



## BURMA SANCTIONS

· On February 18, 2021, the Bureau of Industry and Security (BIS) outlined a stricter licensing policy for Burma (a.k.a. Myanmar) and the suspension of certain license exceptions in response to the military coup. The BIS will apply a presumption of denial license review standard for all items that are destined for the Myanmar Ministries of Defense or Home Affairs or for the Burmese military. 86 Fed. Reg. [10011](#) (Feb. 18, 2021).

· On March 8, 2021 the BIS issued two Final Rules that further strengthened the sanctions. In addition to adding persons to the Entity List, BIS announced a more restrictive license review policy, moved Burma from Country Group B to the more restrictive Group D:1, added Burma to the Military End User (MEU) restrictions, and moved Burma to Tier 3 for Computer End Users. The BIS also further limited the use of license exceptions. 86 Fed. Reg. [13173](#) and [13179](#) (Mar. 8, 2021).

## U.S. SUPPLY CHAIN REVIEW

On February 24, 2021, President Biden signed an Executive Order calling for a review of U.S. supply chain vulnerabilities in domestic semiconductor production, personal protective equipment, medicine, and other critical goods. The Order also calls for a review of supply chains in the defense industrial, public health, information and communication technology, energy, transportation, and agricultural sectors with an intent to spur domestic production of key goods. 86 Fed. Reg. [11849](#) (Mar. 1, 2021).

## FIRST SALE

The U.S. Court of International Trade (CIT) has issued a controversial decision that questions the use of Nissho Iwai “first sale” valuation for transactions involving China since it is a non-market economy. Senior Judge Aquilino determined that non-market factors made it difficult to determine the validity of the first sale valuation and invited clarity from the appeals court. Clients considering or using first sale valuation for transactions involving non-market economies, such as China and Vietnam, should carefully monitor this case. It is too early to tell if the decision will impact CBP reviews. Contact [Sean Murray](#), [Tom Lobred](#), or [Brian Murphy](#) with questions. Meyer Corp. v. U.S., CIT Slip Op. [21-26](#) (Mar. 1, 2021).

## HONG KONG EXPORT GUIDANCE

On February 19, the Bureau of Industry and Security (BIS) issued new [frequently asked questions \(FAQs\)](#) and [revised](#)

## FTZ 101/201 WEBINARS

### SIGN UP TODAY

· FTZ 101: March 16 – 18

· FTZ 201: March 23 – 25

[Register](#) or contact [Kelley Randol](#)

## 2021 TRAINING SEMINARS

Due to COVID-19, our Spring and Fall training seminars will again be conducted by webinar only.

### Spring

· Import/Export 101: April 13 – 15

· Import/Export 201: April 20 – 22

### Fall

· FTZ 101: Sept. 14 – 16

· FTZ 201: Sept. 21 – 23

· Import/Export 101: Oct. 12 – 14

· Import/Export 201: Oct. 19 – 21

More detailed information is posted to our website. Visit our [website](#) to register or contact [Kelley Randol](#). Webinars are offered to Miller & Company clients only.

## BIDEN TRADE AGENDA

On March 1, 2021, President Biden [delivered](#) his 308-page, 2021 Trade Policy Agenda to Congress. Priorities include increasing vaccine production and distribution, implementing trade policy that benefits the U.S. labor force and improves the economy, working with trade partners worldwide to improve the environment, addressing China’s trade practices, and promoting trade policies that benefit U.S. agricultural producers. No specifics were provided.

## APHIS CORE

· On February 17, 2021, Customs and Border Protection (CBP) announced updates to the Animal and Plant Health Inspection Service (APHIS) Message Set in ACE. These updates allow filers to report electronic phytosanitary certificates in ACE. CSMS [#46278734](#) (Feb. 17, 2021).

· Full enforcement of the APHIS Core Message Set in ACE began on March 15, 2021. CSMS [#46607429](#) (Mar. 15, 2021).

· CBP has published the APHIS Lacey Act CATAIR Message Set Implementation Guide. CSMS [#46530160](#) (Mar. 9, 2021)

## PGA FLAG ENFORCEMENT TABLE

CBP has updated the PGA Flag Enforcement Table in ACE. Clients are reminded that ACE PGA flags are not always correct, and that importers are liable for ensuring compliance. CSMS [#46289685](#) (Feb. 18, 2021).

## SECTION 301 LITIGATION

There has been movement in the 3,500 challenges to the China Section 301 Lists 3 and 4A duties. The three-judge CIT panel has issued two orders on case management procedures and the U.S. Government filed its “Master Answer” on March 12, arguing that List 3 and 4 were discretionary presidential action. The CIT has also directed plaintiffs’ counsel to identify sample cases for the purpose of streamlining case adjudication. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.

