



USMCA IMPLEMENTATION

- On March 13 the Canadian Parliament passed legislation to ratify the U.S.-Mexico-Canada Agreement (USMCA). This final approval by the Canadian government starts a three-month period before the agreement can be implemented. The Trump Administration is said to be pushing for implementation in June. Quick implementation will require producers, exporters, and importers to rush to ensure their products are eligible for preferential treatment at the time of entry. The higher regional value content requirements for some products may require sourcing changes.
- The USMCA uniform regulations need to be issued before the agreement goes into effect. That could delay implementation. The three customs agencies will be scrambling to complete the regulations.
- The uniform regulations are necessary for companies to understand how many aspects of USMCA will be interpreted, including new rules of origin, inventory management methodologies, and origin marking requirements.
- CBP has created a USMCA [webpage](#) with basic information and FAQs.
- Contact [Brian Murphy](#) or [Sean Murray](#) with questions or for assistance with USMCA qualification reviews.

FTZs & China 301 List 4A

In an unusual determination solely by CBP administrative message and without a CBP ruling, legal determination, or court case supporting the decision, CBP directed that China 301 List 4A material originally admitted to an FTZ as mandated in Privileged Foreign (PF) status at a 15% rate of duty may not utilize the 7.5% rate of duty now in effect on the date of FTZ withdrawal. This is different treatment than directed by the White House and Commerce Department for duty reductions and/or elimination in Section 232 Trade Remedies. Expect further

BUSINESS CONTINUITY

The firm continues to monitor government guidance on COVID-19 and its impact on employees, clients, and suppliers. The firm has business continuity plans and protections in place to provide client support. We have upgraded options for video conferencing.

2020 TRAINING SEMINARS

- The March FTZ and April Import/Export seminars have been cancelled. Registrations have been transferred to the fall seminars. Contact Kelley Randol at krandol@millerco.com with questions or for changes.
- Sept. 15 - 16: FTZ 101 & 201
- Oct. 6 - 8: Import/Export 101 & 201 and Advanced Export

See our [website](#) for more details, registration, and travel information.

LIST 1 EXCLUSION EXTENSIONS

On March 2, 2020, the U.S. Trade Representative (USTR) announced the process for requesting extensions to China Section 301 List 1 product exclusions granted on May 14, 2019, and set to expire on May 14, 2020. Extension requests may be submitted for a thirty (30) day period from March 12 to April 12. Additional details are available [here](#). Questions should be directed to [Brian Murphy](#), [Sean Murray](#), or [Ryan Thornton](#). 85 Fed. Reg. [12373](#) (Mar. 2, 2020).

301 EXCLUSION REVISIONS

- On February 20, the USTR announced three revisions to previously-approved China Section 301 List 3 product exclusions. Two of the revisions expand the scope of existing product exclusions. The previously-approved exclusion for dog and cat collars is now limited only to dog collars. 85 Fed. Reg. [9921](#) (Feb. 20, 2020).
- On February 25, the USTR announced two revisions to the China Section 301 List 2 product exclusions. A new product exclusion was created for electric skateboards

COVID-19 TRADE IMPACT

- On March 11, 2020, President Trump [announced](#) further limitations on the entry of non-U.S. citizens and lawful permanent residents arriving in the U.S. from the 26 European country "Schengen Area." The UK and Ireland were added to the country list on March 14. This is in addition to prior travel restrictions on China and Iran. These restrictions currently impact travelers and do not prohibit or limit the importation of merchandise from these countries. 85 Fed. Reg. [15043](#) (Mar. 16, 2020).
- On March 13, CBP conducted a conference call on COVID-19 (coronavirus) impact. CBP has not had any staffing impact yet, but more personnel will be "teleworking" and officers with suspected exposure will be in 14-day quarantine.
- Remember that arriving merchandise may be "temporarily deposited" in a foreign-trade zone if Customs entry details or personnel are not available. It may also be regularly admitted into an FTZ.
- The United Nations Conference on Trade and Development (UNCTAD) has [estimated](#) that exports from China have declined by at least \$50 billion as the result of the coronavirus outbreak.
- Clients should be reviewing supply and distribution agreements for "force majeure" language covering the circumstances. Contact [Sean Murray](#) with questions.

COVID-19 301 EXCLUSIONS

Perhaps not coincidentally, the U.S. Trade Representative (USTR) has issued product exclusions covering medical products.

