

Bureau of Customs and Border Protection

General Notices

RE-ACCREDITATION AND RE-APPROVAL SGS NORTH AMERICA, INC., —Deer Park, Texas AS A COMMERCIAL GAUGER AND LABORATORY

[CBP Dec. 06–40]

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of re-approval of SGS North America, Inc., of Deer Park, Texas, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, SGS North America, Inc., 2759 Battleground Road, Deer Park, Texas 77536, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13.

DATES: The re-approval of SGS North America, Inc., as a commercial gauger and laboratory became effective on January 4, 2005. The next triennial inspection date will be scheduled for January 2008.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: December 19, 2006

IRA S. REESE,
*Executive Director,
Laboratories and Scientific Services.*

[Published in the Federal Register, (71 FR 77039), December 22, 2006]

**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN PROTECTIVE
FOOTWEAR FROM CHINA**

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain protective footwear from China.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification of certain protective footwear from China under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before February 9, 2007.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Sasha Kalb, Tariff Classification and Marking Branch: (202) 572-8791

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the

trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of certain protective footwear from China. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) L83296, dated March 25, 2005 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY L83296, CBP ruled that the Bean Boot bottom, style number WJ01 (WJ01), exhibited the essential character of completed footwear and was therefore classifiable in subheading 6402.99.18, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other." Based upon our analysis of the scope of the terms of subheadings 6402.99.18, HTSUS, and 6402.99.20, HTSUS, the Legal Notes, and Treasury Decision (T.D.)

93–88, we have determined that the “Bean Boot” bottom is properly classified in subheading 6402.99.20, HTSUSA, the provision for: “[o]ther footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY L83296 and any other ruling not specifically identified, to reflect the proper classification of the protective footwear according to the analysis contained in proposed Headquarters Ruling Letter HQ 968301, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: December 22, 2006

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY L83296
March 25, 2005
CLA–2–64:RR:NC:247: L83296
CATEGORY: Classification
TARIFF NO.: 6402.99.18

MR. PETER JAY BASKIN
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
75 Broad Street
New York, NY 10004

RE: The tariff classification of footwear from China

DEAR MR. BASKIN:

In your letter dated March 3, 2005 you requested a tariff classification ruling on behalf of Rallye Footwear, Inc.

You have submitted a one-piece molded rubber/plastic boot bottom, designated as “No. WJ01.” The item is commonly referred to as a “Bean boot” bottom. This item does not cover the ankle and is commonly imported into the United States where a “collar” of various heights and materials is attached thereby finishing the item for sale to retail customers. While “unfinished” in its imported condition, the item exhibits the essential character of completed footwear in that it possesses a complete outer sole as well as a substantially complete upper and is classified in subheading 6401–6405, Har-

monized Tariff Schedule of the United States, (HTS). What distinguishes your submission from other "Bean boot" bottoms is that a hole of approximately 1-1/4 inch by approximately 3/16 inch has been punched out of the heel area of the outer sole thereby rendering the item non-waterproof.

The applicable subheading for the boot bottom designated "No. WJ01" will be 6402.99.18, Harmonized Tariff Schedule of the United States (HTS), which provides for footwear with outer soles and uppers of rubber or plastics, not "sports footwear"; not covering the ankle; having uppers of which over 90% rubber and/or plastics (including any accessories or reinforcements); which does not have a foxing or a foxing-like band; and is not designed to be a protection against water, oil or cold or inclement weather. The rate of duty will be 6% ad valorem.

The submitted samples are not marked with the country of origin. Therefore, if imported as is, will not meet the country of origin marking requirements of 19 U.S.C. 1304. Accordingly, the footwear would be considered not legally marked under the provisions of 19 C.F.R. 134.11 which states, "every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article."

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist, Richard Foley at 646-733-3042.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ W968301
CLA-2 RR: CTF:TCM W968301 ADK
CATEGORY: Classification
TARIFF NO.: 6402.99.20

PETER JAY BASKIN, ESQ.
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
75 Broad Street
New York, NY 10004

RE: Revocation of New York Ruling Letter (NY) L83296, dated March 25, 2005; Classification of Certain Protective Footwear from China

DEAR MR. BASKIN:

This letter is in response to your request of June 19, 2006, to United States Customs and Border Protection (CBP) on behalf of your client Rallye Footwear Inc. (Rallye), in which you requested a binding ruling pertaining

to the classification of unfinished Bean Boot bottoms, Style WJ02 (WJ02), under the Harmonized Tariff Schedule of the United States (HTSUS).

After reviewing your request, it came to our attention that New York Ruling (NY) L83296, dated March 25, 2005, in which we classified a Rallye product substantially similar to WJ02, may be inconsistent with our current views. In NY L83296, we determined that the Rallye Bean Boot bottom, Style WJ01 (WJ01), was classifiable under subheading 6402.99.18, HTSUS, which provides for “[o]ther footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcement such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather): Other: Other.”

We have reviewed NY L83296 and found it to be in error.

FACTS:

Style WJ01 is a one-piece molded rubber/plastic boot bottom. The bottom has a treaded outer sole and covers the sides and top of the foot to a point just below the ankle. The sole features a pencil-sized hole, measuring approximately 1 ¼ inch by approximately 3/16 inch, which completely penetrates the heel area. As imported, the Bean Boot bottom does not have a “collar.” Upon entry into the United States, a collar of various heights and materials is attached and the soles are subjected to a molding operation in order to finish the outer sole and complete the Bean Boot for retail sale. During this operation, the hole in the sole will be sealed.

