

FOOTWEAR CUSTOMS CLASSIFICATION CONFERENCE



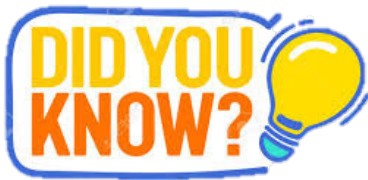
AN FDRA
DIGITAL CONFERENCE

Thursday, November 12, 2020

FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Classification Determines

- Duty Rate
- Origin
- Preference Eligibility
- Application of Trade Remedies



The **Tariff** Act of 1789 was designed to protect manufacturing in the **U.S.** and generate revenue for the government. It was the first major piece of legislation passed since the ratification of the Constitution and was signed by President George Washington.

Chapter 64

<u>Heading</u>	<u>Upper</u>	<u>Outersole</u>	<u>Other</u>
6401	Rubber/Plastics	Rubber/Plastics	Waterproof-No Stitching, Etc.
6402	Rubber/Plastics	Rubber/Plastics	
6403	Leather	Leather Rubber/Plastics Composition Leather	
6404	Textile	Leather Rubber/Plastics Composition Leather	 
6405		Everything Else	
6406		Parts	



There are 436 Footwear HTS codes for U.S. classification.

Chapter 64 Materials

- Leather
- Rubber/Plastics (A single material)
- Textile Materials
- Composition Leather
- Other
 - Leather Flocking
 - Metal Flocking
 - Mushroom Leather
 - Vegan Leather
- Coated Leather is Usually Leather
- Plastic-Coated Textile is Usually R/P
 - ⚠ Fibers poking through R/P top surface could be considered textile
- Artificial Raffia (Plastic or Textile)
- Fur (Pony)

Factors

Footwear classification depends **first** on two factors:

1. The Material of the Upper
2. The Material of the Sole



ESAU

Informed Compliance Publication (ICP) Definition:

In order for a material to be considered the “external surface area of the upper” (ESAU) it must be:

