



June 25, 2010

Secretary
United States International Trade Commission
500 E Street SW
Washington, DC 20436

RE: Comments on Preliminary Commission Report, Investigation No. 1205-8: Certain Footwear: Recommendations for Modifying the Harmonized Tariff Schedule of the United States – FR Notice Volume 75, Number 70, Page 18882 (April 13, 2010)

To Whom It May Concern:

Thank you for providing us the opportunity to provide this written submission in response to the U.S. International Trade Commission's (ITC) preliminary report and recommendations for its 1205 study regarding the classification of certain footwear with textile outsoles.

The American Apparel & Footwear Association (AAFA) is the national trade association representing the apparel and footwear industries, and their suppliers. Our members produce and market footwear throughout the United States and the world. In short, our members make everywhere and sell everywhere.

As the ITC prepares the Commission's final recommendations to the President, AAFA strongly urges the ITC to use as the basis for its recommendations the original proposal made by the U.S. Department of Treasury in its January 15, 2010 letter to the ITC, with the modifications suggested by AAFA in its May 14, 2010 submission and as outlined again in this letter.

AAFA recognizes that the ITC's preliminary recommendations don't reflect the initial comments received by the Commission. AAFA applauds the fact that the ITC's preliminary recommendations concur with Treasury's original proposal to allow a dozen types of non-controversial footwear to continue utilizing textile outsoles for the purposes of lower their duties. However, AAFA is concerned that the ITC's preliminary recommendations fail to include other types of non-controversial footwear which utilize textile outsoles in today's market (as outlined in AAFA's May 14 comments and below). As a result, the implementation of the ITC's preliminary recommendations could cause a significant disruption in trade.

Moreover, the ITC's preliminary recommendations, particularly as it regards the ITC's proposed revision of the Additional U.S. Note, and its potential implications, have raised a lot of concern and confusion in the industry.

With this in mind, before preparing its final recommendations to the President, AAFA encourages the Commission to bring together the parties representing the key industry stakeholders for a face to face meeting to ensure that all stakeholders: 1) have the full

opportunity to explain their concerns and 2) achieve a common understanding of the proposal and recommendations. AAFA believes that there is much more common ground among the stakeholders than it might appear.

Turning again to the specific recommendations, AAFA supports Treasury's original proposal.

However, AAFA believes that the text proposed by the U.S. Department of the Treasury (Treasury) needs to be clarified in order to ensure consistent application by United States Customs and Border Protection (Customs) officials and importers. Specifically, we believe Treasury's proposal is missing certain footwear categories that utilize textile outsoles today. Also, Treasury's proposal should be clarified so that it uniformly applies the correct duty rates.

AAFA urges the ITC forward Treasury's recommendations, with the clarifications detailed below, to the President at the conclusion of this study. As stated by Treasury in its letter, AAFA believes Treasury's proposal, with the clarifications detailed below, "would promote the uniform application of the Harmonized System Convention as well as alleviate unnecessary administrative burdens," while "ensure(ing) substantial rate neutrality."

What does Treasury's Proposal Do?

It is our understanding that Treasury's proposal, if recommended by the ITC and, in turn, accepted by the President, would allow for the use of all types of textile outsoles on 13 types of footwear classified under Chapter 64 for the purposes of lowering the duty-rates for the subject footwear. These 13 types of footwear represent most, *but not all*, of the footwear product categories that utilize textile outsoles in today's market. Further, Treasury's proposal would modify the Harmonized Tariff Schedule to correctly classify, *for the most part*, the subject footwear, which, with the clarifications described below, would reduce the administrative burden for both the U.S. government and for importers while greatly improving the accuracy of the data collected by the U.S. government.

Finally, it is our understanding that the proposal would continue to allow the use of so-called "embedded" textile outsoles on ALL footwear for the purpose of lowering duty rates, as long as the footwear utilizing the "embedded" textile outsoles "possess the characteristics usually required for normal use of an outer sole, including durability and strength."

AAFA's Recommended Modifications to Treasury's Proposal

Again, AAFA supports Treasury's proposal, but we feel the ITC should make the following modifications to Treasury's proposal before the ITC makes its recommendations to the President:

Subheading Text

AAFA suggests that the superior text to the proposed subheadings be amended to read as follows:

a) Heading 6402 -

Having an outer sole to which textile materials have been affixed, which materials have the greatest surface area in contact with the ground:

b) Heading 6404 -

Having an outer sole to which textile materials have been affixed, which textile materials have the greatest surface area in contact with the ground and with uppers of vegetable fibers (or with uppers of textile materials other than vegetable fibers):

The purpose of the proposed changes is twofold. The first is to make it clear that the textile material must account for a majority of the area of the outer sole in contact with the ground. The proposed language, as currently drafted, could be read to require only a minimum amount of textile material on the outer sole. We assume that this interpretation is not what Treasury intended and that the intent was to continue current practice which accepts the textile material but only when it constitutes the majority of the material in contact with the ground. We would delete the term layer because it suggests that textile material must be in the form of a layer before being attached to the outer sole.