- On March 10, the USTR announced the first list of China Section 301 List 4A product exclusions. These product exclusions are set forth in eight (8) ten-digit HTSUS classifications. 85 Fed. Reg. [13970](#) (Mar. 10, 2020).
- On March 12, the USTR announced additional China Section 301 [List 3](#) and [List 4A](#) product exclusions set forth in five (ten-digit) classifications

action. Contact [Marshall Miller](#) with questions. CSMS #41538917 (Feb. 4, 2020).

Section 301 Airbus Dispute

- On February 21, the U.S. Trade Representative (USTR) announced revisions to the existing Section 301 duties imposed on certain EU products. Effective March 18, the applicable duty rate for certain new aircraft will increase from 10% to 15%. Some changes to product coverage went into effect on March 5. A more detailed explanation is available [here](#). 85 Fed. Reg. 10204 (Feb. 21, 2020).
- The USTR has issued ministerial corrections to this product list. 85 Fed. Reg. 14517 (Mar. 12, 2020).

Lacey Act de Minimis

The Animal Plant Health Inspection Service (APHIS) has issued a Final Rule, effective April 1, 2020, that creates a de minimis standard for Lacey Act declarations. All clients importing materials subject to the Lacey Act should carefully review the new rules. The primary exception is for products containing plant materials that are no more than 5% of the total weight of the product, provided that the total weight of the plant material does not exceed 2.9kgs. There are numerous exceptions. Contact [Brian Murphy](#) or [Sean Murray](#) with questions. 85 Fed. Reg. [12207](#) (Mar. 2, 2020).

WTO Appellate Body

17 WTO members have announced they intend to negotiate an interim appeals arrangement similar to the EU's bilateral appeals agreements with Canada and Norway.

CBP IPR BLOCK CHAIN TEST

CBP has issued a [report](#) on a recent "proof of concept" use of block chain for IPR management purposes. There are many technical concerns with using block chain verification for IPR at Customs entry, so it likely will be some time before block chain is available for this purpose.

FORD TARIFF ENGINEERING

Ford has filed a Petition for a Writ of Certiorari with the U.S. Supreme Court to appeal the CAFC's 2019 decision on the classification of Ford Transit vans that were declared as passenger vehicles and modified post-importation for use as cargo vehicles. *Ford Motor Co. v. U.S.*, Case No. [19-1026](#) (Feb. 13, 2020).

and a previously-approved exclusion for silicones in primary forms was expanded. 85 Fed. Reg. [10808](#) (Feb. 25, 2020).

SECTION 232 TARIFF SCOPE

- On February 21, the CIT issued an Order blocking the Section 232 tariffs on aluminum and steel product derivatives for a second importer. *Oman Fasteners, LLC v. U.S.*, Case No. [20-cv-00037](#) (Feb. 21, 2020).
- A group of importers has filed motions to intervene in the two pending matters concerning the legality of the Section 232 derivative tariffs. *PrimeSource Bldg. Prod., Inc. v. U.S.*, Case No. [20-cv-00032](#) (Feb. 20, 2020).
- Contact [Brian Murphy](#) or [Ryan Thornton](#) with questions.

SECTION 232 LITIGATION

The Court of Appeals for the Federal Circuit (CAFC) has upheld the U.S. Court of International Trade (CIT) ruling that Section 232 steel tariffs are a constitutional delegation of legislative authority, relying on and refusing to distinguish Supreme Court precedent. A petition seeking U.S. Supreme Court review is expected. *American Inst. for Int'l Steel v. U.S.*, CAFC Slip Op. [2019-1727](#) (Feb. 28, 2020).

CTPAT QUESTIONNAIRE

The firm has developed a new business partner questionnaire for its Customs Trade Partnership Against Terrorism (CTPAT) supply chain security program. CTPAT participants are reminded that they need to come into compliance with the new CTPAT minimum criteria announced in November 2019. Contact [Sean Murray](#) with questions.

CBP TRADE STATISTICS

As of March 4, CBP has assessed \$59 billion in Section 201, 232, and 301 duties. This includes \$47.8 billion in China Section 301 duties, \$335 million in EU Section 301 duties, and \$8.8 billion in Section 232 duties on aluminum and steel. \$1.6 billion has been collected in Section 201 duties on washing machines and solar cells.

Transaction Value

The CBP has ruled that certain amendment charges, detention charges, switch bill of lading fees, and change of vessel fees incurred by the vendor for services should be included in the transaction value of

and nineteen (19) product-specific descriptions. 85 Fed. Reg. [15015](#) (Mar. 16, 2020).