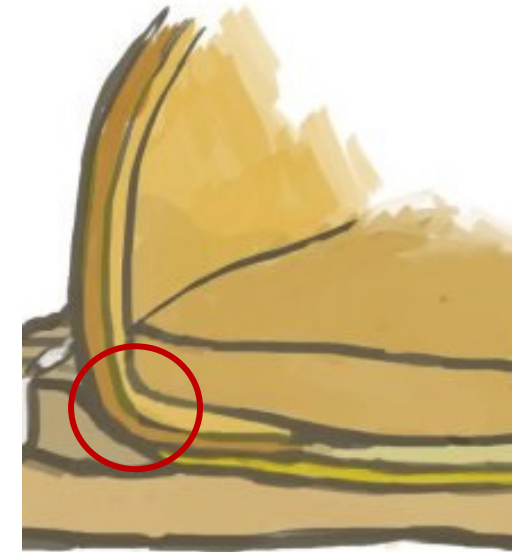
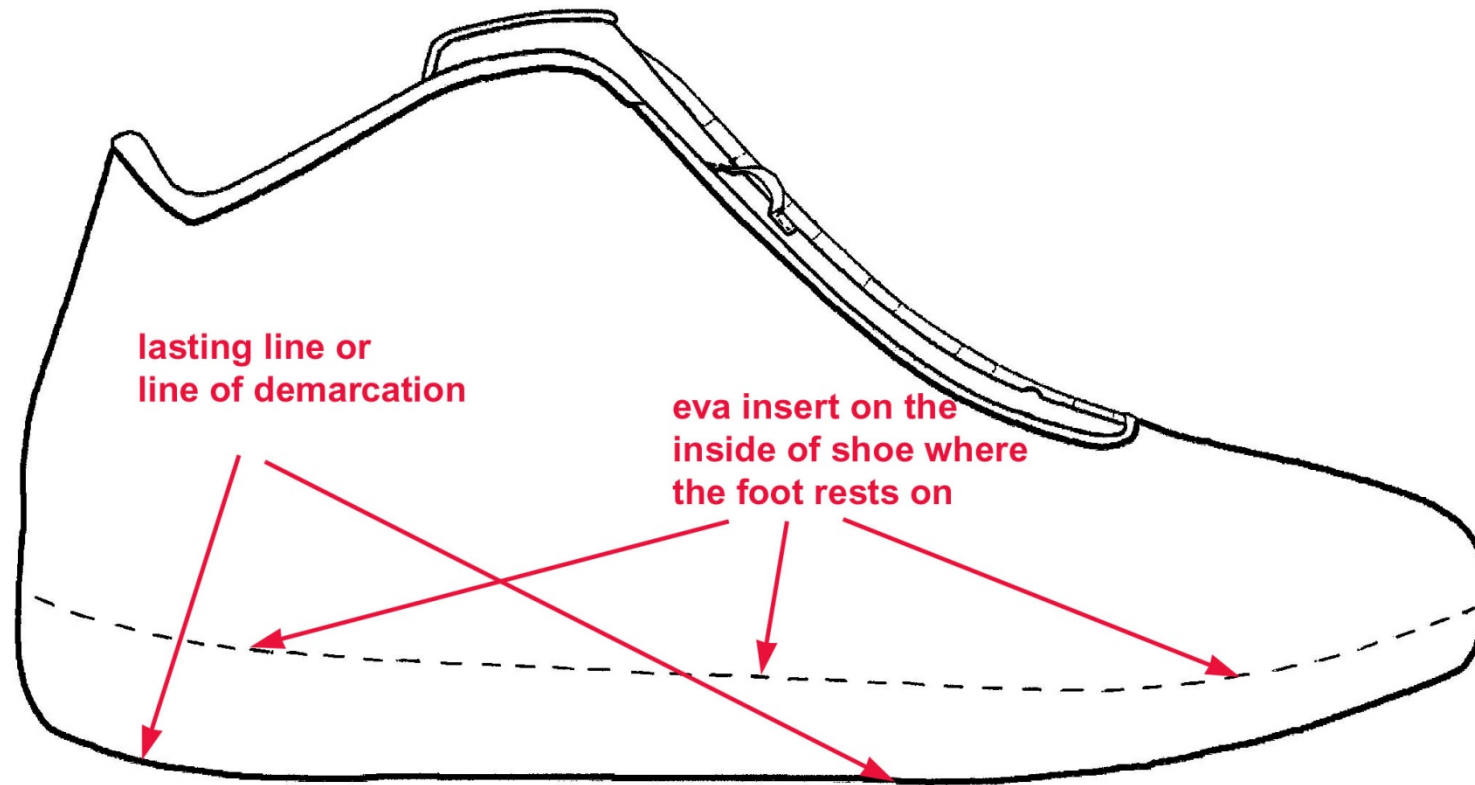
- Visible on the surface of the shoe.
- Plausible or viable upper material.
- Essential (its removal would render the shoe incomplete). Materials which provide structural support, rigidity or strength to the shoe are considered upper material.

Material of the Upper is the material with the greatest External Surface Area

Excluded:

- Accessories and Reinforcements
- Lasting Allowance
- Tongues and Removable Laces
- Loosely Attached Appurtenances
- Foxing and Foxing-Like Bands
- Welt Strips

External Surface Area Of The Upper



The upper extends to the line of demarcation for purposes of determining ESAU.

Accessories And Reinforcements

ICP Definition: accessories or reinforcements are non-structural materials added to either a substantially complete upper or outer sole. They generally consist of overlays lying on top of other materials. Accessories or reinforcements are not included in external surface area measurements for either the upper or outer sole.

However, certain tariff provisions require that accessories or reinforcements be added back to the upper, after the applicable heading is determined to arrive at the appropriate subheading.

- A/R Excluded in Determining Classification at the Heading Level are Sometimes Added Back to Classify at the 8-Digit Level
- Headings 6401/6402 – All A/R – This is a Requirement to Qualify for Low Duty
- Heading 6404 – Only Leather A/R are Added Back (obsolete?)

- Examples:** {
- Eyelet Stays
 - Ankle Patches
 - Embroidery
 - Pull Tabs
 - Buckles
 - Edging

