



## HONG KONG

In response to China's adoption of a new national security law for Hong Kong, the U.S. government has taken some steps and is considering others:

- On July 14, President Trump signed the "Hong Kong Autonomy Act" (H.R. 7440) into law. The Act authorizes and imposes sanctions on foreign persons, entities, and institutions that contribute to China's actions to remove Hong Kong's autonomy.

- On July 14, President Trump also issued an [Executive Order](#) suspending application of the 1992 U.S.-Hong Kong Policy Act to Hong Kong for immigration, defense, export control, and origin marking purposes, providing 15 days for U.S. agencies to take action. This should mean Hong Kong products will become China origin, become subject to China Section 301 tariffs, and become subject to other China actions such as antidumping/countervailing duties. Contact [Marshall Miller](#), [Sean Murray](#), or [Brian Murphy](#) with questions.

- Effective June 30, U.S. export license exceptions that were available for Hong Kong are no longer available unless they are also available to China. The Bureau of Industry and Security (BIS) has issued [guidance](#) on the use of license exceptions for Hong Kong.

- Secretary of State Mike Pompeo announced on June 29 that the U.S. would end exports of U.S. origin defense articles to Hong Kong and will move to impose the same restrictions on U.S. defense and dual-use exports to Hong Kong as it imposes on China exports.

## BIS END USE & AES GUIDANCE

- The BIS has issued [frequently asked questions](#) (FAQs) on the new restrictions on selling to military end users and end uses in China, Russia, and Venezuela. Under the new regulations which took effect on June 29, U.S. persons and entities may not sell certain products if they have knowledge that they will be used for a military end use or a military end user in those countries. The terms include more than just the militaries and include support for the military. U.S. exporters selling covered products in these markets need to use due diligence to prevent products from going to prohibited end users and uses.

- The FAQs also remind that the BIS Final Rule requires Census Automated Export System (AES) filings for all items that have an ECCN and are destined to China, Russia, or Venezuela, regardless of value, end use, or end user. License exception GOV is the only

## FALL 2020 TRAINING SEMINARS

Due to COVID-19, our fall training seminars will be conducted by webinar only.

- FTZ 101 – Sept. 15 - 17
- FTZ 201 – Sept. 22 - 24
- Import/Export 101 – Oct. 6 - 8
- Import/Export 201 – Oct. 13 - 15

More information will be emailed and posted to our website. Visit our website [www.millerco.com](http://www.millerco.com) to register or contact [Kelley Randol](#). Webinars are offered to Miller & Company clients only.

## USMCA IMPLEMENTATION

The U.S.-Mexico-Canada Agreement (USMCA) went into effect as planned on July 1. However, the regulatory transition is incomplete and creates issues and open questions.

- The CBP USMCA regulations published on July 1 contain 62 pages, but are only partially complete. There are 42 "reserved" sections that include import requirements, export requirements, post-implementation claims, drawback and duty deferral programs, rules of origin, textiles and apparel, automotive goods, commercial samples, returned goods, and penalties.

- Reportedly 80% of USMCA is the same as NAFTA, but our cursory review reveals that there are four major subject matters unchanged from NAFTA, sixteen new USMCA subject matters, and sixteen subject matters with changes. Major USMCA subject matter changes include labor (forced labor), environmental, digital trade, intellectual property, currency manipulation, anti-corruption, government procurement, and express shipments.

- Contact [Marshall Miller](#), [Sean Murray](#), [Brian Murphy](#) or [Ryan Thornton](#) with questions. or for assistance on USMCA issues.

## USMCA TRAINING MATERIALS

The firm has created three detailed PowerPoints on the USMCA for client presentations on June 4, June 18, and July 2. If you missed a presentation and would like a copy or a link to the videos, clients may obtain a copy by contacting [Kelley Randol](#).

