



## U.S./CHINA PHASE ONE

- On December 13, the U.S. Trade Representative (USTR) [announced](#) a “phase one” agreement between the U.S. and China. The U.S. [agreed](#) not to impose the Section 301 List 4B 15% additional duties on December 15 and will reduce the Section 301 List 4A additional duties from 15% to 7.5%, effective [30 days](#) after the agreement is signed. Early January is the target date for signature of the phase one agreement.
- China will purchase U.S. agricultural commodities, goods, and services and agreed to temporarily suspend additional tariffs of 5% and 10% on 3,361 categories of U.S. exports scheduled for December 15 and not reimpose 25% tariffs on U.S. vehicles/parts as scheduled.
- 25% U.S. tariffs remain on \$250 billion of China exports to the U.S.
- China has [agreed](#) to certain structural changes involving intellectual property rights, coerced tech transfer, open financial services, currency manipulation, etc. A dispute resolution mechanism is included in the agreement.
- The 86-page phase one agreement is now being translated and is under legal review.
- There is still no clear resolution to the trade war. There is no timetable for the start of negotiations on phase two. This is the fourth time in 2019 the U.S. has delayed or cancelled tariff increases. 2020 will also be an unpredictable period in China trade.
- Clients should be considering logistics and entry timing to take advantage of the lower 7.5% rate on List 4A products in the February time period.

## FARMERS TRADE WAR IMPACT



## Seasons Greetings & Best Wishes for a Happy New Year!

### 2020 TRAINING SEMINARS

- **Mar. 24 - 25:** FTZ 101 & 201
- **Apr. 21 - 22:** Import/Export 101 & 201
- **Sept. 15 - 16:** FTZ 101 & 201
- **Oct. 6 - 8:** Import/Export 101 & 201 and Advanced Export

Seminars are offered to Miller & Company clients only. See [Seminar Outlines](#) for more details. See our [website](#) for registration and travel information.

### IMPORT/EXPORT/FTZ YEAR-END

See [November 2019 Briefings](#) for year-end Import/Export/FTZ to do's.

### AIRBUS EU 232 INCREASE

After a World Trade Organization (WTO) Compliance Panel [ruling](#) on December 2 that the EU had not complied with a previous dispute settlement report for providing illegal subsidies to Airbus, on December 9 the USTR requested comments on increasing the existing 25% and 10% duties up to 100% on an expanded list of products. The expanded product list includes helicopters, aircraft parts, more foods, metal products, motorcycles, clocks, etc. Comments are due by January 13, 2020. Contact [Sean Murray](#) with questions or for assistance with comments. 84 [Fed. Reg. 67992](#) (Dec. 12, 2019).

## USMCA

Congressional Democrats and the White House have agreed to finalization of the USMCA. The House of Representative's vote is scheduled for December 20. The Senate vote is scheduled for early January 2020. The amended USMCA text dated December 13, 2019 has been [posted](#) by the USTR. A [Protocol of Amendments](#) may be ratified by Mexico and Canada in the next month. CBP is working on the necessary regulations.

### CBP FTZ COMPLIANCE REVIEWS

New CBP procedures for FTZ Compliance Reviews significantly expand guidance to CBP officers nationwide conducting such reviews. Review a checklist of potential topics on our [website](#) and contact [Marshall Miller](#), [Scott Taylor](#), [Linda King](#), or [Lori Hessler](#) with questions or for detailed assistance.

### 2018 FTZ BOARD ANNUAL REPORT

The FTZ Board [annual report](#) should be reviewed by all who are involved in the FTZ program. Over 3,300 firms employing 44,000 persons were in FTZ status. Merchandise received was \$794 billion, an increase of 15.6%. Foreign status merchandise received was \$296.7 billion, representing 11.6% of all U.S. imports. Exports increased 22.3% to \$113 billion, representing 6.7% of all U.S. exports. Both warehouse and production increased significantly. Petroleum refining continued as the largest industry sector. The 2019 statistics should be significantly higher.

### CHINA 301 PRODUCT EXCLUSIONS

- On November 27 and [December 12](#), the USTR issued more China Section 301 List 3 product exclusions retroactive to September 24, 2018. They cover a wide variety of specific products. Clients are reminded that

The farm rescue response to the trade actions and retaliations has [increased](#) to \$28 billion, which is more than twice the \$12 billion auto industry bailouts of Presidents George Bush and Barack Obama. No other effected business sector has received any federal funding.

