



BIDEN TRADE POLICY

At an April 28 [hearing](#) before the Senate Appropriations Committee, U.S. Trade Representative (USTR) Katherine Tai indicated she is optimistic about a resolution of the longstanding Airbus/Boeing dispute with the European Union, but remained non-committal on a resolution of the China Section 301 tariffs.

301 PRODUCT EXCLUSIONS

At a Senate Finance Committee hearing on May 12, USTR Tai stated that there should be a new Section 301 product exclusion process before the end of the year. We expect the process to differ from the prior process, but clients should begin preparing product information in order to expedite filings and maximize duty savings. Contact [Sean Murray](#) or [Brian Murphy](#) with questions.

USTR PHARMA & COVID-19

- On May 5, USTR Tai [announced](#) U.S. support for waiving intellectual property protections under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) for COVID-19 vaccines.
- On May 12, USTR Tai indicated in a Senate hearing that the USTR had the authority to waive intellectual property protections for COVID-19 vaccines without Congressional approval.
- Bolivia has notified the WTO that it intends to import COVID-19 vaccines under the WTO TRIPS compulsory license framework.

FIRST SALE

- In light of the U.S. Court of International Trade (CIT) opinion in Meyer Corp. v. U.S. on the use of first sale valuation for merchandise from non-market economies and in anticipation of greater CBP scrutiny, companies utilizing first-sale are encouraged to ensure commercial documentation and financial statements demonstrate compliance.
- Meyer Corporation has appealed the CIT decision to the Court of Appeals for the Federal Circuit (CAFC). Meyer Corp. v. U.S., CAFC Case No. 21-1932 (May 10, 2021).
- Contact [Sean Murray](#) or [Brian Murphy](#) with questions.

SECTION 232 DUTIES

The U.S. and European Union [announced](#) on May 17 that they have started discussions to address excess global capacity in the steel and aluminum industries, with the goals of addressing trade-distorting policies by non-market economies and ending World Trade

2021 TRAINING SEMINARS

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

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.

FTZ CTPAT

At the National Association of Foreign-Trade Zones (NAFTZ) virtual seminar on April 27-29, CBP Executive Director of Cargo and Conveyance Security Thomas Overacker indicated that CBP will bring 3PL & Public Warehouse FTZs into the CTPAT program. Contact [Marshall Miller](#) with further questions.

E-COMMERCE/SECTION 321

U.S. Customs and Border Protection (CBP) is auditing importers and using information gathered from Section 321 low-value shipment data pilot programs to start drafting a Proposed Rule to create new regulations governing small package/e-commerce imports.

SECTION 301 LITIGATION

Clients are reminded that court challenges to China List 3 and 4A duties can still be filed. On April 29, the U.S. Court of International Trade (CIT) issued an [Administrative Order](#) staying new complaints. This allows them to be handled pursuant to the lead case. The lead plaintiffs have filed a motion requesting a preliminary injunction to suspend entry liquidations, and the U.S. government has filed a motion in opposition. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.

301 TECHNICAL CORRECTION

- The USTR has published a notice correcting a narrow technical issue affecting certain merchandise covered by China Section 301 List 3 product exclusions. The USTR notice clarifies that merchandise covered by a China Section 301 List 3 product exclusion is not subject to these duties if it was exported before May 15, 2019 and entered before June 15, 2019. 86 Fed. Reg. [22092](#) (April 26, 2021).
- CBP has issued instructions for claiming product exclusions subject to the technical correction. CSMS [#47741425](#) (May 10, 2021).
- Contact [Brian Murphy](#) with questions.

FTZ FORCED LABOR WRO

CBP Headquarters has agreed that U.S. foreign-trade zones (FTZs) may store merchandise subject to Withhold Release Orders (WROs) pending a final determination by CBP. This avoids the necessity for FTZs to store merchandise in a third-party facility. Merchandise may be exported until there is a CBP Forced Labor Finding; once a Finding is issued, it must be destroyed. We have a copy of the draft CBP guidance. It is expected to be finalized shortly. We are preparing a new FTZ Manual section on this subject for client use. Contact [Linda King](#) for guidance.