## UK/US AIRBUS TARIFFS

· On March 4, 2021, the U.S. and UK [announced](#) a four-month suspension of retaliatory tariffs in the ongoing large civil aircraft subsidies dispute. U.S. Section 301 tariffs imposed on UK scotch, cheese, and cashmere will be suspended during this period as the U.S. and UK attempt to resolve the dispute.

· CBP has issued guidance on the four-month suspension. Merchandise subject to these tariffs entered into an FTZ in Privileged Foreign (PF) status prior to March 4 will remain subject to these duties. Contact [Marshall Miller](#) with questions. CSMS [#46561075](#) (Mar. 10, 2021).

· The U.S. Trade Representative (USTR) has issued a notice suspending the tariffs on UK goods from March 4 until July 4, 2021. 86 Fed. Reg. [13961](#) (Mar. 11, 2021).

## U.S./EU AIRBUS DISPUTE

· On March 5, 2021, the U.S. and EU [agreed](#) to suspend for 4 months the retaliatory tariffs imposed on U.S. and EU products.

· The USTR has issued a [notice](#) suspending the Section 301 duties imposed on EU products from March 11 to July 11, 2021.

· Merchandise subject to these Section 301 duties entered into an FTZ in Privileged Foreign (PF) status prior to March 11 will remain subject to the duties. Contact [Marshall Miller](#) with questions.

## 301 PRODUCT EXCLUSIONS

On March 5, the USTR announced the extension until September 30, 2021 of ninety-nine (99) China Section 301 product exclusions related to the COVID-19 response that were to expire on March 31, 2021. Clients may contact [Brenda Zeller](#) for our China Section 301 Product Exclusion spreadsheet. 86 Fed. Reg. [13785](#) (Mar. 10, 2021).

[other FAQs](#) regarding exports to Hong Kong. From an export control standpoint, Hong Kong is now treated the same as mainland China.

### CALIFORNIA MAN SENTENCED

On March 5, Mr. Alex Yun Cheong Yue of South El Monte, California was [sentenced](#) to jail time served and one-year home confinement for exporting Cesium atomic clocks to Hong Kong without the required authorization. He also had his import and export privileges revoked. Cesium atomic clocks are controlled and used in Global Positioning Systems (GPS), encryption programs, network timing protocols, and other defense related applications.

### WTO HONG KONG DISPUTE

The USTR has issued a notice requesting comment on the issues raised by Hong Kong at the World Trade Organization (WTO) concerning the U.S. requirement that goods originating in Hong Kong be labeled "Made in China." Comments are due by April 12, 2021. 86 [Fed. Reg. 13960](#) (Mar. 11, 2021).

### HUAWEI

- Bloomberg reported in a March 11 [article](#) that the Biden Administration is imposing stricter controls on already approved Huawei licenses related to 5G devices.
- The Congressional Research Service (CRS) has issued a report summarizing the actions taken against Huawei, including export restrictions, and the consequences of adding Huawei to the Entity List. CRS Rpt. [R46693](#) (Feb. 23, 2021).

### USMCA MARKING RULES

- CBP has issued a ruling that separately applies the NAFTA Marking Rules on 19 CFR Part 102, and the USMCA Rules of Origin to determine the country of origin and eligibility for USMCA preferential treatment to drink mixes incorporating Brazil origin sugar. HQ [H313454](#) (Feb. 4, 2021).
- In publicly reported comments, CBP Office of Regulations and Rulings (OR&R) attorney James Kim indicated that CBP will allow importers to continue to use the NAFTA Marking Rules under the USMCA. However, clients should note that the continued application of the NAFTA Marking Rules to goods imported from Canada and Mexico does not include some agricultural products designated "S+" in the special sub-column. For those agricultural products, CBP expects importers to determine whether the product is a good of Canada or Mexico. At some point, CBP will issue a Proposed Rule to implement the "USMCA Marking Rules."

### AD RATES & SECTION 232

The CIT has ruled that Section 232 steel and aluminum duties are a form of normal import duties and should be deducted from the export value when calculating antidumping duty (AD) rates. As a result of this deduction, the AD rate on steel and aluminum products should increase. [Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. v. U.S.](#), CIT Slip Op. [21-18](#) (Feb. 17, 2021).

### EXPORT CLASSIFICATIONS

The BIS announced during a March 2 Sensors and Instrumentation Technical

Clients are reminded that CBP has an [online application](#) to protect both inward and outward manifest data from public disclosure. Contact [Brian Murphy](#) with questions.

### LITHIUM-ION BATTERIES

On February 17, 2021, the U.S. International Trade Commission affirmed a Section 337 initial determination and issued a limited exclusion and cease and desist orders prohibiting the importation by SK Innovation Co. and SK America, Inc. of certain lithium-ion batteries, battery cells, battery modules, battery packs, and components thereof. If no settlement is reached, this could have a big impact on U.S. battery production. 86 [Fed. Reg. 9952](#) (Feb. 17, 2021).