COVID-19 EXPORTS

For researchers and companies engaged in COVID-19 research, the Bureau of Industry and Security (BIS) [posted guidance](#) on February 25 that the causative agent of COVID-19, the SARS-CoV-2 virus, is classified EAR99, even though the "SARS-related coronavirus" has an Export Control Classification Number (ECCN) of 1C351.a.46. As EAR99 classified, an export license is not required to most destinations, but end use and end user restrictions must still be considered. Contact [Sean Murray](#) or [Chuck Ballard](#) with questions.

U.S. China Trade

China has issued two lists of 65 mostly industrial U.S. products that are exempt from retaliatory tariffs imposed against the U.S. China has also announced that it will accept exclusion requests from a [list](#) covering 696 items, including agricultural goods, metals, and oils.

COUNTERFEIT SEIZURE

The Court of Appeals for the Federal Circuit (CAFC) has ruled that butane gas cannisters had a counterfeit UL certification mark at importation even though the importer obtained approval for the UL mark post-importation. *ICCS USA Corp. v. U.S.*, CAFC Slip Op. [2019-1561](#) (Mar. 11, 2020).

ALUMINUM SHEET AD/CVD

An aluminum industry group has filed petitions with the U.S. International Trade Commission seeking antidumping and countervailing duties (AD/CVD) on common alloy aluminum sheet from 18 countries, including Germany, India, Korea, and Turkey. 85 Fed. Reg. [14702](#) (Mar. 13, 2020).

HUAWEI GL

On March 12, the BIS published a Final Rule announcing it was extending to May 15 the General License (GL) for Huawei shipments necessary for the operation of existing networks or support of current mobile services. The BIS also requested comments by March 25 relating to further extensions of the GL. 85 Fed. Reg. [14416](#) and [14428](#) (Mar. 12, 2020).

HUAWEI IRAN EXPORTS

RUSSIAN & YEMEN EXPORTS

The BIS has issued a Final Rule adding further export restrictions on items controlled for Nuclear Proliferation (NP) reasons to Russia. Items controlled for NP1 reasons now require a license for export to Russia. Applications for licenses for items controlled for Missile Technology (MT) or Chemical and Biological Weapons (CB) will be reviewed with a presumption of denial. Changes were also made for Yemen, moving it from Country Group "B" to Country Group "D." 85 Fed. Reg. [10274](#) (Feb. 24, 2020); 85 Fed. Reg. [13009](#) (Mar. 6, 2020).

LIQUIDATION EXTENSIONS

Given recent rounds of China Section 301 product exclusions, clients may consider requesting that CBP extend liquidation of entries of Chinese merchandise that is subject to pending product extension requests in order to preserve the ability to file Post Summary Corrections (PSC) if exclusions are approved.

VENEZUELA

- On March 12, the Office of Foreign Assets Control (OFAC) announced changes to two General Licenses (GLs). GL [15C](#) authorizes transactions with some financial institutions and GL [16C](#) authorizes personal accounts and transactions with some financial institutions.
- OFAC has issued [GL 36A](#) to permit wind down operations with Rosneft Trading S.A. and TNK Trading International S.A through May 20, 2020. The two named entities were involved in transactions related to Venezuelan oil sales. OFAC also issued two frequently asked questions (FAQs) on GL 36A: FAQ [817](#) and [818](#).
- OFAC has published General License 5B, which authorizes certain transactions relating to a Petroleos de Venezuela, SA (PDVSA) 2020 8.5% bond beginning April 22, 2020. 85 Fed. Reg. [14572](#) (Mar. 13, 2020).

IRAN PLEA

Mr. Aiden Davidson of Tennessee [plead guilty](#) to charges he arranged the export to Iran of valves, motors, and pumps valued at \$100,000. Mr. Davidson is to be sentenced on June 17 and faces up to 10 years in prison and fines exceeding \$1 million.

PATENT INFRINGEMENT

imported merchandise. Contact [Sean Murray](#) for more information. [HQ_H303913](#) (Feb. 4, 2020).

2020 HTS Revision 4

The U.S. International Trade Commission has [issued](#) revision 4 to the HTSUS, adding new exclusions from Section 301 tariffs, amending units of quantity for returned goods under Chapter 98, and making a range of other changes.

GPS Tracking Devices

CBP has ruled that certain tracking devices using GPS and not connecting to smart phones should be classified differently from smart watches and other Bluetooth-connected devices that rely on a smart phone connection. CBP determined that their correct classification is HTSUS subheading 8526.91.00 as radio navigational aid apparatus. [HQ_H300872](#) (Sept., 30, 2019).