FORCED LABOR SEIZURE

On May 12, CBP [announced](#) the seizure of 4.68 million latex gloves from Malaysia with an estimated value of \$690,000 due to information indicating that the gloves were made with forced labor.

FORCED LABOR RULING

CBP has issued a ruling upholding a decision that certain cotton garments are subject to the Withhold Release Order (WRO) on cotton products from the Xinjiang region. CBP determined that the importer failed to establish that a detained shipment of cotton garments was not produced in part by forced labor. HQ [H318182](#) (May 10, 2021).

WRO CIT CASE

On May 12, palm oil importer Virtus Nutrition filed a [motion](#) at the U.S. Court of International Trade (CIT) requesting an expedited litigation schedule for its action seeking the release of more than \$2 million of its palm oil imports being held by CBP pursuant to the WRO on certain Malaysian palm oil. Its palm oil was initially detained and then excluded from Customs entry under suspicion that it is subject to exclusion under the WRO, but Virtus claims that its palm oil is made by a different Malaysian producer. Storage fees are said to be over \$35,000 a month. [Virtus Nutrition, LLC v. U.S.](#), CIT Case No. 21-165 (May 12, 2021).

FCA PENALTY

Tungsten Heavy Powder (TCP) of San Diego has [settled](#) for \$5.6 million allegations under the False Claims Act (FCA) that it falsely certified its tungsten source material was from the U.S. when it was from China. TCP also certified that the finished product was manufactured in the U.S. when it was actually Mexico. The Justice Department learned of the false

Organization (WTO) disputes resulting from the U.S. Section 232 additional duties. The EU has [announced](#) that it will not further increase its retaliatory tariffs on U.S. goods that were scheduled for June 1. There is currently no timeframe for changes to the Section 232 additional duties and clients are reminded that the Section 232 product exclusion process continues. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.

EAPA WOODEN CABINETS

On May 5, CBP [announced](#) that it had commenced a formal investigation under the Enforce and Protect Act (EAPA) into the evasion of antidumping and countervailing duties (AD/CVD) imposed on wooden cabinets from China by CNC Cabinetry and Direct Builders Supply, Inc. During the investigation, CBP will suspend liquidation and require live entry for importations of wooden cabinets by these companies.

ELECTRIC MOTORS ORIGIN

· CBP has issued a ruling that the country of origin of electric vehicle motors depends on the origin of the rotor and stator. Likewise, the origin of the rotor and stator is the country where their cores are made. HQ [H313371](#) (March 30, 2021).

· CBP has issued another ruling on the origin of electric motors where the rotor and stator are made in different countries. CBP determined that the stator assembly is the more fundamental component of the motor and the origin of the motor is derived from the origin of the stator. HQ [H314638](#) (April 22, 2021).

IRAN CONVICTION

The Justice Department [announced](#) on May 7 that Mehrdad Ansari, a resident of Germany and the United Arab Emirates (UAE), was convicted in federal court for exporting millions of dollars' worth of dual use products that could be used in nuclear weapons, missile systems, tactical radio communications, offensive electronic warfare, electronic countermeasures, and radar warning and surveillance systems. The goods were shipped through the UAE with knowledge they would be reexported to Iran. Mr. Ansari faces up to 20 years in prison. Sentencing is scheduled for September 1.

SOMALIA REGULATIONS

The Office of Foreign Assets Control (OFAC) has issued a Final Rule that amends and reissues the Somalia Sanctions Regulations. The new regulations provide more guidance, general licenses, and statements of licensing policy. 86 Fed. Reg. [22346](#) (April 28, 2021). Contact [Sean Murray](#) or [Chuck Ballard](#) with questions.