Secondly, AAFA believes the proposed reference to footwear having a textile layer as described in Additional Note 5 (which provides that the textile outsole is to be ignored) may create confusion. Proposed Additional Note 5 focuses on the material of the outer sole in determining classification at the heading level. Additional Note 5 is not relevant to classification of subheading level. We believe deletion of the reference in the subheading language will help alleviate the mistaken notion that a textile outsole on a shoe classified in heading 6402 or 6404 must pass a test for durability or strength.

AAFA believes that the suggested changes will make the proposed recommendation easier to understand by importers and easier to administer by Customs officials.

Additional Subheadings

The subheadings which Treasury would subdivide do not include all of the types of footwear which currently are imported with a textile outsole in order to qualify for classification in heading 6405. For example, footwear of the type described in HTS subheading 6402.99.40 is imported with a textile outsole for that purpose. Accordingly, subheading 6402.99.40 should be included among those subheadings which are amended by adding a separate provision for footwear with a textile outsole. The following subheadings also fall in the same category and should be included with those footwear categories that should still be able to utilize textile outsoles for the purposes of lowering duties; 6402.91.16, 6402.91.90, 6402.99.12, 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90.

Clarifying Duty-Rates

In the case of footwear with textile uppers classified in heading 6405, there are two duty rates, 7.5 percent where the upper is a vegetable fiber and 12.5 percent where the upper is another textile material. However, only some of the 6404 subheadings in Treasury's proposal provide for the 7.5 percent rate as well as the higher rate of 12.5 percent. There is no justification for restricting the 7.5 percent rate to a limited number of subheadings. Both rates should be provided for in the new subdivisions of the listed subheadings; 6404.11.40, 6404.11.50, 6404.11.60, 6404.11.70, 6404.11.80, 6404.19.40, 6404.19.50¹, 6404.19.60,

¹ The rate listed in the Treasury request is 2.5%. We assume that the intended rate is 12.5%. The same comment applies to subheading 6404.19.60.

6404.19.70, and 6404.19.80. In the case of the new subdivisions of subheadings 6404.11.20, 6404.19.15, 6404.19.25 and 6404.19.90, only the 7.5 percent rate is necessary because the existing rate is less than 12.5 percent.

Implementation of Treasury's Proposal

Although it is not under the purview of this ITC study, we would also like to make two recommendations to Customs in applying Treasury's proposal to the subject footwear, if Treasury's proposal is recommended by the ITC and approved by the President.

First, we urge that Customs, when applying Note 5, differentiate between footwear intended indoor use and footwear intended for outdoor use. Second, we would recommend that Customs adopt a standard test method to measure "strength and durability." AAFA believes certain standard test methods have already be used to test "strength and durability" in the European Union, particularly in the United Kingdom.

Treasury's Proposal: A Balanced Approach That Reflects the Realities of Today's Market

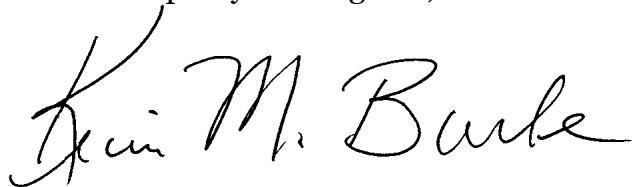
AAFA strongly supports Treasury's proposal, as modified above, because the proposal balances the needs of the entire U.S. footwear industry. The proposal:

- Recognizes that 99 percent of the footwear sold in the United States today is imported. In the absence of legislative changes to eliminate duties on footwear no longer made in the United States, the proposal legitimizes the use of textile outsoles to lower these significant and unnecessary import duties that serve no other purpose than to act as a hidden, regressive tax on hardworking American families,
- While still protecting the types of footwear still made in the United States by a small, yet vibrant footwear manufacturing industry.

AAFA supports Treasury's proposal. However, AAFA strongly believes that the best solution on this issue for the entire U.S. footwear industry, and for American consumers, would be for Congress to approve the *Affordable Footwear Act* (S.730).

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

Please accept my best regards,



Kevin M. Burke
President & CEO