### SECTION 321 IMPORTS

- Customs has reminded importers of a July 28, 2020 administrative [ruling](#) that aggregate shipments of unsold merchandise sent to a fulfillment center valued at more than \$800 do not qualify for duty-free entry under Section 321. This is part of a continuing CBP effort to restrict 321 imports. CSMS [#46328074](#) (Feb. 22, 2021).
- Effective March 15, CBP has issued an Interim Final Rule requiring the advance transmission of electronic data from the U.S. Postal Service (USPS) to CBP for inbound international packages and mail. The data is expected to help CBP target narcotics and counterfeit goods. Comments are due by May 14, 2021. 86 [Fed. Reg. 14245](#) (Mar. 15, 2021).

### EXPORT AES INFORMATION

Census has distributed a [reminder](#) that Electronic Export Information (EEI) from Automated Export System (AES) filings is not to be provided to non-U.S. persons or foreign governments. Contact [Sean Murray](#) with questions.

### ALUMINUM SHEET

On March 2, 2021 the Commerce Department [issued](#) affirmative final determinations in the antidumping/countervailing duty (AD/CVD) investigations into common alloy aluminum sheet from 18 countries. The antidumping duty rates range from 0% to 242.8% and the countervailing duty rates range from 2.56% to 35.25%.

### NEW RUSSIAN SANCTIONS

On March 2, the State Department [announced](#) new sanctions on Russia due to Russia's treatment of Putin critic Alexi Navalny. Among the new sanctions were additions to the BIS Entity List of Russian companies, termination of some foreign assistance, additional export restrictions on certain goods, and removal of some license exceptions for exports of products controlled for National Security (NS) reasons. BIS will also no longer permit waivers for exports and reexports of NS controlled items to commercial end-users in Russia for civil end-uses. License submissions for those exports will be reviewed under a presumption of denial policy.

### RUSSIA CYBER OFAC LICENSE

On March 2, the Office of Foreign

### SECTION 232 DERIVATIVES

The CIT has dismissed an importer's challenge to the Section 232 steel and aluminum exclusion process. The Court rejected the importer's claim that the exclusion process violated the Uniformity Clause when exclusions were granted to specific companies applying for the exclusions instead of to a class of products. [Thyssenkrupp Materials v. U.S.](#), CIT Slip Op. [21-29](#) (Mar. 10, 2021).

### SECTION 232 DERIVATIVES

On March 5, the DOJ declined to submit additional arguments or facts in defense of President Trump's decision to expand Section 232 duties on steel and aluminum derivatives. Absent this information and based on the CIT's January decision, it appears the Section 232 steel and aluminum duties on derivative products will be invalidated because they were imposed outside the 105-day deadline for action, but the case may still be appealed. Contact [Brian Murphy](#) with questions. [PrimeSource Building Products v. U.S.](#), CIT Slip Op. No. [21-8](#) (Jan. 27, 2021).

### NETWORK EXTENDER

CBP has issued a ruling that a mesh network extender was not classified as switching or routing apparatus and instead as an "other" machine for the reception, conversion, and transmission of voice, images, or other data. HQ [H313242](#) (Dec. 18, 2020).

### US/EU AGRICULTURAL QUOTAS

On March 8, 2021, the European Union (EU) issued a [press release](#) indicating that the EU and U.S. have concluded negotiations to adjust agricultural quotas to reflect the United Kingdom's exit from the EU. Total quota volumes will remain the same, but will be divided between the EU and UK. The agreement covers beef, poultry, rice, dairy products, fruits and vegetables, and wine. The agreement must be ratified by both parties before going into effect.

### REMOTE BROKER EXAM

CBP has [announced](#) that it will provide a remote proctored exam option for the April 21 customs broker exam.

### ENTITY LIST ADDITIONS

The BIS has added fourteen Russian, German, and Swiss entities to the to the Entity List for acting contrary to U.S. national security or foreign policy concerns related to weapons of mass destruction and chemical weapons. 86 [Fed. Reg. 12529](#) (Mar. 4, 2021).

### OFAC SAUDI SANCTION

On February 26, 2021, the Office of Foreign Assets Control (OFAC) [announced](#) sanctions against several Saudi nationals for the murder of journalist Jamal Khashoggi.

### CPSC MESSAGING

The U.S. Consumer Product Safety Commission (CPSC) has announced the expansion of Two-Way Messaging to all commercial brokers on March 22, 2021. CSMS [#46546391](#) (Mar. 10, 2021).

### FCPA ENFORCEMENT

The Department of Justice (DOJ)

Advisory Committee meeting that the Department of Defense (DOD) will be consulted on all export classification (CCATS) requests. This may extend the response time for CCATS requests.