## USMCA ERRORS/CONCERNS

- No MPF refunds for post importation USMCA claims.
- HTSUS – Use of 2012 HTS classifications in some instances.
- TPL (Tariff Preference Level)

## COVID-19 ENTRY PAYMENTS

On April 20, 2020, the Treasury Department and CBP authorized a ninety (90) day temporary postponement of certain Customs entry payments in March and April 2020. CBP has issued a reminder that postponed payments must be timely made beginning July 22, 2020. CSMS [#43324033](#) (July 10, 2020).

## COVID-19 & FDA DEVICES

The FDA has published a notice of Emergency Use Authorizations (EUAs) for medical devices related to the COVID-19 pandemic. Contact [Sean Murray](#) with questions on importing medical devices under EUAs. 85 Fed. Reg. [42407](#) (July 14, 2020).

## COVID-19 RELIEF

On July 7, 2020, Customs issued updated guidance on merchandise imported for COVID-19 relief efforts. For international donations accepted by FEMA via the International Assistance System (IAS), a cargo release must be provided by the providing carrier and screened by the ports, but IAS donations do not require a formal entry and may be released with approval from Partner Government Agencies. CSMS [#43286719](#) (July 7, 2020).

## SUBSTANDARD RESPIRATORS

The Department of Justice (DOJ) has charged Crawford Technologies Group (HK) Co. Ltd. with violating the Federal Food, Drug and Cosmetics Act for exporting respirators to the United States that were certified as KN95 respirators, but were either defective or did not meet standards.

## CHINA 301 EXCLUSIONS

- On July 6, the Office of the U.S. Trade Representative (USTR) [announced](#) the extension of only twelve (12) out of the one hundred ten (110) List 1 product exclusions that expired on July 9, 2020.

- On July 7, the USTR [announced](#) sixty-one (61) new List 4A product exclusions. The List 4A product exclusions are retroactive to September 1, 2019 and expire on September 1, 2020. The USTR also posted denials of approximately 50% of all List 4A product exclusion requests.

- On July 15, the USTR announced technical amendments to some China Section 301 List 1 and List 3 product exclusions. 85 Fed. Reg. [42969](#) (July 15, 2020); 85 Fed. Reg. [42970](#) (July 15, 2020).

exception.

Contact [Sean Murray](#) or [Chuck Ballard](#) with questions.

### **TURKISH STEEL DUTIES**

The U.S. Court of International Trade (CIT) has ruled that President Trump's Proclamation No. 9772 (Aug. 10, 2018), which doubled the Section 232 additional duties on certain steel products of Turkey from 25% to 50%, is unlawful and void. Note that the CIT decision did not extend to the initial imposition of the 25% additional duties. A government appeal is likely. Clients should be considering steps to preserve the ability to obtain duty refunds. Contact [Brian Murphy](#) or [Sean Murray](#) with questions. *Transpacific Steel LLC v. U.S.*, CIT Slip Op. [20-98](#) (July 14, 2020).

### **XINJIANG TRADE ADVISORY**

The Office of Foreign Assets Control (OFAC), along with the Departments of State, Commerce, and Homeland Security, has issued an [advisory](#) on inadvertently doing business with entities that are contributing to oppressive measures in the Xinjiang Uyghur Autonomous Region. Areas of concern include assisting in surveillance activities, buying products made with forced labor, and the construction of internment or other facilities used in the human rights abuses in the region.

### **UIGHUR HUMAN RIGHTS ACT**

On June 17, President Trump signed the [Uighur Human Rights Policy Act](#), which authorizes sanctions on persons and entities involved in the persecution of China's minority Uighur Muslim population in Western China. P.L. [116-145](#) (June 17, 2020).

### **CHINA RETALIATION**

On July 13, China announced undisclosed sanctions against Senator Marco Rubio, Senator Ted Cruz, Ambassador Sam Brownback, Representative Chris Smith, and the Congressional-Executive Commission on China in retaliation for legislation intended to punish China for its treatment of Uighurs in Xinjiang.