ISSUE:

Was the unfinished bean boot bottom, style number WJ01, properly classified in NY L83296 as other than protective footwear?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

It is undisputed that WJ01 is classified in subheading 6402.99, HTSUS, which provides for: “Other footwear with outer soles and uppers of rubber or plastics: Other. . . .” Classification at the eight-digit level is disputed. Specifically, this case turns on whether WJ01 is “designed to be protective,” in its

condition as imported². The HTSUS provisions under consideration are as follows²:

6402 Other footwear with outer soles and uppers of rubber or plastics:

Other footwear:

6402.99 Other:

Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):

Other:

6402.99.18 Other

* * *

6402 Other footwear with outer soles and uppers of rubber or plastics:

Other footwear:

6402.99 Other:

Other:

6402.99.20 Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather

* * *

On November 17, 1993, in the Customs Bulletin, Volume 27, Number 46, CBP published Treasury Decision (T.D.) 93-88, which contains certain footwear definitions used to classify footwear. The footwear definitions were pro-

¹ It is well established that goods are to be classified in their condition as imported. E. T. Horn Company v. United States, Slip Op. 2003-20, (CIT, 2003), (citing Carrington Co. v. United States, 61 CCPA 77, 497 F.2d 902, 905 (CCPA 1974); HQ 967972, dated March 2, 2006; NY M81667, Dated March 8, 2006.

² Heading 6401, HTSUS, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes" is not under consideration for the subject merchandise. This is because the upper collar will be stitched to the boot bottom after entry to the United States. WJ01 is therefore excluded from heading 6401 and classification is limited to heading 6402 which provides for protective, rather than waterproof, footwear.

vided merely as guidelines and, although consulted here, are not to be construed as CBP rulings. With regard to “protection,” T.D. 93–88 states, in pertinent part:

Footwear is designed to be a “protection” against water, oil or cold or inclement weather only if it is substantially more of a “protection” against those items than the usual shoes of that type. For example, a leather oxford will clearly keep your feet warmer and drier than going barefoot, but they are not a “protection” in this sense. On the other hand the snow-jogger is the protective version of the non-protective jogging shoe.

A. Footwear that is a “protection” against water includes:

1. Any item which will keep your foot dry if you linger in a pool of water which is more than 2 inches deep unless:
 - a. It has a rigid, thick, clog bottom but no protective features – or
 - b. In normal use, water will get in over the top of the shoe or boot
 - c. It is a woman’s molded high heeled shoe in which the top of the foot will be exposed to the rain – or
 - d. It is a molded downhill ski boot. They are primarily designed to protect the ankle from injury, and no non-waterproof alternative is made.

In its March 3, 2005 ruling request, counsel for Rallye argued that WJ01 could not be classified as protective footwear because “[i]n its **condition as entered**, the subject unfinished article does not have the essential [character] of waterproof or protective footwear . . .” (emphasis in original) This argument relies upon GRI 2 (a), which states in pertinent part:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. . . .

Under GRI 2 (a), incomplete or unfinished merchandise is classified as if it were complete, provided that it bears the essential character of completed or finished merchandise. Based on counsel’s argument, CBP held that “[w]hile “unfinished” in it’s imported condition, the item exhibits the essential character of completed footwear in that it possesses a complete outer sole as well as a substantially complete upper.” NY L83296. As a result, WJ01 was classified under subheading 6402.99.18, HTSUS. We find this analysis to be in error.

While the vast majority of unfinished or incomplete merchandise is classified according to GRI 2 (a), its application is unnecessary here. The subheading 6402.99.20, HTSUS, is broad enough to encompass this merchandise by application of GRI 1. Classification under subheading 6402.99.20, HTSUS, turns on whether the incomplete article is designed to be protective, not whether it has the essential character of completed protective footwear. See Headquarters Ruling (HQ) 963224, dated March 22, 2002 and NY E88827, dated December 6, 1999. Importantly, this test does not require that the footwear actually offer protection in its imported condition. Instead, the unfinished footwear must feature a design capable of offering such protection once completed.

According to T.D. 93–88, footwear is designed to be protective if it will offer “substantially more of a ‘protection’ against [water, oil or cold or inclement weather] than the usual shoes of that type.” Footwear that qualifies as

'protective' must be capable of keeping the foot dry if the wearer lingers "in a pool of water which is more than 2 inches deep." If the footwear features any of the four enumerated exceptions listed in T.D. 93-88, however, it will not be protective. Again, we note that subheading 6402.99.20, HTSUS, does not require the merchandise to offer such protection in its condition as imported. Instead, it must be designed or dedicated to provide such protection.

As imported, WJ01 features a heavily treaded outer sole made of thick rubber. These treads are designed to offer maximum traction in slippery or wet conditions. The rubber itself will prevent penetration from winter elements such as rain and ice. The rubber sole, which measures approximately 3 inches, reaches a point just below the wearer's ankle. Once completed, this will offer enough protection to allow the wearer to linger in a pool of water which is more than 2 inches deep. In addition, style WJ01 does not feature any of the four enumerated exceptions which would prevent classification as protective footwear. Notwithstanding the hole in the sole, the construction of the imported boot bottom confirms that WJ01 is designed to offer protection from inclement weather conditions.

Furthermore, Rallye advertises and markets its products as protective footwear. According to its website, Rallye's products "are designed to withstand the challenging elements of Canadian winters and provide comfort and durability³." (Emphasis added). By Rallye's own admission, the boots are designed to be worn as protection against inclement weather conditions.

HOLDING:

By application of GRI 6, applying GRI 1, the Bean Boot bottom is classified in subheading 6402.99.20, HTSUS, the provision for: "[o]ther footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather." The Column 1 general rate of duty is 37.5 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY L83296, dated March 25, 2005, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

³http://www.rallyefootwear.com/about_en.htm