#### ACE DRAWBACK

Modifications to ACE for USMCA drawback claims were to be completed on March 13. CSMS #[46570554](#) (Mar. 11, 2021).

#### EXPORT PRIVILEGES REVOKED

On March 5, the BIS [denied](#) the export privileges of MSI Aircraft Maintenance Services International GmbH & Co. (MSI), a German company, after MSI used U.S. parts in a maintenance contract with Mahan Airways of Iran. BIS also fined MSI \$50,000. BIS has suspended the ban provided MSI pays the fine and agrees to cooperate with the BIS.

#### BIS ICTS RULE

The Interim Final Rule for the Securing the Information and Communications Technology and Services Supply Chain regulations were to go into effect on March 22, but implementation has reportedly been delayed by President Biden's regulatory freeze. The implementation costs have been estimated as high as \$20 billion. 86 [Fed. Reg. 4909](#) (Jan. 19, 2021).

#### EAPA INVESTIGATION

On February 19, 2021, CBP [announced](#) the initiation of an Enforce and Protect Act (EAPA) investigation into the alleged transshipment of China-origin wooden cabinets through Malaysia to avoid antidumping/ countervailing duties

#### FORCED LABOR REPORT

The Government Accountability Office (GAO) has [released](#) a report calling on CBP to better communicate with other federal agencies involved in trade when conducting investigations or taking enforcement actions related to Forced Labor.

Assets Control (OFAC) issued cyber-related [general license \(GL\) 1B](#), which allows certain transactions with the Russian Federal Security Service. The allowance is primarily limited to permitting the use of certain U.S. products in Russia. Frequently Asked Questions (FAQs) [501](#), [502](#), and [503](#) were also updated. Related updates were also made to the Specially Designated Nationals (SDN) List.

#### BITPAY PAYS PENALTY

On February 18, OFAC announced a [settlement agreement](#) with BitPay of Atlanta, Georgia. Under terms of the settlement, BitPay agreed to remit \$507,375 to OFAC. BitPay was accused of allowing persons in Crimea, Iran, Cuba, North Korea, and Syria to transact with U.S. merchants using digital currency such as Bitcoin.

#### EPA TSCA SETTLEMENT

On March 2, 2021, the Environmental Protection Agency (EPA) [announced](#) a settlement agreement with Brenntag Pacific, Inc. for violations of the Toxic Substances Control Act. Brenntag will pay a \$128,265 fine for its failure to submit timely and accurate reports on the import and export of nine chemicals.

#### PATIENT LIFTS

CBP has issued a final country of origin determination for federal procurement purposes on certain patient lifts. The patient lifts were assembled in the U.S. from U.S., Canada, and China origin parts and subassemblies. Since the assembly operations substantially transformed the subassemblies and component parts, CBP determined that the patient lifts were not products of a foreign country. However, CBP directed the requestor to contact the relevant government procuring agency to determine whether the lifts qualified as "U.S.-made end product." 86 [Fed. Reg. 12963](#) (Mar. 5, 2021).

#### WRO MODIFICATIONS

CBP has posted a new [fact sheet](#) outlining the process for modifying or revoking Withhold Release Orders.

announced an expansion of its foreign bribery unit, indicating the increased enforcement of Foreign Corrupt Practices Act (FCPA) violations. A DOJ [report](#) on the FCPA unit highlights FCPA enforcement actions taken in 2020, including the conviction of 15 individuals and collection of \$7.84 billion in penalties.

#### BIS INTEL RULE DELAYED

According to reports, the Bureau of Industry and Security (BIS) will delay implementation of an Interim Final Rule set to take effect on March 16, 2021. The Interim Final Rule was intended to impose new controls on technologies and activities that support foreign military-intelligence end use in China, Russia, and other "terrorist supporting" countries. 86 [Fed. Reg. 4865](#) (Jan. 15, 2021).

#### EXPORT PRIVILEGES

The BIS has issued an order denying the export privileges of Siddharth Bhatt for illegally exporting U.S.-origin thermal imaging cameras to the United Arab Emirates without the required license. 86 [Fed. Reg. 11224](#) (Feb. 24, 2021).

#### ZOETIS OFAC INVESTIGATION

Zoetis, an animal health company, indicated in a recent Securities and Exchange Commission [10K filing](#) that it is under OFAC investigation for pre-acquisition sales to Iran by a newly acquired subsidiary, Platinum Performance (PP). According to the filing, PP made sales to Iran without the required OFAC licenses or authorizations. This is a reminder of the importance of including trade compliance in pre-acquisition reviews.

#### FTZ STATS

FOREIGN-TRADE ZONES BOARD  
ACTIVITY AS OF 03/15/2021

	Approved	Currently Authorized
Zones	294	276
Subzones	866	712
<b>Pending</b>		
Zones	3	
Subzones	13	
Misc.	34	