IRANIAN CONSULTANTS

The Office of Foreign Assets Control (OFAC) has announced a [settlement agreement](#) with Alliance Steel, a steel fabricator based in Oklahoma City, whereby Alliance Steel agreed to pay \$435,003 for using an engineering consulting company based in Iran.

BELARUS SANCTIONS

On April 19, the Office of Foreign Assets Control (OFAC) cancelled General License (GL) 2G and issued [GL 2H](#). While GL 2G allowed some

CJ PENALTY

The Bureau of Industry and Security (BIS) has [announced](#) an administrative settlement with FLIR Systems Inc. (FLIR) whereby FLIR has agreed to remit \$307,922 to settle allegations it made incomplete, misleading, and inaccurate statements in a Commodity Jurisdiction (CJ) request. Contact [Sean Murray](#) with questions.

2022 HTS CHANGES

The U.S. International Trade Commission has released its recommendations on the U.S. implementation of the World Customs Organization (WCO) changes to the Harmonized Tariff Schedule for 2022. In particular, clients are encouraged to review Appendices B, C, and D, which provide revised HTS provisions and concordance tables. Contact [Sean Murray](#) with questions. USITC Pub. No. [5171](#) (April 2021).

TRADE SECRET THEFT

Dr. Xiaorong You, a former Coca Cola and Eastman Chemical engineer, was [convicted](#) of selling trade secrets to China. The information involved formulations for bisphenol-A-free (BPA-free) coatings for the inside of beverage cans. The original effort to develop this formulation cost the companies about \$120 million. Sentencing is set for November 2021.

TRADE SECRETS BILL

On April 21, Senator Lindsey Graham (R-S.C.) introduced [legislation](#) (S. 1245) that would expand penalties for companies that misappropriate trade secrets. These expanded penalties would include the denial of export licenses, visa, and prohibitions on patent protection.

AD/CVD SCOPE RULINGS

· On April 26, the Commerce Department issued a scope [ruling](#) that window wall kits are not subject to the antidumping and countervailing duties (AD/CVD) on aluminum extrusions from China. Commerce found that the window wall kits are outside the scope of these duties because they qualify as a finished good.

· On April 15, the Commerce Department issued a scope [ruling](#) that two accent chests of drawers are covered by the AD order on wooden bedroom furniture from China. Commerce found that the chests are suitable for bedroom use and marketed as bedroom furniture.
· Contact [Brian Murphy](#) with questions.

KIT ORIGIN

In a notice that revokes a ruling and modifies prior guidance, CBP has ruled that because the components of an unassembled electronic drum kit are merely packaged together in Sweden and not assembled, those components are not substantially transformed and the origin of each component must be marked. 55 *Cust. B. & Dec.* [17](#) (May 5, 2021).

FMS EXPORTS

On May 12, the Bureau of Industry and Security (BIS), the Directorate of Defense Trade Controls (DDTC), Homeland Security, and CBP issued

certifications from a competitor and a former employee who are expected to split \$950,000 in settlement proceeds.

ANNUAL AGOA REVIEW

The USTR has announced the initiation of the annual review of sub-Saharan African countries to receive benefits under the African Growth and Opportunity Act (AGOA). Comments are due by June 23, 2021. 86 Fed. Reg. [26248](#) (May 13, 2021).

POWERS OF ATTORNEY

· Export: Clients are reminded that specialized POAs for Forwarders/Consultants can increase compliance and control for U.S. Principal Parties in Interest (USPPIs). We have developed a template for client use.

· Import: Clients are encouraged to use our POA template instead of the standard CBP Form 5291 Import POA template because it limits certain activities and authorizations.

· Contact [Marshall Miller](#) for templates and guidance.

RUSSIA SANCTIONS

On May 7, 2021, the Office of Foreign Assets Control (OFAC) added the Central Bank of the Russian Federation, Ministry of Finance of the Russian Federation, and National Wealth Fund of the Russian Federation to blocking sanctions imposed on the Russian government. 86 Fed. Reg. [24691](#) (May 7, 2021).

