot. The slipper was found to be classified in HTS subheading 6404.19.37 (12.5%). The fact that the ruling does not mention the possibility of a protective classification illustrates that slippers, as indoor footwear, are not classified as protective.

NYRL N286574 (June 14, 2017) concerns the classification of a man's closed toe/closed heel, oxford height lace-up shoe with a R/P outsole. The ESAU is 80/20, R/P, textile. The importer argued that the flat portion of the sole is designed to fit a flat bicycle pedal and sought classification as sports footwear. CBP disagreed. The ruling points out that the outsole has no cycling cleats and no provision for the attachment of such. CBP found classification in HTS subheading 6420.99.90 (20%), as the first cost exceeded \$12/pr.

## **August**

The following is a brief summary of recent classification rulings.

The first ruling, [NY N285717 \(June 26, 2017\)](#), examined the tariff classification and NAFTA eligibility of a man's leather upper, leather outsole cowboy welt boot. The boot was made in Mexico. The boot was classified in subheading 6403.51.30 (5%).

New York also concluded that the boot qualified for NAFTA status. All of the leather was further processed after importation into Mexico. New York concluded that this satisfied with the tariff change rule applicable to Chapter 41. Accordingly, the leather was considered an originating material. Although not stated, we assume that the same applies to the leather used to make both the uppers and the soles.

The applicable rule of origin requires a change in classification to headings 6401 - 6405 from any heading outside the group except subheading 6406.10 covering, uppers and upper parts, provided there is a regional value content ("RVC") of 55 percent.

The boot clearly satisfies the tariff change rule. The ruling never mentions the RVC. However, the fact that all of the leather is originating makes it almost invariable that the RVC requirement was satisfied.

The iconic "Chuck Taylor All-Star" is the subject of [NY N287357 \(July 10, 2017\)](#). The sneaker has an inner protective waterproof lining. Classification was held to fall in subheading 6404.11.90 (20%), as athletic footwear. If non-athletic, the duty rate would be 37.5%.

The cycling boot covered in [NY N284489 \(July 12, 2017\)](#) has a removable gaiter that covers the ankle. The boot upper is leather and R/P, with the majority being R/P. The removable gaiter is described as "synthetic textile (rubber/plastics)". The gaiter attaches to the boot with a zipper. The ruling describes the boot as providing protection against water.

The ruling treats the boot-gaiter combination as a composite good. Composite goods are classified according to the component that imparts the essential character of the whole. It is obvious that as between the boot and the gaiter, the former is the more important.

The ruling is confusing in that it is not clear whether the determination that the upper was majority R/P included the gaiter. Assuming it did not, the ruling is correct in determining classification to be in subheading 6402.91.50 (37.5%).

The next ruling concerns a woman's boot with an outer surface of R/P. The boot is lined with a thick faux fur, which covers the shaft, the foot as well as the foot bed. Inasmuch as the faux fur covers the entire foot, the boot is protective against cold and is classified in subheading 6404.19.20 (37.5%). Eliminating faux fur on the insole would have avoided classification as protective.

The final classification ruling, [NY N287354 \(July 7, 2017\)](#), covers house slippers and removable insoles. The slipper uppers and separately applied outer soles are wool felt. An application of R/P appears on the soles but wool is the majority of the material in contact with the ground. The removable insoles are wool. The slippers are classified in subheading 6405.20.60 (2.5%). When imported separately, the wool insoles are classified in subheading 6406.90.15 (14.9%).

## September

The following is a brief summary of recent classification rulings.

The first of the rulings appears in the [Customs Bulletin for August 16, 2017](#). In HQ H242873 (July 19, 2017) CBP revokes NY [N222103 \(July 18, 2012\)](#). The NY ruling held that certain foot sleeves are classified as hosiery in HTS subheading 6115.96.90 (14.6%). The foot sleeves cover various areas of the foot for purposes of cushioning only and must be worn with socks or shoes. There is no fabric covering on the toes, heels, or ankles. The importer argued that the sleeves were not hosiery or substitutes for hosiery. CBP agreed. According to CBP, the sleeves do not sufficiently cover the area of the foot or toes to warrant classification as hosiery. CBP held that the foot sleeves are classified and in subheading 6307.90.98 (7%).



The same addition of the Customs Bulletin published HQ H285612 (Proposed). The ruling proposes to revoke [NY N276141 \(July 29, 2016\)](#), which held that a chest-high fishing wader with a predominantly textile upper and a R/P outsole with a thin layer of leather was classified in HTS subheading 6505.90.90 (12.5%). CBP proposes to reclassify the waders in HTS subheading 6404.20.60 (37.5%). The latter provision, which describes footwear with textile uppers and leather outsoles, is the obviously correct classification.

