

FOOTWEAR TRADE DISTRIBUTION & CUSTOMS



FTDC 2019 CONFERENCE

October 27–29 | The Renaissance | Long Beach

FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Footwear Policy Potpourri

**Footwear Family Trade Therapy Session—
an industry sounds off**

TRUMP TARIFFS – RESPONSES

Ø Origin

Ø Final Assembly

Ø Exceptions

Ø Value

Ø Classification

Ø *De Minimis*

Ø Exclusions (a Fool's Errand?)

Miscellaneous Tariff Bill (MTB) 2019

**Athletic
OR
Nonathletic**



Tariff Mitigation

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Intellectual Property & Third-Party Platforms Pontification

Thomas Crockett, Director of Government & Regulatory Affairs, Footwear Distributors & Retailers of America (FDRA)



FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

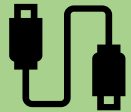
Intellectual Property in Focus 2019

Thomas Crockett
Director of Government & Regulatory Affairs

Past Few Years ... FDRA Expands IP Advocacy



Special 301 Testimony to USTR (2016, 2017, 2018, 2019)



U.S. Senate E-Commerce Investigation (2018)



FTC Competition and Consumer Protection in the 21st Century (2018)



U.S. Customs 21st Century Customs Framework Hearing (2019)



Senate Judiciary IP Subcommittee Hearing (2019)

Past Few Years ... FDRA Expands IP Advocacy



MATT PRIEST
PRESIDENT & CEO, FDRA

The Challenging IP Landscape in 2019

Feds seize \$2.2 million worth of fake Nike shoes at Southern California seaport

CBS NEWS

UPDATED ON: OCTOBER 11, 2019 / 8:01 AM / CBS NEWS



The Challenging IP Landscape in 2019



United States Government Accountability Office

Report to the Chairman, Committee on
Finance, U.S. Senate

January 2018

INTELLECTUAL PROPERTY

Agencies Can
Improve Efforts to
Address Risks Posed
by Changing
Counterfeits Market

- **January 2018 GAO Report**
- **Investigators bought products from five popular e-commerce sites (choosing four categories of frequently counterfeit goods)**
- **Of the 47 products purchased, 20 turned out to be counterfeit**
- **The report led to the U.S. Senate's heightened focus on counterfeit sales on online platforms**

The Challenging IP Landscape in 2019



Birkenstock quits Amazon in US after counterfeit surge

PUBLISHED WED, JUL 20 2016•1:10 PM EDT | UPDATED WED, JUL 20 2016•5:57 PM EDT

Amazon has finally admitted to investors that it has a counterfeit problem

By Marc Bain • February 5, 2019

QUARTZ

CBS NEWS / April 16, 2019, 7:45 AM

Amazon touts effort to crack down on counterfeit goods amid complaints



3,121 views | Aug 17, 2019, 03:29am

U.S. Music Industry Accuses Amazon Of Selling 'Millions Of Fake CDs'

Forbes



Amazon is shipping expired food – is it ever safe to eat?

With increasing numbers of Amazon customer complaints about rancid food, it's important to know whether expired food is safe to eat.

The Challenging IP Landscape in 2019



What does this have to do with ...



301 Tariffs?

301 Tariffs?

March 22, 2018 Section 301 Report

Investigation Into China's Acts, Policies, And Practices Related To Technology Transfer, Intellectual Property, And Innovation Under Section 301 of the Trade Act of 1974



- *Section 301 of the Trade Act of 1974*
- To invoke Section 301, the U.S. trade representative has to determine that a foreign country is infringing on U.S. trade rights or carrying out discriminatory trade practices against U.S. commerce
- The President can then take various retaliatory actions, including the imposition of tariffs or other import restrictions
- Section 301 measures do not have a built-in expiration date