Multiple Materials

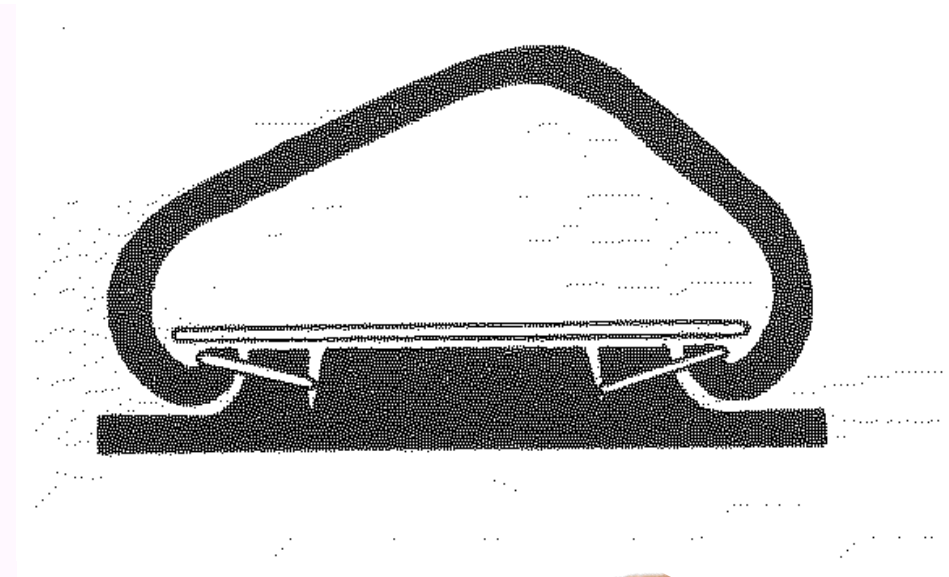
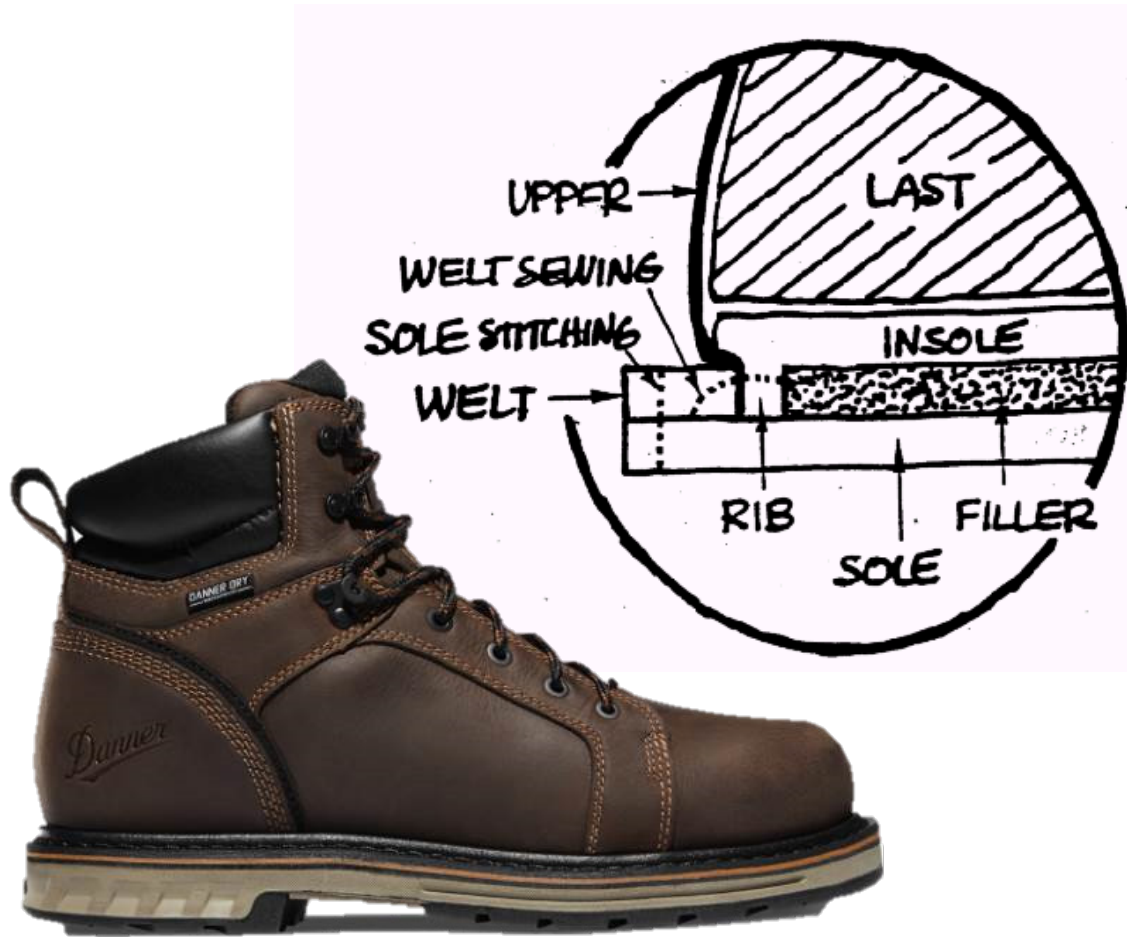
- 50 Percent not Required – *Majority for classification*
- Material Which Exceeds Each of the Other Materials Taken Individually 50/30/20 as per example