China announced on July 14 that it will sanction Lockheed Martin for arms sales in Taiwan.

### **HUAWEI**

The Bureau of Industry and Security (BIS) has issued an Interim Final Rule that enables U.S. companies and persons to work with other companies, including Huawei, to set global 5G and other standards. The sanctions on Huawei remain in place. Comments are due by August 17. 85 Fed. Reg. [36719](#) (June 18, 2020).

### **FCC HUAWEI/ZTE DESIGNATIONS**

On June 30, the Federal Communication Commission (FCC) [designated](#) Huawei Technologies Company, ZTE Corporation, and their affiliates as "covered companies" for purposes of the FCC's November 2019 ban on the use of universal service support to purchase equipment from companies posing an international security threat. The FCC \$8.3 billion universal service fund may be used for a wide range of equipment purchases, but is now barred from any relationship with those companies.

Quotas for apparel exports to Canada and Mexico chart in *Implementing Instructions* is wrong. Notes are correct.

• Drawback/Duty Deferral – No regulations yet.

### **USMCA DOCS**

The following are key documents for managing USMCA:

- U.S. HTSUS [General Note 11](#) (July 1, 2020).
- [USMCA Treaty \(December 13, 2019\)](#).
- [USMCA Implementation Act](#).
- [USMCA Uniform Regulations and Miller & Co. Table of Contents](#).
- U.S. CBP USMCA Regulations. 85 Fed. Reg. [39690](#) (July 1, 2020).
- CBP USMCA [webpage](#).
- Presidential Proclamation [#10053](#) (June 29, 2020).
- C B P [Final Implementing Instructions](#) (June 30, 2020).
- USMCA Post-Importation Claims. CSMS [#43198567](#) (June 29, 2020).
- Interim Drawback Guidance. CSMS [#43227909](#) (July 1, 2020).
- Updated ACE CATAIR Duty Deferral. CSMS [#43215888](#) (June 30, 2020).
- Interagency Labor Committee for Monitoring and Enforcement Procedural Guidelines for Petitions 85 Fed. Reg. [39257](#) (June 30, 2020).
- Modification of Reconciliation for Filing USMCA Post Importation Claims. CSMS [#43235886](#) (July 2, 2020).
- U.S. International Trade Commission Interim USMCA rules on cross border long-haul trucking services. 85 Fed. Reg. [41355](#) (July 10, 2020).
- Congressional Research Service [Report R44981](#) on USMCA Agreement (Mar. 2, 2020).

### **USMCA CERTIFICATION FORM**

The firm has developed a template USMCA "certification of origin" form that is electronic and auto fillable. Contact [Sean Murray](#) for a copy. CBP has indicated that the form should be signed by a person who has knowledge of the circumstances and has seen proof of USMCA origin.

### **301 FTZ PRODUCT EXCLUSIONS**

FTZ clients are reminded to request refunds for goods subject to China 301 product exclusions not only for tendered China 301 duties, but also for the FTZ inverted duty difference for goods admitted in Privileged Foreign (PF) status that should revert to Non-Privileged Foreign (NPF) status. Contact [Marshall Miller](#) with questions.

### **SECTION 232 LITIGATION**

A U.S. producer of steel tubing has challenged the assessment of Section 232 duties on merchandise exported from the U.S. for further processing in Canada and re-imported to the U.S. under HTSUS Chapter 98 as a violation of the Administrative Procedures Act. The producer has also challenged

With over 2,000 product

exclusions, it is difficult to identify and track them. Clients can contact [Ryan Thornton](#) for a current copy of our proprietary spreadsheet of all U.S. product exclusion actions to date. Contact [Brian Murphy](#) for exclusion advice and counsel.

### **HTSUS UPDATE**

CBP has issued an HTSUS update for China Section 301 product exclusions, a wide range of HTSUS ten-digit statistical suffix changes including personal protective equipment, the automated collection of assessments for imported softwood lumber, and USMCA implementation. CSMS [#43208869](#) (June 29, 2020).