OFAC PENALTY

The Office of Foreign Assets Control (OFAC) has reached an [agreement](#) where the Swiss Société Internationale de Télécommunications Aéronautiques (SITA) will pay approximately \$8 million for providing U.S.-origin services and software to Iranian airlines on the OFAC Specially Designated Nationals (SDN) List.

DECCS

The Directorate of Defense Trade Controls (DDTC) launched its new Defense Export Control and Compliance System ([DECCS](#)) on February 18. DECCS replaces the DSP-2032, D-Trade, and other systems for registration, licensing, advisory opinions, commodity jurisdiction requests, and other functions. Contact [Chuck Ballard](#) with questions or for assistance.

IRAN PORTAL

The State Department has announced a "guidance portal" with links to State and Treasury Department guidance documents relating to Iran. 85 Fed. Reg. [12047](#) (Feb. 28, 2020).

ACQUIRING U.S. TECHNOLOGY

The Department of Defense (DoD) has issued a [report](#) describing attempts by foreign governments and entities to obtain U.S. technology.

According to a March 2 Reuters [report](#), Huawei made at least 2 exports to Iran of HP computers, despite claims by Huawei that it did not violate U.S. sanctions. According to Reuters, the packing lists they discovered provide proof that Huawei violated the sanctions.

HUAWEI DE MINIMIS

Commerce Secretary Wilbur Ross indicated in a March 5 Senate hearing that the Commerce Department is considering lowering the current 25% de minimis level on foreign made products that contain U.S. content for exports to Huawei.

DISCRIMINATION SETTLEMENT

The Department of Justice (DOJ) has [announced](#) a settlement with Chancery Staffing Services (CSS) for discriminating against non-U.S. citizens for positions related to International Traffic in Arms Regulations (ITAR) work. The DOJ argued that the ITAR does not specifically prohibit non-U.S. citizens from doing ITAR-related work so long as they obtain a license prior to the release of ITAR controlled information. Under the terms of the settlement, CSS paid \$27,000 in penalties and agreed to upgrade their guidance and procedures.

Titanium Sponge

President Trump has determined not to impose Section 232 duties on titanium sponge imports. A Presidential [memorandum](#) was issued on February 27 indicating that titanium sponge is being imported into the U.S. in such quantities and under such circumstances as to threaten and impair national security, but 94.4% of the imports are from Japan, which has an important security relationship with the U.S. As a result, the President concurred with the Commerce Secretary's recommendations not to take actions to adjust imports under Section 232 at this time and to create a working group.

WTO Procurement Agmt

Rumors abound that USTR Robert Lighthizer is exploring U.S. withdrawal from the WTO Government Procurement Agreement. If the U.S. withdraws, it will limit consideration of products from foreign signatories to the WTO agreement in U.S. government procurements, but also impact U.S. firms competing for foreign

The CIT has [ruled](#) that an importer who redesigned its product to avoid patent infringement under a Section 337 exclusion order may challenge a Customs exclusion action. The CIT found that CBP acted on its own authority, so its decision could be protested. [Wirtgen America, Inc. v. U.S.](#), Slip Op. [20-29](#) (Mar. 4, 2020).

FDA CHINA Inspections

As a result of the COVID-19 outbreak, the FDA has halted all [inspections](#) of China facilities. The FDA indicates that it will “continue to aggressively monitor medical products and food safety.”

WRENCHES AND PLIERS

CBP has published notice that, effective March 11, it is limiting the application of CIT and CAFC decisions in [Irwin Industrial Tool Co. v. U.S.](#) to the merchandise identified in those specific entries and to locking pliers identical in all material respects. CBP believes other items should be classified as “wrenches.” 54 [Customs B. & Dec. 30](#) (Mar. 11, 2020).

FWS ACE FILING PILOT

The Fish and Wildlife Service (FWS) is reopening its import ACE pilot program on April 6. This third version of the pilot adds new filing options for import data transmission. 85 [Fed. Reg. 12936](#) (Mar. 5, 2020).

government contracts in about 50 countries.

USTR 2020 Agenda

Clients are encouraged to read the USTR’s lengthy annual U.S. Trade Agenda [report](#). GSP imports dropped in 2019, but expect increased efforts to change and limit GSP. The report also focuses on heightened enforcement activity. The trade deficit decreased by \$1.9 billion or 1.7%, the first decline since 2013.

FOREIGN-TRADE ZONE BOARD ACTIVITY AS OF 03/15/20

	<u>APPROVED</u>	<u>CURRENTLY AUTHORIZED</u>
ZONES	294	276
SUBZONES	844	690
<u>PENDING</u>		
ZONES	3	
SUBZONES	15	
MISC.	34	

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