#### **FRANCE SECTION 301 DUTIES**

On December 2 the U.S. Trade Representative (USTR) [proposed](#) 100% duties on certain French products, including 63 HTSUS subheadings for butter, cheese, whey protein concentrates, sparkling wine, skincare products, handbags, and porcelain tableware and kitchenware valued at approximately \$2.4 billion per year. The potential tariff increase is in response to the French digital services tax that would be a 3% tax on revenue generated by companies providing certain digital services in France. Similar taxes are being considered by the UK and other countries. Comments are due by January 6, 2020 and a public hearing will be held January 7, 2020. Contact [Marshall Miller](#), [Sean Murray](#), [Brian Murphy](#), or [Ryan Thornton](#) with questions or for assistance with comments. 84 Fed. Reg. [66956](#) (Dec. 6, 2019).

#### **SEC PENALTY**

In a Foreign Corrupt Practices Act (FCPA) case involving [Quad/Graphics Inc.](#), the Securities and Exchange Commission (SEC) added to the FCPA penalty for sanctions violations on improper exports to Cuba, even though the FCPA case involved only Peru and China. Quad/Graphics Inc. will pay almost \$10 million in penalties. Public company clients should consider this potential new SEC role in export sanctions.

#### **CBP WRENCH DEFINITION**

In the November 20 [Customs Bulletin](#), Customs proposed to limit the Court of International Trade and U.S. Court of Appeals for the Federal Circuit decisions involving locking pliers and other hand tools. CBP believes that the court definition of a “wrench” unduly limits many articles that operate as wrenches. Comments are

#### **BRAZIL/ARGENTINA SECTION 232**

On December 2, President Trump [tweeted](#) that the Section 232 additional duties would immediately be implemented at rates of 25% for steel and 10% for aluminum for both Argentina and Brazil. The President specifically indicated that he was taking this action because of the “massive devaluation of their currencies” and referenced harm to U.S. farmers. It continues to be unclear as exactly what will occur because there has been no Presidential Proclamation, Commerce Department action, or [Federal Register](#) notice that is necessary for legal implementation.

#### **232 MOTOR VEHICLES/PARTS**

The Trump Administration missed the Section 232 [deadline](#) for action. It is unknown whether any action will be taken.

#### **US-JAPAN TRADE AGREEMENT**

The mini-trade agreement between the U.S. and Japan has been passed by the Japanese Diet with a January 1, 2020 effective date. Once implemented, the arrangement will eliminate duties on nearly 250 tariff lines of Japanese imports into the U.S. and lower Japanese tariffs on hundreds of U.S. exports. The U.S. timeframe for approval is still unclear.

#### **GSP REFUND LAPSE**

A recent Court of Appeals for the Federal Circuit (CAFC) decision is a useful reminder for clients that deadlines must be met. During the 2013-2015 GSP lapse, a statutory deadline of December 28, 2015 for requesting refunds was set by law. Due to miscommunication between the importer and its broker, the filing date was missed but a Protest was filed. The court dismissed the case because of the missed deadline. [Industrial Chemicals, Inc. v. U.S.](#), CAFC Slip Op. [2019-1176](#) (Nov. 8, 2019).

#### **SECTION 232 2018 STEEL TARIFFS**

A new lawsuit has been filed in the U.S. Court of International Trade (CIT) challenging the legal basis of instituting the 2018 Section 232 steel tariffs and seeking an injunction and refund of all Section 232 tariffs paid. [Universal](#)

exclusions are not company specific. 84 Fed. Reg. [65882](#) (Nov. 29, 2019).

- The USTR has also posted modifications to certain previously-issued [List 1](#) and [List 2](#) product exclusions. The retroactive effect of these changes is unclear and could pose issues for companies that have used them. Contact [Sean Murray](#) or [Brian Murphy](#) with questions.
- Contact [Ryan Thornton](#) for our updated proprietary spreadsheet of product exclusions.

#### **WTO DISPUTE SETTLEMENT**

The [dispute settlement](#) appeals body at the World Trade Organization (WTO) has ceased to function because the U.S. is blocking the appointment of judges. Efforts continue to resolve the dispute, but the Trump Administration does not appear to be working on a solution even though the U.S. has won more WTO cases than it has lost since the process was initiated in 1995. Suspension of the dispute resolution appeals process is a serious challenge to the WTO multilateral trade system. Without a referee and an effective enforcement mechanism, global trade disputes will be less predictable. The EU has already announced a unilateral process for sanctions, similar to the recent U.S. trade actions, if the WTO multilateral process is not continued.

#### **HTS UNIT OF QUANTITY CHANGE**

Customs has issued guidance that as of January 1, 2020, there will no longer be any units of quantity in the HTSUS that are “X.” All unit of quantities used in HTSUS will be specific units such as “kgs,” “No,” etc. Detailed information is provided on the Customs [website](#). Importers and FTZ firms should validate that their computer systems properly report the new HTS quantities.