CHINESE MILITARY COMPANIES

The U.S. District Court for the District of Columbia has granted Luokung Technology Corporation's motion for a preliminary injunction to temporarily [enjoin](#) the Department of Defense's (DOD's) designation of Luokung as a Chinese Communist Military Company. The court found no evidence to support the designation and found any risk to national security to be minimal. [Luokung Technology Corp. v. Department of Defense](#), Civil Action No.: 21-583 (RC) (May 5, 2021).

· The DOD has agreed to a final order dropping the designation of Xiaomi as a Chinese Communist Military Company. *Xiaomi Corp. v. U.S.*, Case No. 21-cv-280 (D.D.C. May 11, 2021).

CHINESE UNIVERSITY EXPORTS

On April 28, the Justice Department [announced](#) that Shuren Qin, a Chinese citizen living in Massachusetts, pled guilty to sending approximately \$100,000 in U.S. products and technology related to underwater and marine applications to Northwest Polytechnical University, a Chinese military university on the Bureau of Industry and Security (BIS) Entity List, without required export licenses. Mr. Qin faces up to 20 years in prison and a \$1,000,000 fine.

SAP AND MONEYGRAM

On April 29, OFAC announced settlement agreements with [SAP](#) and [MoneyGram Payment Systems](#). SAP agreed to remit \$2,132,174 to OFAC for its alleged export of software and technology from the U.S. through third countries when it knew, or should have known, it was going to Iran. MoneyGram agreed to pay a \$34,379

transactions with sanctioned entities, GL 2H only authorizes wind-down operations until June 3, 2021.

NEW APHIS PORTAL

The U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) has [announced](#) a new Agricultural Commodity Import Requirements (ACIR) online portal. The new APHIS portal is in beta testing, starting with plants and plant products not for propagation. APHIS is seeking user feedback to improve the product.

IMPORTED SPIRITS

CBP has announced modifications to the collection process for deferred payments of Internal Revenue taxes on consumption entries of distilled spirits, wines, and beer. The modification harmonizes the due date for deferred tax payments with the Entry Summary date. 86 Fed. Reg. [22696](#) (April 29, 2021).

AUTOMOTIVE HEADRESTS

CBP has issued a ruling that the country of origin of automotive headrests assembled in Mexico from Mexican and Chinese-origin parts was Mexico. HQ [H315295](#) (April 9, 2021).

[frequently asked questions \(FAQs\)](#) guidance on Foreign Military Sales (FMS) exports to address industry confusion and questions resulting from recent jurisdictional changes. Since FMS exports are still considered defense items, the BIS will not issue a license even if the items have an Export Control Classification Number (ECCN).

MADE IN AMERICA

On April 27, President Biden [selected](#) Celeste Drake, a longtime labor advocate from the AFL-CIO, as the head of the new "Made in America" office in the Office of Management and Budget (OMB).

ELECTRICAL WIRES

CBP has ruled that electrical wire processed in Vietnam from Chinese-origin copper conductor remained a Chinese-origin product. NY [N318743](#) (April 9, 2021).

CRIME CONTROL

The BIS has [fined](#) a Maryland company and its owner \$42,000 for illegally exporting crime control items. The company exported handcuffs, collapsible batons, and stun guns to Mexico, the Dominican Republic, and Nigeria without a license.

penalty for providing services to blocked individuals and commercial transactions involving Syria.

ASSIST ALLOCATIONS

In a good reminder that there are standards for apportioning assists to Customs entries, CBP has ruled that an importer's application of tooling assists across imports regardless of whether the imports were made using the tooling was not reasonable because it did not account for differing duty rates. Contact [Sean Murray](#) with questions. HQ [H311213](#) (Feb. 10, 2021).

FTZ STATS

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 05/15/2021

	Approved	Currently Authorized
Zones	294	276
Subzones	868	714
Pending		
Zones	3	
Subzones	12	
Misc.	53	