DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JAN 1 5 2010

Mr. David B. Beck
Office of Tariff Affairs and Trade Agreements
U.S. International Trade Commission
500 E Street, SW
Washington, DC 20436

RE: Proposed Modifications to the Harmonized Tariff Schedule of the United States (HTSUS) Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988; Special Classification Provisions in Chapter 64 of the HTSUS

Dear Mr. Beck:

Pursuant to Section 1205 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. §3005), the Department of the Treasury respectfully requests that the International Trade Commission (ITC) commence a Section 1205 investigation regarding the administration of Note 4(b) to Chapter 64, Harmonized Tariff Schedule of the United States (HTSUS). We specifically request that the ITC recommend to the President the addition of an Additional U.S. Note and the amendment of certain classification provisions in Chapter 64 of the HTSUS relating to certain footwear featuring outer soles of rubber or plastics to which a layer of textile material has been added. These suggested measures would promote the uniform application of the Harmonized System Convention as well as alleviate unnecessary administrative burdens.

Tariff Classification of Footwear

Classifying footwear at the heading level requires consideration of the composition of the upper and the outer sole of the footwear. With regard to determining the composition of the outer sole, Legal Note 4(b) states the following: "[t]he constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments."

Customs and Border Protection (CBP) has issued a number of decisions holding that textile material added to an outer sole that is otherwise composed of rubber or plastics will be considered the constituent material of the outer sole when it covers the majority of the surface area of the outer sole in contact with the ground.[1] We have undertaken a review of these decisions in conjunction with the events which are described below.

[1] *See* Headquarters Ruling Letter 965751, dated November 18, 2002, in which CBP, responding to a Petition by Domestic Interested Party filed pursuant to 19 U.S.C. § 1516, held that such textile material should be taken into

HSC Decisions on Footwear Featuring Rubber/Plastics Outer Soles with a Layer of Textile Material Attached to the Surface Area

At the request of the United States, at its 34th Session, the Harmonized System Committee (HSC) of the World Customs Organization examined the issue of the classification of three types of footwear featuring rubber/plastics outer soles with an added layer of textile material. The Committee decided to classify the first two samples in subheading 6404.19[2] and a third sample in subheading 6405.20[3], by application of General Interpretative Rules (GRI) 1 and 6. By letter of December 3, 2004, China entered a reservation on the decisions classifying two of the samples in subheading 6404.19.[4] As a consequence, the HSC approved an amendment to the Compendium of Classification Opinions only for the sample classified in subheading 6405.20. Classification Opinion 6405.20/1 (HSC/35) describes a shoe with a textile upper and an outer sole of rubber, 52 percent of which was covered with textile flock that was partially embedded in the rubber, and provides for classification in subheading 6405.20.

The HSC ultimately reconsidered the tariff classification of the other samples at its 36th Session and confirmed that the samples were indeed classified in subheading 6404.19.[5] Amendments to the Compendium of Classification Opinions reflecting the decisions made at HSC/36 were approved by the HSC at its 37th Session.[6] In 6404.19/1 (HSC/37, March 2006), a woman's shoe with a textile upper and an outer sole of plastics, 67.5 percent of which was covered with flocking (fibers of rayon not exceeding 5mm in length) in a manner that created a design and trademark, was classified in subheading 6404.19. Similarly, in 6404.19/2 (HSC/37, March 2006), a woman's shoe with a textile upper and an outer sole of plastics, 78 percent of which was covered by a detachable knitted polyester fabric that was affixed to it at the ball of the foot and heel, was also classified in subheading 6404.19. In both of these classification opinions, the textile material on the footwear was considered to be an "accessory or reinforcement" and was therefore not taken into account in determining the constituent material of the outer sole having the greatest surface area in contact with the ground.

Unlike the footwear in Classification Opinion 6405.20/1, in which the textile flock was found to be partially embedded, the textile material on the footwear subject to Classification Opinions 6404.19/1 and 6404.19/2 was found to be merely attached, and consequently was determined not to be the constituent material of the outer sole.