ESAU - Principles

1. WHAT YOU SEE IS WHAT YOU GET - UNLESS YOU SEE MORE THAN ONE MATERIAL.
2. IF THE MATERIAL IS NOT VISIBLE, IT PROBABLY CAN BE IGNORED.
3. OVERLAYS ARE PROBLEMATIC AND DEPENDING ON A NUMBER OF FACTORS MAY BE INCLUDED IN ESAU.
4. IS THE OVERLAY LASTED? IS IT ATTACHED TO A PIECE THAT IS LASTED?
5. IS THE OVERLAY JOINED AT ITS EDGE TO A LASTED COMPONENT?
6. DOES THE OVERLAY FLOAT?
7. FOXING, FOXING-LIKE BANDS AND SIDEWALLS ARE IGNORED WHEN THEY COVER UPPER MATERIAL.
8. IN MEASURING COMPONENTS, YOU INCLUDE ONLY THE VISIBLE PORTION.
9. TONGUES AND LOOSELY-ATTACHED APPURTENANCES ARE IGNORED.
10. WHAT HAPPENS WHEN A LASTED PIECE IS PURELY DECORATIVE OR IS NOT VIABLE UPPER MATERIAL?

Welt & Turned Construction



Adhesive Construction

- Upper and Bottom Held Together Exclusively by Adhesive
- Vulcanized and Molded Footwear Excluded
- Functional Nails and rivets, even if secondary, are disqualifying features



Outersole

- The Material of the Outersole is the Material in Contact with the Ground
- Applied Heels are Excluded
- A/R are Excluded
 - Sole A/R are: Spikes, Cleats, Bars, Protectors and Nails
- Plastic Dots



Outersole Overlays

Textile Flocking

- Textile Surface Area
 - >50% contact with the ground
- Durability Textile Test
 - Required for 6405
- Not “Durable” Treated as an Accessory
 - 6402 & 6404
- Limited Coverage

Leather Flocking

- Not Leather for Purposes of Chapter 64
- Textile vs R/P Upper
- No Durability Test
- An Unsettled Area



Protective Footwear

- Protects wearer against water, cold, oil, chemicals - not against abrasion
- Footwear with “Gortex” “Thinsulate” is protective
- Molded rubber clogs are not protective when they are open heel
- Protection must cover the entire foot
- Indoor Footwear – not protective



Water Protective Test

- Submerge in 2” water for 10 minutes
- If moisture inside shoe than NOT protective

Gender

- Leather Uppers Only
- Men's, Youths and Boys (8.5%)
- Other Persons (10%)
- Unisex - Shoe "Commonly Worn by Both Sexes" is Classified as for Other Persons
- Labels Govern Unless You Want a Fight

Slip-On, Open Heel or Open Toe

- Footwear is not Considered a Slip-On When There is Any Means of Closure
- Pull-on is Slip-on
- Footwear is Considered Open Toe/Heel when any Part of the Toe or Heel is Visible



Footwear Types

Sport

- Designed For a Sporting Activity
- With Spikes, Cleats, Etc. that are Pointed or Sharp and Widely-Spaced
- Footwear Useable as Street Wear will not be Classified as Sports Footwear
- Narrowly interpreted by CBP

Athletic

- Tennis Shoes and the Like – but not necessarily designed or used for athletic purposes
- Flexibility of Sole and Light Weight are principal defining characteristic
- Sneakers with Bling
- Slip-Ons not considered athletic
- Embroideries



NON-Athletic

Shoes that resemble sport shoes but clearly could not be used at all in that sporting activity. Features to determine if shoe may qualify as non-athletic:

- No Functional Fasteners
 - Slip-Ons
- Stiff Bottom Platform
- Smooth (no traction tread) bottom outsole
- Non-Performance Materials
- No Internal Supportive Counters (heel/toe)