#### **TRADE REMEDY DUTIES**

As of November 13, CBP has [assessed](#) \$46.4 billion in duties under the Trump Administration Section 201, Section 232, and Section 301 trade remedies in 2019.

#### **2020 C-TPAT UPDATE**

due by December 20. 53 [Cust. B. & Dec. 32](#) (Nov. 20, 2019).

### HONG KONG

The Hong Kong Human Rights and Democracy Act passed by the Senate and U.S. House of Representatives has been signed by the President. China has expressed deep antipathy towards the legislation. U.S. military visits to Hong Kong have been suspended. U.S. NGO's have been restricted from Hong Kong activity. Public Law [116-76](#) (Nov. 27, 2019).

### UIGHUR POLICY ACT OF 2019

[H.R.649](#) and [S.178](#) have now cleared the House and the Senate. They would require tough U.S. sanctions on China over reports of government run detention centers imprisoning millions of Muslim minority Chinese citizens of Xin Jing.

### FORD TARIFF ENGINEERING

The U.S. Supreme Court has [granted](#) Ford's request for an extension of time until February 13, 2020 to file a certiorari petition to seek the Court's review of the case concerning the Ford Transit Connect van that was imported as a passenger van and subsequently changed after entry into a truck.

### STEEL TARIFF EXCLUSIONS

Through the end of July, 836 American manufacturers had [filed](#) 62,797 requests for an exclusion from the steel tariffs. 49% of petitions have been approved, 21% denied, and 34% are pending. 22,210 objections have been filed to the exclusion requests, covering 154 million metric tons of steel.

### ALUMINUM EXTRUSION AD/CVD

In the continuing saga of impacts of the China aluminum extrusion case, Commerce has [ruled](#) that bolts used to tighten clamps were not fasteners, so they prevented mounting kits from qualifying for the finished goods kit AD/CVD scope exclusion.

### IMPORTED MONITOR/PARTS

Prysm, Inc. argued that its imported laser phosphor displays (LPDs) for use in larger wall panel computer displays were manufactured for use as "parts of" a display wall system which should

Steel Products, Inc., et al. v. U.S., CIT Case No. [19-00209](#) (Dec. 3, 2019).

### CIT SECTION 232 DECISION

In an important decision, the CIT denied the U.S. government's motion to dismiss an importer's challenge to the institution of the different Section 232 tariffs on Turkish steel. [Transpacific Steel LLC v. U.S.](#), CIT Slip Op. [19-142](#) (Nov. 15, 2019).

### SECTION 9817 HTSUS IMPORTS

Clients are reminded that there are specific HTSUS provisions that allow merchandise used for certain medical purposes to be entered into the U.S. duty-free. HQ [H305925](#) (Nov. 12, 2019).

### CFIUS ANNUAL REPORT

The Treasury Department has released its [report](#) to Congress on transactions reviewed by the Committee on Foreign Investment in the United States (CFIUS) for 2016 and 2017. The report identifies the investigations, transactions, business sectors, and other necessary information to identify foreign investment in the U.S. and its impact on U.S. technology.

### NORTH KOREA PRESENTATION

A U.S. citizen living in Singapore is facing [charges](#) from the Department of Justice (DOJ) after he traveled to North Korea and presented information at a blockchain cryptocurrency conference. According to the DOJ, Virgil Griffith was warned by the U.S. State Department not to travel to North Korea. If convicted, Mr. Griffith faces up to 20 years in prison.

### GAO AD/CVD REPORT

The U.S. Government Accountability Office (GAO) has issued a [report](#) on actions by Commerce and CBP to address weaknesses in collecting antidumping/countervailing duties (AD/CVD). The report indicates that for 2011-2018, Customs collected \$19 billion in initial estimated AD/CVD and another \$1.6 billion in retrospective increased AD/CVD. However, as of May 2019 CBP issued 544,000 retrospective AD/CVD bills, with \$4.5 billion remaining uncollected. Only 20 importers accounted for 43% of the uncollected \$4.5 billion. A sharp

The new C-TPAT requirements for 2020 will impact most participants. We encourage companies to [review](#) the requirements and contact us. Contact [Chuck Ballard](#) or [Marshall Miller](#).

### FTZ TO BONDED WAREHOUSES

There is an increase in merchandise admitted to FTZs in Privileged Foreign (PF) status due to trade remedies. Clients are reminded that under 19 C.F.R. § 146.64(a), PF status merchandise held in FTZs cannot be transferred to a bonded warehouse. Contact [Marshall Miller](#) or [Linda King](#) for more information.

