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DEPARTMENT OF THE TREASURY

Customs Service

Standards for Tariff Classification of Unisex Footwear

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice; solicitation of comments.

SUMMARY: This document invites the public to submit comments to Customs regarding what standards Customs should use in determining what constitutes "unisex" footwear for tariff classification purposes. Comments are invited on the appropriateness of specific standards suggested by a footwear trade association and on the extent to which any standards that Customs has followed in the past should be retained, and suggestions for appropriate alternative standards are also invited. After a review of the submitted comments, Customs will attempt to formulate specific proposed standards for further public comment prior to adoption of a final interpretive rule in this area.

DATES: Comments must be submitted by June 14, 2002.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textile Branch, Office of Regulations and Rulings (202-927-2380).

SUPPLEMENTARY INFORMATION:

Background

Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS) covers articles of footwear and footwear uppers and other parts of footwear. Within Chapter 64, heading 6403 covers "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather." Under heading 6403, subheading 6403.99.60, specifically covers "other" footwear "[f]or men, youths and boys" and the two following subheadings (6403.99.75 and 6403.99.90) cover "other" footwear "[f]or other persons." Additional U.S. Note 1(b) to Chapter 64, HTSUS, provides as follows:

(a) The term "*footwear for men, youths and boys*" covers footwear of American youths' size 11-1/2 and larger

for males, and does not include footwear commonly worn by both sexes.

Nearly all types of footwear may be, and in fact are, worn by both sexes. Moreover, many types of shoes in male sizes feature no physical characteristics which distinguish the footwear as being exclusively for males. While Customs is often required to determine whether footwear in sizes for males is "commonly worn by both sexes" within the meaning of Additional U.S. Note 1(b) to Chapter 64, HTSUS, and thus is excluded from classification as "for men, youths and boys" under subheading 6403.99.60, HTSUS (and consequently must be classified as "for other persons" under subheading 6403.99.75 or subheading 6403.99.90, HTSUS), the standards for making that determination have been developed and applied by Customs on an *ad hoc*, case-by-case, basis. This approach to the "unisex" footwear issue, while effective in individual cases, has provided only limited guidance to the importing community and to Customs officers as regards other prospective or current import transactions that present different factual patterns involving that issue.

In a letter dated September 17, 1999, a request was made on behalf of the Footwear Distributors and Retailers of America (FDRA) that Customs Headquarters issue a policy memorandum or other decision to clarify the unisex footwear issue. The letter requested that Customs (1) set forth criteria for determining whether footwear claimed to be "for men, youths and boys" is "commonly worn by both sexes" and therefore should be classified as footwear "for other persons" and (2) ensure the uniform interpretation and application of those criteria by Customs field offices. To this end, the letter requested the adoption of a unisex footwear policy consisting of five specified elements.

In light of the request on behalf of the FDRA, and based on a review of the various criteria Customs has applied in this area as reflected in prior rulings and other written decisions, Customs believes that the complexity of this matter warrants preliminary public comment procedures to assist Customs in developing, for further public comment, specific proposals for standards to be applied in resolving issues regarding the classification of unisex footwear. To assist the public in preparing comments on this matter, the specific FDRA proposals and the standards Customs currently applies in this area are described below.

The FDRA Proposed Criteria

The elements of the unisex footwear policy proposed by the FDRA consisted of the following:

1. Footwear in sizes for men, youths and boys should not be considered "commonly worn by both sexes," that is, "unisex," if that particular type of footwear (for example, tennis shoes) is available in women's styles;
2. Determinations as to whether a type of shoe is "commonly worn by both sexes" should be based upon use by women or girls of at least 25 percent, a ratio of at least one female user to every four male users;
3. Footwear for males should be presumed not to be unisex if an importer markets a "comparable" number of styles for both sexes, and a ratio of five to one (male to female styles) should be considered "comparable;"
4. In determining whether women's styles are available, the inquiry should focus on the availability of women's styles in the market as a whole; and
5. The fact that a shoe is not marketed to women should be considered evidence that it is not "commonly worn by both sexes."