6404.19.90



Foxing / Foxing-Like Band

Foxing or Foxing-Like Band Applied or Molded at the Sole and Overlapping the Upper

Foxing – Traditional Sneakers and Tennis Shoes

- Converse – “All Star”
- Keds – “PF Flyers”



Foxing-Like Band

- Same Qualities, Characteristics and appearance of a Foxing
- Need Not Be a Separate Component
- Need Not Secure Joint Between Sole and Upper
- Must Be Applied or Molded at the Sole
- Must Overlap the Upper
- Must Encircle or Substantially Encircle the Shoe
- Any Means of Attachment



Foxing – Measuring The Component

Bottom Platform

Unit Molded Bottom whether Simultaneous or Separate is not considered a foxing-like band unless the degree of vertical overlap is 1/4 inch or more for adults.

- 3/16 – Children
- 1/8 – Infants

Substantial Encirclement

- Need Not Be a Single Component
- More than 60 percent – always a foxing-like band
- Less than 40 percent – no foxing-like band
- Between 40-60 percent appearance is the deciding factor
- Sandals



Foxing, Other

- Foxing Under – mudguard may be a foxing-like band unless it constitutes the upper
- Mock Welts are not foxing-like bands
- Shell Bottoms, where the side wall constitutes part of the upper, do not exhibit foxing-like bands



- Over-the-Ankle (Sandal Straps)



- Zoris



Soles Which OverLap the Upper

- Must Be Sole
- Any Discernable Overlap
- At the Toe or Heel (2.5")



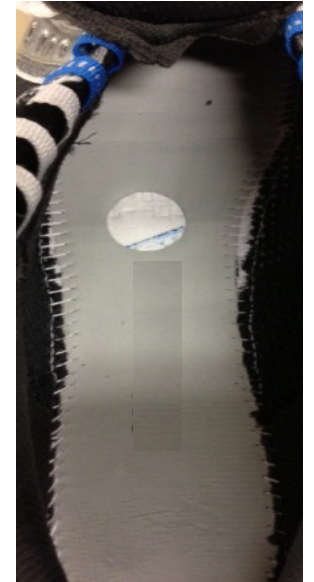
Work Footwear

- Metal Toe-Cap
- Outer soles of Rubber/Plastics
- Agriculture, Construction, Industrial, Public Safety, Food Service, and Transportation
- Special features to protect against hazards in the workplace (oil, slippage, static buildup, etc.)



Unformed Uppers

- Open Bottom or Not completely shaped by lasting, molding or otherwise.
- Can be either heel lasted or toe lasted but not both.
- Open Bottom must be larger than the diameter of a Nickel (21.21mm)
- Allows for the Country of Origin to be the location of where bottoming is performed



Weight

- Condition As Imported – not as Manufactured
- Replace R/P with Non-woven
- What does Reasonable Care Require
- Are Tests Mandatory?
- Manufacturer's Certifications are Not Sufficient



Price

- Appraised Value
- Rebates
- Tie-In Sales
- First Sale Issue



Footwear Markings: Country of Origin

Footwear – Basic Rule: “The country of final assembly is the country of origin”

Conspicuous

MARK MUST BE EASILY LOCATED

- Heel seat
- Top of tongue
- Near topline
- On the outsole
- Not under the vamp

Legible

MARK MUST BE EASILY READ

- Gold on tan sockline
- Embossed on black
- Size
- Full Circle

Permanent

MARK MUST BE “PERMANENT”

- Reach the consumer
- Stickers are acceptable

Misleading References

EXAMPLES

- “Italian Design”
- “Distributed by”
- EU Sizes?
- Origin in close proximity
- Design or Trademark – Conspicuous Only

Please note abbreviations generally not allowed: “made in”, “product of”

Footwear Markings: Labeling

Footwear Labeling

Leather labeling - FTC

- No general requirement to disclose materials
- Disclose that artificial leather is not leather
- Applies to upper, lining, sock and outsole
- Multi-material uppers – disclose predominant material first (surface area)
- Rules apply to advertising

Wool Content

- Fiber content
- RN Number

Fur

- Shearling is Fur
- Pony is fur
- \$150 exemption eliminated
- Hangtag Acceptable
- No Specified Size

Faux Fur (States Only)

- Massachusetts requires disclosure
- New York?
- Other States?

Preference Rules

- USMCA
- AGOA
- CAFTA
- Korea FTA



Questions?



Thank You!!!