In addition to the foregoing classification opinions, the HSC adopted an amendment to the General Explanatory Note (EN) (C) to Chapter 64 (GEN 64(C)) at HSC/37. GEN 64(C) now reads as follows:

---

account for the purposes of Note 4(b) to Chapter 64, HTSUS, notwithstanding the fact that the textile material wears off after very limited use. CBP also issued approximately twenty rulings following this line of reasoning.

[2] Subheading 6404.19 provides for: "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: Footwear with outer soles of rubber or plastics: Other."

[3] Subheading 6405.20 provides for: "Other footwear: With uppers of textile materials."

[4] *See* Annex O/19, Doc. NC0938B3b (HSC/35 – Report).

[5] *See* Annex F/2 to Doc. NC1004E1b (HSC/36 – Report).

[6] *See* Annex O/16 to Doc. NC1059B2b (HSC/37 – Report).

> The term "outer sole" as used in headings 64.01 to 64.05 means that part of the footwear (other than an attached heel) which, when in use, is in contact with the ground. The constituent material of the outer sole for purposes of classification shall be taken to be the material having the greatest surface area in contact with the ground. In determining the constituent material of the outer sole, no account should be taken of attached accessories or reinforcements which partly cover the sole (see Note 4(b) to this Chapter). These accessories or reinforcements include spikes, bars, nails, protectors or similar attachments (including a thin layer of textile flocking (e.g., for creating a design) or a detachable textile material, applied to but not embedded in the sole).

The HSC classification opinions and GEN 64(C) reiterate that "accessories or reinforcements," covering or affixed to the outer sole, are not to be taken into account in determining the constituent material of the outer sole. As made clear in these sources, "accessories or reinforcements" can take the form of spikes, bars, nails, protectors, flocking, detachable textile material or similar items that may be positioned on the outer sole. Such "accessories or reinforcements" are subordinate in the formation of the outer sole to the extent that if they were detached, an outer sole of another material remains. The HSC classification opinions and GEN 64(C) also stated that material that is "embedded" is not regarded as subordinate in the formation of the outer sole. "Embedded" material is not an accessory or reinforcement, but part of the actual outer sole that is to be taken into account in determining the constituent material of the outer sole as described by Note 4(b) to Chapter 64, HTSUS.

It does not appear that the decisions of the HSC, as reflected in the General Explanatory Note, draw an adequate distinction between textile layers on outer soles that are to be considered accessories or reinforcements and those which are not. Rather than basing the question on the manner in which the textile layer is applied, such a distinction should be drawn based on whether the layers of textile materials possess the characteristics usually required for normal use of an outer sole, such as durability or strength. Those which do not should be considered accessories and reinforcements and should not be taken into consideration for classification purposes.

Accordingly, we respectfully request that, in light of the decisions taken by the HSC with respect to GEN 64(C) and the scope of Note 4(b) to Chapter 64 of the Harmonized System, an Additional U.S. Note be added to Chapter 64, HTSUS, to clarify that textile materials that do not possess the characteristics usually required for normal use of an outer sole (e.g., durability strength, etc.) should not be taken into account for classification purposes when added to an outer sole.

Specifically, we suggest that the following Additional U.S. Note be inserted in Chapter 64 of the Harmonized Tariff Schedule of the United States:

> "5. For purposes of determining the constituent material of the outer sole pursuant to Note 4(b) to this Chapter, no account

shall be taken of textile materials which do not possess the characteristics usually required for normal use of an outer sole, including durability and strength."