### FTZ QUOTA

Customs has updated the ACE Cargo Release Condition Codes document to add an error message that goods subject to quota are not eligible for FTZ Weekly Entry (Entry Type 06). CSMS [#40928052](#) (Dec. 9, 2019).

### HUAWEI

The Bureau of Industry and Security (BIS) has extended the General License (GL) for Huawei for 90 days until February 16. Under the terms of the GL, specific sales involving Huawei relating to existing network operations of mobile devices are permitted. Other sales to Huawei are being evaluated on a case-by-case basis. 84 [Fed. Reg. 64018](#) (Nov. 20, 2019).

### GSP HEARING

A public hearing will occur concerning country practice reviews for Azerbaijan, Ecuador, Georgia, Indonesia, Kazakhstan, Thailand, South Africa, and Uzbekistan, and for the Country Designation Review of Laos. The deadline for comments, prehearing briefs, and requests to appear is January 17, 2020. The hearing is January 30, 2020. 84 [Fed. Reg. 63955](#) (Nov. 19, 2019).

### EU CHEMICALS HANDBOOK

The European Commission recently released its 2019 [Export Control Handbook for Chemicals](#).

### WTO SAFEGUARD ACTIONS

A record 45 WTO [Notifications](#) of Safeguard Actions have been instituted in 2019. It is believed that many of the safeguard actions may not actually fit

be classified under Heading 8529, but the CIT determined that the LPDs are a monitor properly classified under Heading 8528. [Prysm, Inc. v. U.S.](#), CIT Slip Op. [19-149](#) (Nov. 26, 2019).

**EXPORT PENALTY RECAP**

The Bureau of Industry and Security (BIS), the Office of Foreign Assets Control (OFAC), and the Department of Justice (DOJ) have indicated that they have record numbers of fines and penalties for export violations in 2019. Prominent companies that have been fined this year include [Apple](#), [Western Union](#), and [Expedia](#). BIS has not yet published its 2019 annual report and DOJ does not break-out export penalties, but a list of OFAC enforcement activities is available on the OFAC [website](#).

**EXPORT DE MINIMIS**

Richard Ashooh, the Assistant Secretary of Export Administration, has indicated in media comments, that the BIS is considering expanding the “[direct product rule](#)” and broadening the “de minimus” rule on sales to Huawei involving foreign-made product containing U.S. components.

increase in AD/CVD orders without a corresponding increase in government staffing levels is blamed.

**CBP TRADE AND TRAVEL REPORT**

CBP has issued a fiscal year 2018 [report](#) that provides information on all aspects of CBP activity, including enforcement activities, Centers of Excellence and Expertise (CEE) activities, and AD/CVD activities under the Enforce and Protect Act.

**CUSTOMS VIOLATION**

In a very unusual press [release](#), CBP Headquarters identified Satisloh, an importer of machinery used in the production of optical lenses, as being subject to 19 U.S.C. § 1592 penalties for false descriptions and incorrect tariff classifications. The penalty was collected by an Offer in Compromise for \$3,320,425. Generally, CBP does not publicize penalty matters.

**EXPORT DISCLOSURES**

Arrow Electronics, one of the largest distributors of electronic parts and components, indicated in a Securities and Exchange Commission (SEC) [filing](#) that some of its employees were involved in facilitating and transshipping electronic parts to sanctioned entities in Iran and Syria. Arrow fired or disciplined the employees involved and voluntarily disclosed the violations to both OFAC and BIS.

within the rules of the Safeguard Agreement and are a response to U.S. increased duties on a wide range of merchandise.

**CBP VALUE ADJUSTMENT**

In a recent ruling, Customs determined that an automotive importer could use Reconciliation to adjust the value of its entries for surcharges that account for commodity prices of the metals used in imported auto parts. HQ [H302879](#) (Oct. 22, 2019).

**HUMAN RIGHTS**

The European Union (EU) is considering adding [human rights](#) considerations to EU export controls. Even if the United States does not implement these same considerations, working with or selling to entities that are found to be involved in human rights violations may be viewed as a “red flag.”

**FOREIGN-TRADE ZONES BOARD  
ACTIVITY AS OF 12/15/2019**

	<u>APPROVED</u>	<u>CURRENTLY AUTHORIZED</u>
ZONES	292	274
SUBZONES	838	684
<u>PENDING:</u>		
ZONES	5	
SUBZONES	14	
MISC.	39	

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**IMPORTS EXPORTS FOREIGN-TRADE ZONES**

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