Two rulings involve fabric upper footwear with R/P soles. [NY N288178 \(August 10, 2017\)](#) found that the subject footwear was athletic and therefore classified in HTS subheading 6404.11.90 (20%). What appears to be somewhat similar footwear was classified as non-athletic in [NY N288264 \(August 11, 2017\)](#). There, classification fell in HTS subheading 6404.19.90 (9%). Both rulings covered footwear valued at over \$12 a pair.

The first of the two rulings indicates that classification as athletic was based upon the flexibility of the outer sole, the presence of a foxing or foxing-like band, a secure form of closure and a general athletic look. One of the shoes in the second ruling had a foxing-like band, but according to CBP did not have the general appearance of athletic footwear. The ruling does note that the upper is predominantly a large weave textile material.

A comparative reading of the rulings confirms that the distinction between athletic and non-athletic footwear has a large subjective component.

The final ruling is [NY N287847 \(July 25, 2017\)](#). The footwear addressed there is a rain boot with a R/P upper and outer sole. The sole is described as incorporating a textile wrap. Since the textile wrap met the durability test, classification fell in subheading 6405.90 .90 (12.5%).

## October

Nothing of note for footwear.

## November

The following is a brief summary of recent classification rulings.

In NY N290178 (October 12, 2017) New York looked at the classification of a woman's closed toe/heel shoe with R/P sole. The upper is predominantly a man-made fiber textile. The shoe does not have a tongue and although it does have laces, the laces need not be fastened or loosened and, for that reason, the shoe was considered a slip on. Classification was held to fall in HTS subheading 6404.19.39 (37.5%).

The difference between classification as athletic and non-athletic is illustrated in NY N289881 (September 28, 2017). The ruling covers two shoes. Both shoes had textile uppers and R/P outsoles. Both were closed toes and heel. One of the two had an above-the-ankle bootie sock upper with no defined tongue. That shoe was deemed non-athletic. There was no mention of the factors that led to the determination of non-athletic classification. The second shoe was deemed athletic

in part because it had a lightweight upper, secure closures and a padded tongue. There is also the usual statement that the shoe was "athletic in styling".

NY N290469 (October 23, 2017) demonstrates an instance where the presence of a foxing or foxing-like band would have been beneficial. The shoe at issue had a textile upper and a R/P outer sole. There are non-functional laces. The shoe does not have a foxing or foxing-like band and is priced in excess of \$12/pair. It is said to fall in HTS subheading 6404.19.39 (37.5%). With a foxing, classification would have fallen to subheading 6404.19.90 (9%).

The final ruling, NY N290097 (October 6, 2017) involved a thong sandal. The thong was described as having a V-shaped upper decorated with seven loosely attached fabric flowers. The upper is held to the layered foam EVA sole by plugs. The importer sought classification as a zori. That classification is inappropriate because the height of the contoured outer sole is not approximately even. Therefore, the thong fell in HTS subheading 6402.99.31 (6%).

## December

The following is a brief summary of recent classification rulings.

In New York [N290683 \(October 27, 2017\)](#), CBP ruled that a woman's closed toe/ heel shoe with an unstructured textile booty upper and a R/P outsole was classified HTS subheading 6404.19.90 (9%). The shoe is described as having a functional toggle closure to tighten the shoe to the foot and a foxing-like band.

The ruling does not state whether CBP considered the shoe to be a slip-on. It mentions that the toggle tightens the shoe to the foot but not whether it must be employed in putting on or taking off the shoe. As a slip on, it would have been subject to a higher rate of duty in subheading 6404.19.39 (37.5%). The presence of the foxing-like band precluded that classification.

[NY N291109 \(November 6, 2017\)](#) the classification of a flax upper espadrille. The outer sole is a combination of cork and R/P, with cork being the majority material in contact with the ground. Classification was held to fall in HTS subheading 6405.20.30 (7.5%).

Weight is the crucial element in [NY N285043 \(November 13, 2017\)](#). The shoe is a woman's slip on. The upper is cotton and the outer sole is leather. The Customs Laboratory determined relative weights of the component materials to be 50.8% leather, 14.2% textile, R/P 13.8% and other 21.2%. Since the combined weight of the R/P and textile components is less than 50%, classification falls in HTS subheading 6404.20.40 (10%).

The Customs Bulletin for November 29, 2017 published HQ H285612 (November 29, 2017). The ruling revokes [NY N276141 \(July 29, 2016\)](#), which held that a chest-high fishing wader with a predominantly textile upper and a R/P outsole with a thin layer of leather was classified in HTS subheading 6505.90.90 (12.5%). CBP reclassified the waders in HTS subheading 6404.20.60 (37.5%), which provides for footwear with textile uppers and leather outsoles and is the obviously correct classification.