

STRATEGIES TO MITIGATE IMPACT OF CHINA 301 TARIFFS

The potential imposition of additional duties on footwear from China has led to questions on the means available to avoid or mitigate the duties. FDRA addresses two approaches here.

Origin

The most obvious is to change the country of origin. Basically, in the case of footwear, the country of origin is the country of assembly.

A change from materials, *e.g.* leather to footwear, is a substantial transformation as is a change from footwear parts, *e.g.* soles or uppers not formed, to complete footwear. However, a change from formed uppers or duck-type bottoms to complete footwear is not treated as a substantial transformation.

CBP has expressed this is a tariff shift rule that states: “6401-6405 A change to heading 6401 through 6405 from any other heading outside that group, except from formed uppers.” 19 CFR 102.20. This rule covers bean boot bottoms since they are classified in heading 6401.

There are a couple of points to keep in mind. If all of the parts and components are produced in China it may be prudent to ship the components in bulk, not in kits. That is certainly the case if you are shipping lasted uppers with the “customs” hole. In [HQ 951508 \(July 8, 1992\)](#), CBP held that lasted uppers with a “customs” hole shipped with an even number of sock liners were “formed”, but the same uppers shipped with an unequal number of sock liners were not “formed”.

The result in the above ruling is based in part on the principle of “constructive assembly”, which classifies an assembly of parts as the finished article. Whether this principle can be applied to the origin of footwear assembled in country B using parts and components from China is not clear. To our knowledge the issue has not been the subject of a ruling. It is for this reason we suggest that parts and components be shipped separately, in bulk and in uneven quantities.

Discounts

Some members asked whether it is appropriate to seek discounts from suppliers in China in an effort to mitigate the impact of the additional duties. This approach is perfectly acceptable.

Discounted prices agreed to prior to exportation are recognized as representing statutory transaction value. CBP may require documentary substantiation of the agreement. Normal commercial documents, such as a seller’s invoice showing the discount may be sufficient for this purpose. *See*, [HQ H057716 \(June 30, 2009\)](#). Discounts or rebates agreed to after importation are acceptable, but they do not reduce the appraised value.

Prepared by John B. Pellegrini, McGuireWoods LLP. For questions or comments, please contact FDRA.