301 Tariffs?

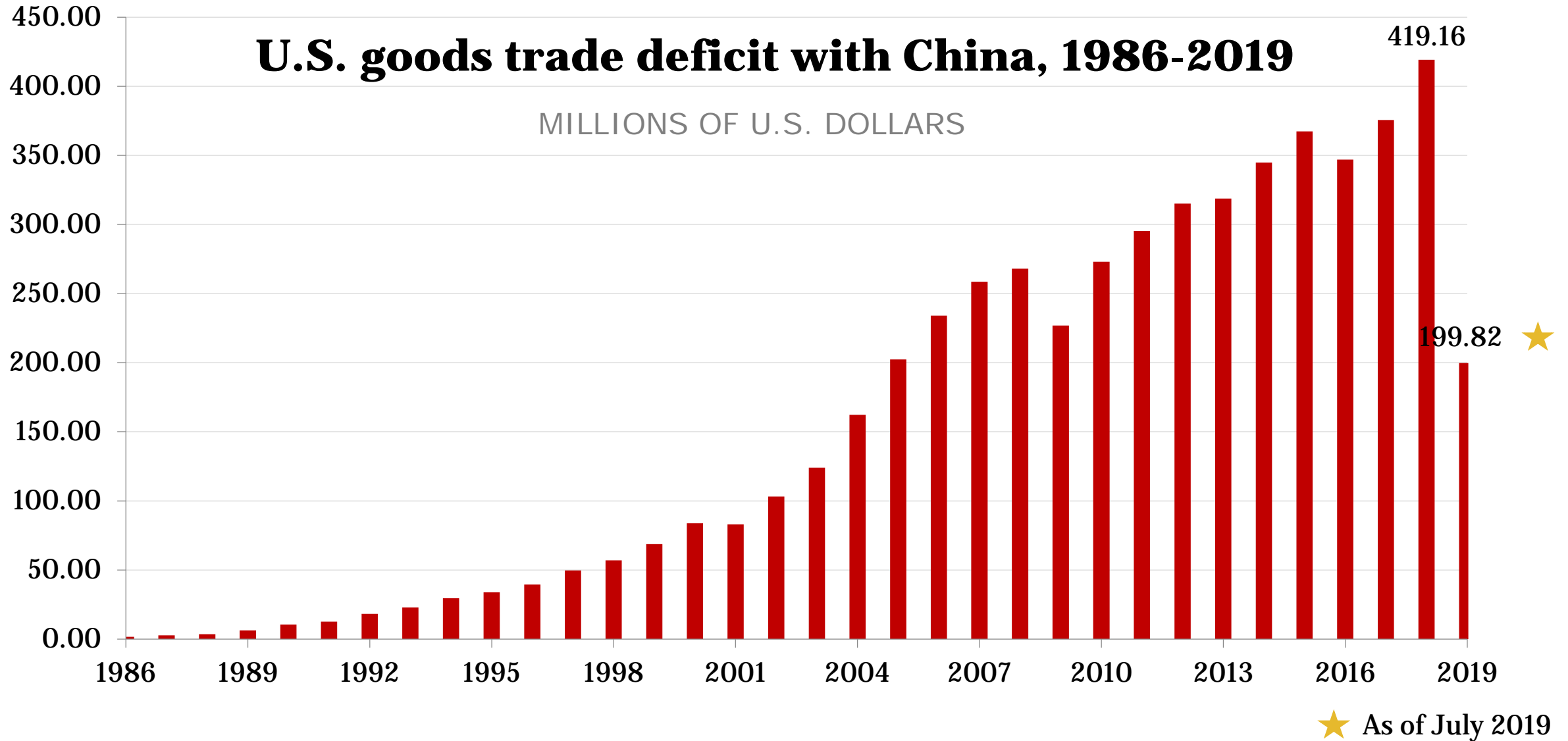
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Mixed Messages: Tariffs for IP or Trade Deficits?



Negotiations: Issues Based on May 2019 Document

On the table

Most of the items included in the original document are fair game, including:

- Reducing China's subsidies for its state industries
- Increasing China's purchases of U.S. agricultural goods, energy and manufactured goods
- Creating new protections for U.S. intellectual property
- Ending forced technology transfers
- China's currency manipulation
- Reducing non-tariff barriers to trade

Possibly on the table

China recently agreed to discuss:

- Cyber hacking of U.S. companies

China has yet to promise:

- A specific reduction in the trade deficit

How will compliance be enforced?

U.S. negotiators hope to create an enforcement mechanism, which would automatically raise tariffs if China fails to comply with the new agreement

Off the table

- Roughly 20% of the original items were deemed nonnegotiable by China for national security reasons

What about the existing tariffs?