On the basis of rulings issued by CBP, the tariff classification of certain imported footwear falling under the scope of the proposed Additional U.S. Note 5 will change from subheadings 6405.20.30, 6405.20.90, and 6405.90.90 to other subheadings in Chapter 64, HTSUS.[7] Accordingly, in order to ensure substantial rate neutrality, and to reflect our understanding of current trade patterns, we respectfully request that new tariff lines be inserted into the structure of headings 6402 and 6404, HTSUS, as follows:

(A) Subdivide subheading 6402.99.60 into the following two new subheadings:

	Valued not over $3/pair:	
6402.99.61	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6402.99.69	Other	48%

(B) Subdivide subheading 6402.99.70 into the following two new subheadings:

	Valued over $3 but not over $6.50/pair:	
6402.99.71	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6402.99.79	Other	90¢/pair + 37.5%

(C) Subdivide subheading 6404.11.40 into the following two new subheadings:

	Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:	
6404.11.41	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.49	Other	37.5%

(D) Subdivide subheading 6404.11.50 into the following two new subheadings:

	Other:	
6404.11.51	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%

[7] In particular, footwear with textile material attached to the outer sole is classifiable in subheadings 6405.10.10, HTSUS, at 10 percent *ad valorem*, 6405.20.30, HTSUS, at 7.5 percent *ad valorem*, and 6405.20.90, HTSUS, at 12.5% ad valorem.

6404.11.59	Other	48%

(E) Subdivide subheading 6404.11.60 into the following two new subheadings:

Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:

6404.11.61	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.69	Other	37.5%

(F) Subdivide subheading 6404.11.70 into the following two new subheadings:

Other:

6404.11.71	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.79	Other	90¢/pair + 37.5%

(G) Subdivide subheading 6404.11.80 into the following two new subheadings:

Valued over $6.50 but not over $12/pair:

6404.11.81	Including a layer described by additional U.S. Note 5 to this Chapter	7.5%
6404.11.89	Other	90¢/pair + 20%

(H) Subdivide subheading 6404.19.35 into the following three new subheadings:

Other:

6404.19.36	Including a layer described by additional U.S. Note 5 to this Chapter and with uppers of vegetable fibers	7.5%
6404.19.37	Including a layer described by additional U.S. Note 5 to this Chapter and with uppers of materials other than vegetable fibers	12.5%
6404.19.39	Other	37.5%

(I) Subdivide subheading 6404.19.40 into the following two new subheadings:

Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:

6404.19.41	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6404.19.49	Other	37.5%

(J) Subdivide subheading 6404.19.50 into the following two new subheadings:

Other:

6404.19.51	Including a layer described by additional U.S. Note 5 to this Chapter	2.5%
6404.19.59	Other	48%

(K) Subdivide subheading 6404.19.60 into the following two new subheadings:

Having soles (or mid-soles, if any) of rubber or plastics which are affixed to the upper exclusively with an adhesive (any mid-soles also being affixed exclusively to one another and to the sole with an adhesive); the foregoing except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear with soles which overlap the upper other than at the toe or heel:

6404.19.61	Including a layer described by additional U.S. Note 5 to this Chapter	2.5%
6404.19.69	Other	37.5%

(L) Subdivide subheading 6404.19.70 into the following two new subheadings:

Other:

6404.19.71	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6404.19.79	Other	90¢/pair + 37.5%

(M) Subdivide subheading 6404.19.80 into the following two new subheadings:

Valued over $6.50 but not over $12/pair:

6404.19.81	Including a layer described by additional U.S. Note 5 to this Chapter	12.5%
6404.19.89	Other	90¢/pair + 20%

The above-described amendments to Chapter 64 of the HTSUS will ensure that footwear featuring outer soles of rubber and plastics with a layer of textile material added to the surface

area of the outer sole will promote, in a rate neutral manner, uniform application of the Harmonized System Convention while mitigating the administrative burden of enforcing the classification principle set forth by the HSC in General EN 64(C).

Thank you for your consideration.

Sincerely,

Timothy E. Skud

Timothy E. Skud
Deputy Assistant Secretary
Tax, Trade, and Tariff Policy

cc: Shara L. Aranoff, Chairman, U.S. International Trade Commission