The Current Customs Standards

In determining whether footwear is "commonly worn by both sexes," Customs generally considers certain types or categories of footwear to be at least susceptible to unisex treatment (that is, to be classifiable as footwear "for other persons" despite claims that the footwear is designed and intended solely "for men, youths and boys"). These types of footwear include hikers, sandals, work boots, cowboy boots, combat boots, motorcycle boots, "athleisure" shoes, boat shoes, and various types within the class described as athletic footwear (for example, tennis shoes, training shoes).

Customs generally considers that a type of footwear is "commonly worn by both sexes" if the number of styles claimed to be for males in an importer's line, when compared to the number of styles in the line for females, renders it likely that females will purchase and wear at least 5 percent of the styles claimed to be for males (in other words, one female user for every twenty male users). Since it is unlikely that a distributor or retailer would discourage the sale to females of footwear claimed to be for males, Customs would consider that an importer of basketball shoes claimed to be for use only by males, who imports no basketball shoes claimed to be for use only by females, is in fact an importer of basketball shoes

that potentially could be “commonly worn by both sexes.”

Once it is determined that an imported line of footwear potentially susceptible to unisex treatment is in fact “commonly worn by both sexes,” Customs applies unisex treatment to that footwear line only in sizes up to and including American men’s size 8. This size-limited treatment isolates from the full range of imported sizes those footwear sizes that are most “commonly worn by both sexes.”

Even if a shoe in an imported line claimed to be for males is of a type of footwear commonly worn by both sexes (for example, a hiker, sandal, work boot, tennis shoe), Customs does not accord unisex treatment to the imported line if a “comparable line” of styles is available to females. The styles of the “comparable line,” however, should be substantially similar to the styles for males in general appearance, value, marketing, activity for which designed, and component material (including percentage) breakdowns.

With regard to a ratio of male styles to female styles at which a “comparable line” may be found to exist, in Headquarters Ruling Letter (HQ) 955960, issued August 19, 1994, Customs stated that “* * * a good case * * * exists [for that finding] in the situation where an equal number of styles of a particular type of footwear * * * for men and women is available.” In other words, a one to one ratio clearly establishes a “good case” by which an importer may avoid unisex treatment of footwear claimed to be for males.

For purposes of establishing the existence of a “comparable line” for females, Customs confines its determination to the imported footwear at issue. Customs may take notice of additional styles made available by the importer that are not included in a particular entry. Customs does not, however, consider the availability of comparable styles for females in the U.S. market as a whole in determining what constitutes an importer’s “comparable line.”

Finally, Customs does not consider the fact that a certain shoe is not marketed to women to be evidence that the shoe is not “commonly worn by both sexes.” Customs has no control over decisions regarding the marketing of imported footwear, and it is further noted that sales to females of footwear claimed to be for males, without the expense of marketing, would certainly appear to be profitable and therefore probably do occur.

Submission of Comments

Customs is interested in receiving preliminary comments from the public on all aspects of the unisex footwear issue for the purpose of assisting Customs in the preparation of specific proposals for further public comment, with a view to promulgating, if feasible, a final interpretive rule setting forth standards for the tariff classification of unisex footwear. Comments are specifically invited on, but need not be limited to, the following matters:

1. Whether specific, mandatory criteria, as opposed to general guidelines, should be used by Customs in resolving unisex footwear classification issues;
2. The acceptability of the five FDRA proposals both individually and as a group;
3. The extent to which any of the positions of Customs described above should be retained, revised or discarded;
4. Whether any general standards or specific criteria other than those already mentioned in this document should be adopted;
5. Whether the terms “category,” “type,” “style,” and “line” (or “imported line”) should be specifically defined with reference to footwear for purposes of their use in developing unisex footwear classification standards; and
6. Whether application of unisex footwear classification standards should be limited to the subheadings under heading 6403, HTSUS, mentioned above or should also apply for purposes of classification under other HTSUS headings (for example, under heading 6402, for purposes of distinguishing at the statistical subheading level between footwear “for men” and footwear “for women” and “other” footwear.

Consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

Dated: April 9, 2002.

John Durant,

Director, Commercial Rulings Division.

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DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0519]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine locality pay rates for nurses at VA facilities.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 14, 2002.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: ann.bickoff@hq.med.va.gov. Please refer to “OMB Control No. 2900-NEW” in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273-8310 or FAX (202) 273-9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104-13; 44 U.S.C., 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA’s functions, including whether the information will have practical utility; (2) the accuracy of VHA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on