China has urged the U.S. to lift its tariffs as part of the trade deal, but Trump has said previously he wants to leave tariffs for a "substantial period" as a way of ensuring compliance

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On the Horizon: 2019 Report on Counterfeits



On the Horizon: 2019 Report on Counterfeits

PRESIDENTIAL MEMORANDA

Memorandum on Combating Trafficking in Counterfeit and Pirated Goods

ECONOMY & JOBS | Issued on: April 3, 2019



MEMORANDUM FOR THE SECRETARY OF DEFENSE
THE ATTORNEY GENERAL
THE SECRETARY OF COMMERCE
THE SECRETARY OF HOMELAND SECURITY
THE DIRECTOR OF THE OFFICE OF MANAGEMENT
AND BUDGET
THE UNITED STATES TRADE REPRESENTATIVE
THE ASSISTANT TO THE PRESIDENT FOR ECONOMIC
POLICY
THE ASSISTANT TO THE PRESIDENT FOR TRADE AND
MANUFACTURING POLICY
THE INTELLECTUAL PROPERTY ENFORCEMENT COORDINATOR

FDRA's Comments focused on three areas:

- platforms should take more proactive and preventative measures to limit consumers exposure
- consumers need clear seller identification and product display requirements to avoid unknowingly purchasing counterfeits, and
- CBP can do more to work with rights holders to stop infringing products from entering the U.S. market.

November 2019: Administration's recommendations to the President to address the problem

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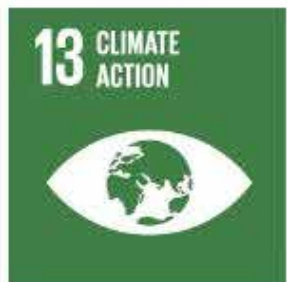
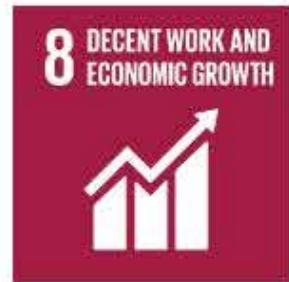
The Science of Footwear Sustainability

Andy Polk, Senior Vice President, Footwear Distributors & Retailers of America (FDRA)

Erin Augustine, Director, Responsible Sourcing, Wolverine Worldwide



SUSTAINABLE DEVELOPMENT GOALS



MERRELL®



GRIDWAY
CANVAS



GRIDWAY
KNIT



GRIDWAY
LEATHER

The Gridway Collection

BIG STYLE, SMALL IMPACT

SHOP NOW

GRIDWAY KNIT

100%

RECYCLED KNIT
UPPERS & LACES

40%

RECYCLED EVA
MIDSOLES

50%

RECYCLED EVA
FOOTBEDS

30%

RECYCLED VI BRAM®
OUTSOLES

GRIDWAY LEATHER

100%

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MIDSOLES

30%

RECYCLED VI BRAM®
OUTSOLES

SUPERITE

1 SA TANTEC
LEATHER

MERRELL®

- NO DYE -

savi ng 80% wat er & 50% ener gy*

- + RECYCLED, UNDYED LACES
- + RECYCLED, UNDYED MESH
- + RECYCLED, UNDYED TPU
- + UNDYED EVA M DSOLE
- + UNDYED OUTSOLE



*On average, per men's size 9 upper, compared to traditional dyeing methods



Every minute 1 garbage truck of plastic is dumped into the oceans.

THE SPERRY BIONIC® COLLECTION

Each pair of Sperry BIONIC® shoes removes plastic from marine and coastal environments.



LININGS MADE FROM RECYCLED PLASTIC WATER BOTTLES

BIONIC
UPPER MATERIAL MADE FROM RECYCLED PLASTIC WATER BOTTLES



RECYCLED FOAM FOOTBED

LACES MADE FROM RECYCLED PLASTIC WATER BOTTLES

BIONIC & Waterkeeper Alliance have recovered the equivalent to

4,598,411

plastic water bottles from marine and coastal environments.

MEET OUR COLLABORATORS

We are proud to work with partners BIONIC® and Waterkeeper Alliance. Together, they've launched the Ocean Plastic Recovery Initiative, with plastic recovery facilities built to protect coastal and marine environments around the world.



Waterkeeper Alliance has a simple goal: drinkable, fishable, swimmable water everywhere.

Learn more at: waterkeeper.org

BIONIC

BIONIC® is a mission-driven material engineering company, addressing ocean plastic pollution in marine and coastal environments.

