

The following outlines the principles that govern whether adding textile or leather (whether flocking or sheets) to a complete rubber/plastic outsole affects classification and lowers the duty rate. The following does not apply to textile materials that are considered durable under Additional US Note 5, Chapter 64. CBP's interpretation of the note is explained below.

I. TEXTILE

A. Heading 6402 – Rubber/Plastic uppers

1. Does not apply to over-the-ankle footwear
2. Price cannot exceed \$6.50 unless the shoe is open toe or heel, or the shoe is a slip-on and does not have a foxing or FLB
3. Does not apply to protective footwear
4. Applies to some subheadings only

B. Subheadings 6404.11 and 6404.19 – Textile uppers

1. Price must be less than \$12 unless the shoe is not sports or athletic and is open toe or heel, or the shoe is a slip-on and does not have a foxing or FLB
2. Does not apply to protective footwear
3. Pay attention to whether upper material is vegetable fiber or other
4. Applies to some subheadings only

II. LEATHER

A. Heading 6405 - Rubber/Plastic uppers – no restrictions – rate will be 12.5%

B. Subheading 6404.20 - Textile uppers – Adding either leather or composition leather sheet leads to classification in subheading 6404.20. The effect of adding leather flocking is not well settled. There are few rulings on textile upper footwear with leather flocking on a R/P sole. Our view is that leather flocking is not leather for purposes of Chapter 64. Chapter Note 3(b) defines leather as materials classified in headings 4107, 4112-4114. We would classify leather flocking in 4115.20 - no ruling support. Composition leather is classified in 4115.10.

Many rulings hold that R/P upper footwear with leather flocked soles is classified in heading 6405. These rulings are not dispositive as to textile upper footwear because heading 6404 includes footwear with leather or composition leather soles, whereas heading 6402 is limited to footwear with R/P soles.

III. ADDITIONAL NOTE 5 INTERPRETATION.

CBP has adopted ISO 20871 as the test methodology to determine whether a textile material satisfies the durability requirement of Additional US note 5, Chapter 64, HTS. Generally, the test method requires that three plugs be taken from the areas of the sole with textile material and subjected to abrasion.

CBP did not adopt the ISO standard. The requirement is that textile material must appear on one of the three plugs taken from the outsole and subjected to the abrasion test. If textile appears on one of the three

samples, all of the textile in contact with the ground will be treated as durable and will be used in determining whether textile represents the majority of the area in hi the ground.

CBP changed its original position with respect to the definition of indoor footwear, which is not subject to durability testing. It abandoned the idea of using the definition of house slippers in Statistical Note (1)(d), Chapter 64. Rather, as at present, the determination will be made on an *ad hoc* basis.

CBP confirmed that importers who do not believe that the textile is sufficiently durable do not need to test.

Finally, CBP agreed that when textile is the only material that can possibly make up the outer sole, no test is required. The test is required only when textile material is superimposed on a substrate of rubber/plastic.

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