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February 22, 2012

The Honorable David V. Aguilar  
Acting Commissioner  
U.S. Customs and Border Protection  
1300 Pennsylvania Ave. NW  
Washington, DC 20229  
E-Mail: [EarlyInputMailbox@dhs.gov](mailto:EarlyInputMailbox@dhs.gov)

**RE: Request for Advance Public Comments on the Proposed Administration of Additional U.S. Note 5 to Chapter 64, HTSUS**

Acting Commissioner Aguilar:

On behalf of the American Apparel & Footwear Association (AAFA), I am writing in response to U.S. Customs and Border Protection's (CBP) request for advance public comments on the proposed administration of Additional U.S. Note 5 to Chapter 64 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Specifically, CBP requests comments on the interpretation of the phrase "characteristics usually required for normal use of an outer sole, including durability and strength", and how to determine whether such characteristics are possessed by imported footwear.

AAFA is the national trade association representing apparel, footwear and other sewn products companies, and their suppliers, which compete in the global market. AAFA's members produce, market, and sell apparel and footwear in virtually every country around the world, including the United States. The U.S. apparel and footwear industry employs over 4 million U.S. workers who support this global supply chain in research and development, design, manufacturing, compliance, sourcing, logistics, marketing, merchandising, and retail.

First, and regardless of the outcome, we urge CBP to make a final determination as soon as possible with regards to what "durability and strength" means in the context of Additional U.S. Note 5. The quick publication of CBP's final determination will provide much needed clarity and certainty to the trade.

The classification of and, in turn, the duty-rate for well-over 100 million pairs of shoes formerly classified under HTS 6405 hangs in the balance. And with variation in duty-rates ranging from 25%-40% (7.5%-12.5% vs. 37.5%-48%), CBP's final determination will not only have a significant impact on the bottom lines of hundreds of U.S. companies, but also on the pocketbooks of millions of American consumers.

Second, in its final determination, we urge CBP to establish a clear standard and establish a single test method for determining whether imported footwear meets this new standard. CBP should publish clear guidelines on the standard and the test method.

Third, in the development of any standard, we urge CBP to base the standard, and any associated test method, on the footwear as imported, the whole shoe, as opposed to a standard based on the testing of fabric that has been completely separated from the shoe.

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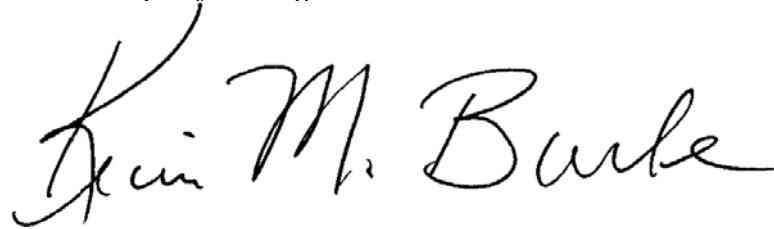
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Finally, we urge CBP to base any standard on the intended use of the footwear in question. For example, “durability and strength” for a slipper or other footwear intended for indoor use should have a different meaning than “durability and strength” for shoes intended primarily for outdoor use, like sneakers, or for other types of footwear, like waders.

In conclusion, we again urge CBP to make a final determination on the meaning of Additional U.S. Note 5 as soon as possible. We also urge CBP to take into consideration the factors described above when making its final determination.

Thank you for your time and consideration in this matter. Please contact Nate Herman of my staff at 703-797-9062 or [nherman@wewear.org](mailto:nherman@wewear.org) if you have any questions or would like additional information.

Please accept my best regards,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive, flowing style with a large initial 'K'.

Kevin M. Burke  
President & CEO