Learn more at: bionicyarn.com



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**Product Safety Updates You
Absolutely Need Right Now**

Bao Vu, Stoel Rives

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Let's Talk Footwear Customs From Here On Out

Critical Updates with Customs & Border Protection (CBP)

Eric Batt, Director, Apparel, Footwear & Textiles Center, Customs & Border Protection (CBP)

Centers of Excellence (Centers)

§ Regulatory Authority

§ Staffing/Realignment

§ Systems / Processes



**U.S. Customs and
Border Protection**

Centers of Excellence (Centers)

Regulatory Authority

§ 10 Centers are fully operational as of March 23, 2016

§ Federal Register Notice - Regulatory Implementation of Centers - effective 1/19/2017



**U.S. Customs and
Border Protection**

Operational Status Staffing / Realignment



Operational Status – Where We are Now

Trade Functionality

- Multiple IORs Assignment to One Center = Account Based Approach
- ACE – Increased Functionality - Full Deployment
- External collaboration - Trade Stakeholders
- Internal collaboration - within CBP



AFT Profile

Top 5 Commodities

Women's or Girl's Pullovers \$ 2.8 B

Sweaters, of man-made fibers
\$ 2.6 B

Men's or Boy's Pullovers
\$ 2.5 B

Brassieres, not of lace
\$ 1.8 B

Footwear, Women
\$ 1.8 B



AFT Profile

Top 5 Country of Origin

China		\$47.8 B
Vietnam		\$19.7 B
India		\$7.4 B
Indonesia		\$5.9 B
Mexico		\$5.6 B



AFT Profile

Top 3 Free Trade Agreements



CAFTA
\$ 7 B

NAFTA (MX)
\$ 5.1 B

NAFTA (CA)
\$ 2 B

C

A

F

T

A



Going Forward

- ACE Trade Functionality - Core processing capabilities
- Mature the Center –
 - Increase Industry Knowledge
 - Training, Training, Training
 - Collaborative Efforts / Reinvigorate



Section 301

August 30, 2019 – Federal Register Notice (FRN)

- Formalizes the increase in the Section 301 additional duty rate from 10% to 15% for the trade remedy action on approximately \$300 billion worth of products of Chinese origin.
- List 4A, effective September 1, 2019
- List 4B, effective December 15, 2019.



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FDRA

Let's Talk Footwear Customs From Here On Out

Interactive Sample Review

John Pellegrini, *Customs Counsel, Footwear Distributors & Retailers of America (FDRA)*

Stacey Kalkines, *National Import Specialist, Footwear, Customs & Border Protection (CBP)*

Aliya Grosfeld, *Laboratory Directory, Tariff Solutions, LLC*

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FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Let's Talk Footwear Customs From Here On Out

**The John Pellegrini Footwear Customs
Concepts Hour**

Footwear Trade, Distribution & Customs FTDC Conference

Customs Concepts

Long Beach, CA
October 29, 2019

www.mcguirewoods.com

McGUIREWOODS

TRUMP TARIFFS – RESPONSES

Ø Origin

Ø Final Assembly

Ø Exceptions

Ø Value

Ø Classification

Ø *De Minimis*

Ø Exclusions (a Fool's Errand?)

TRUMP TARIFFS - PERILS

Ø Transshipment Schemes

Ø DDP is Not a Panacea

Ø False Claims Act

CLASSIFICATION

- Ø Athletic – Still No Change – Marketing – Sensors
- Ø Do we Want a Change?
- Ø High Point Rule
- Ø Artificial Raffia – Coated Textile
- Ø Composition Leather

FLOCKING RULES

A. Textile

- § 6402 and 6404 Only

- § Limited Coverage in 6402

- § No Over the Ankle in 6402

- § No protective

- § No Over \$12 footwear

B. Leather

- § R/P Uppers Primarily

- § Can Use on R/P Protective

- § No Advantage on Textile Uppers - 6404.20.60 (37.5%)

VALUE

- Ø Cancellation Charges
- Ø Materials
- Ø Molds / Tooling - Planning Required
- Ø Defective Merchandise
- Ø First Sale – “Flash Title”
- Ø Discounts
- Ø Unbundling
- Ø Any Value Questions?

FORCED LABOR

- Ø Change in the Law – “Consumptive Demand” Eliminated
- Ø “Available Reasonably But Not Conclusively”
- Ø *De Minimis?*
- Ø NGO’s – The Driving Force
- Ø China – Muslim “Training Camps”
- Ø North Korea – Presumption

ENFORCEMENT

Ø CEE Priority

Ø Will Transshipment Become an Issue?

Ø DDP Issues

FALSE CLAIMS ACT

- Ø The New Customs Enforcement Tool
- Ø Primarily Antidumping, but footwear classification is the subject of at least one current claim.
- Ø False Claims Trolls (Customs Fraud Investigations, Inc.) in the business of finding misclassification, undervaluation, origin.
- Ø Disgruntled Ex-Employee, CHB Employee
- Ø *Notations* Consent Order – DDP Purchaser

MISCELLANEOUS

Ø MTB's

Ø "Made In USA"

Ø North Korea – Sanctions

Ø *De Minimis*

Ø *CROSS*