### **EU SECTION 301 DUTIES**

On June 23, the USTR [announced](#) potential modifications to the existing Section 301 duties imposed on certain EU products. These EU Section 301 duties are in retaliation for the EU's unfair subsidization of large civil aircraft. The proposed modifications include more products valued at approximately \$3.1 billion that may be subject to Section 301 duty rates up to 100%. Comments are due by July 26. Clients are encouraged to submit comments. 85 Fed. Reg. [38488](#) (June 26, 2020); 85 Fed. Reg. [39661](#) (July 1, 2020).

### **FRANCE DIGITAL TAX**

On July 10, the U.S. Trade Representative (USTR) issued a [Notice](#) that it will impose additional duties of 25% on certain French products including makeup, soaps, and handbags in response to France's implementation of a digital service tax that has a discriminatory impact on U.S. companies. These new France Section 301 duties will go into effect on January 6, 2021, which provides an opportunity for the countries to negotiate a settlement.

### **PHARMACEUTICAL APPENDIX**

CBP has issued a ruling that agreed with the importer's classifications of Beta-Alanine and D-Aspartic Acid, but denied the importer's claim for duty free treatment under the Pharmaceutical Appendix because the products are "distinct chemical species" not listed in the Appendix. Clients are reminded that the Appendix has not been updated in many years and FTZ status is a viable option to secure duty-free status. HQ [H279018](#) (April 28, 2020).

### **JET BLUE RULINGS**

In HQ [H308580](#) (May 8, 2020), CBP ruled that Jet Blue's contracted discount from an engine manufacturer may be applied to the customs valuation of a new aircraft.

In HQ [H308581](#) (April 10, 2020), CBP determined that U.S.-origin aircraft engines are eligible for a partial duty exemption under HTS subheading 9802.00.80. As a result, the value of the U.S.-origin aircraft engines may be deducted from the value of finished aircraft imported into the U.S., reducing the impact of the EU Section 301 additional duties on the aircraft.

### **APHIS CORE**

The full implementation of the APHIS

#### FIREARMS FAQS

The BIS has published new [frequently asked questions \(FAQs\)](#) guidance related to the recent changes to the regulations involving the export of firearms and ammunition.

#### AMAZON FINED

The Office of Foreign Assets Control (OFAC) announced on July 8 that it has reached a [settlement agreement](#) where Amazon has agreed to pay \$134,523 for selling to individuals in embargoed countries and failing to provide required reports where sales were permitted under general licenses.

#### SEED IMPORT REGULATIONS

Effective August 6, the Agricultural Marketing Service has extensively amended seed labeling, testing, and certification requirements in the Federal Seed Act regulations. 8 5 [Fed. Reg. 40571](#) (July 7, 2020).

#### CANADIAN SENTENCED

Ms. Angelica Preti was [sentenced](#) to 18 months in prison for her role in arranging to move aircraft parts from the United States to Iran.

#### NAFTA FTZ ORIGIN PROHIBITION

The NAFTA prohibition on FTZ production conferring origin at 19 U.S.C. § 3332(a)(2)(A) was not included in the USMCA Implementation Act. While USTR has indicated that they intend to include it in the 2020 USMCA technical correction legislation, it is not current law. This raises potential FTZ questions/opportunities. However, there are no CBP regulations or ACE programming that allows Customs entry of a USMCA-qualified article produced in a foreign-trade zone. Contact [Marshall Miller](#) with questions.

#### CTPAT

CBP has [issued](#) an updated Customs Trade Partnership Against Terrorism (CTPAT) bulletin emphasizing the importance of a Code of Conduct for CTPAT participants. Customs indicates that a Code of Conduct should include provisions on employee behavior, specifically integrity, objectivity, professional competence and due diligence, equal employment practices, and the use of internet and social media.

Some CTPAT validations are occurring. Contact [Sean Murray](#) with questions.

the constitutionality of Section 232. Maple Leaf Marketing, Inc. v. U.S., et. al., CIT Case No. [20-cv-00125](#) (June 24, 2020).

#### FALSE ORIGIN DECLARATION

In an unusual case, Koch Industries has [accused](#) a competitor of avoiding China 301 tariffs by shipping China origin steel rope and chain through Vietnam. Instead of utilizing the U.S. Department of Commerce or CBP to investigate, Koch sued directly on claims of false designation of origin in violation of the Lanham Act and state consumer protection laws. Koch Industries Inc. v. Baron Manufacturing Co. LLC, Case Number 3:2020-cv-00569 W.D. Wis. June 23, 2020.

#### FORCED LABOR

CBP officers in the Port of New York/New Jersey recently [detained](#) a shipment of products/accessories involving human hair suspected of being made with forced labor.

#### IITs

CBP has ruled that cloth coverings to protect imported rail car shells do not qualify as Instruments of International Traffic as they are not "containers or holders" for the rail car shells. HQ [H303169](#) (April 26, 2020).

#### 9801 CLAIMS

CBP has ruled that general date ranges for export and detailed supporting documentation were sufficient for duty-free treatment under subheading 9801.00.10. HQ [H307282](#) (Feb. 4, 2020).

#### OECD REPORT

The Organization for Economic Cooperation and Development (OECD) has [issued](#) a survey of the U.S. economy that indicates that Section 301 tariffs have raised prices for domestic consumers and the sectors most exposed to retaliatory duties saw decreased consumption.

#### FTZ NAFTA/USMCA TRANSITION

Clients should carefully consider NAFTA-qualified Privileged Foreign (PF) status merchandise on hand in FTZ inventory after July 1. CBP has stated that PF NAFTA claims will still be accepted for merchandise admitted in PF status prior to July 1. Contact [Linda King](#) with questions.

message set has been delayed until January 20, 2021. Firms that can comply now are encouraged to do so. CSMS [#43224976](#) (July 1, 2020).

#### U.S. BRIBERY CHARGES

Novartis AG and former eye care unit Alcon will pay more than \$346 million to [resolve](#) U.S. criminal and civil charges that they bribed doctors, hospitals, and clinics in Greece and Vietnam to prescribe their drugs and use their surgical products.

#### COUNTERFEIT DEVICES

An Illinois federal judge has ordered the seizure of counterfeit versions of Johnson & Johnson surgical devices from distributor eSutures.com Johnson & Johnson et al. v. Advanced Inventory Management Inc. et al., Case Number 1:20-cv-03471 (N.D. Ill. July 7, 2020).

#### TARIFF ENGINEERING

On June 29, the U.S. Supreme Court [denied](#) Ford's request to review the U.S. Court of Appeals for the Federal Circuit's decision affirming the CBP classification of Transit vans that were subject to post-importation modifications.

#### BREXIT

The UK has published [guidance](#) on the processing of imports and exports between the UK and EU beginning on January 1, 2021.

#### TRADE REDUCTION

On July 2, the Commerce Department [released](#) data indicating that the combined value of U.S. exports and imports fell to \$343.6 billion in May 2020. This is the lowest combined amount since 2009.

#### FTZ STATS FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 07/15/2020

Currently  
[Approved](#) [Authorized](#)  
Zones 294 276  
Subzones 852 698  
[Pending](#)  
Zones 3  
Subzones 12  
Misc. 38

1300 I STREET N.W., SUITE 400E  
WASHINGTON D.C. 20005

4929 MAIN STREET  
KANSAS CITY, MISSOURI 64112  
816.561.4999  
FAX 816.561.4999

233 BROADWAY, SUITE 2702  
NEW YORK, NEW YORK 10279

E-MAIL: [intlaw@millerco.com](mailto:intlaw@millerco.com)  
[www.millerco.com](http://www.millerco.com)

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