



## USMCA ORIGIN RULES

· U.S. Customs & Border Protection (CBP) has extended the deadline to September 7 for submitting comments on its Proposed Rule to apply the Part 102 NAFTA Marking Rules to all origin determinations involving merchandise imported from Canada and Mexico, whether or not they involve preference claims under the U.S.-Mexico-Canada Agreement (USMCA). 86 Fed. Reg. [42758](#) (Aug. 5, 2021).

· Clients are urged to carefully consider this proposed significant change. CBP has attempted and failed to impose this supposed “simplification” of origin rules multiple times. The complexity and financial impact should be examined as it may be considerable for some companies. Please contact [Sean Murray](#) or [Brian Murphy](#) for assistance in preparing and filing comments and for more information.

· A number of interested parties have already submitted comments. Representatives from the technology industry oppose the changes because a Part 102 tariff shift analysis considers only alterations to hardware components and would produce a different origin than the current substantial transformation analysis. Alternatively, the National Customs Brokers & Forwarders Association of America supports the changes because it believes they provide increased objectivity and transparency.

## FTZ STEEL/ALUMINUM LICENSES

CBP has removed the requirement for a steel or aluminum license number on Type 06 Customs entries from an FTZ. Prior to the change, CBP Headquarters and the Commerce Department accepted dual reporting (e-214 and Customs entry), contrary to the Customs Regulations. Now a steel/aluminum license must only be submitted to CBP on an e-214 at the time of FTZ admission. The firm was directly involved in the change. Contact [Linda King](#) for more detailed information. CSMS [#24923327](#) (July 29, 2021).

## DRONE EXPORTS

Mira Resnick, a senior official in the State Department’s Bureau of Political-Military Affairs, [indicated to the Senate Foreign Relations Subcommittee](#) on August 10 that the Biden Administration will keep the less stringent export control policy relating to the export of Unmanned Aerial Vehicles (UAVs) that was implemented by the Trump Administration. Export license approval is still required for most advanced capabilities, applications, technology, and destinations, but national

## 2021 FALL SEMINARS

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

- 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.

## WITHHOLD RELEASE ORDERS

· Silica - CBP has released [FAQs](#) concerning the Withhold Release Order (WRO) on silica-based products made by Hoshine Silicon Industry Co. Ltd. The FAQs indicate the WRO applies to component materials, intermediate goods, and finished goods, and indicates the type of evidence CBP expects from importers seeking the release of detained shipments.

· Nepal - CBP has [modified](#) a Withhold Release Order (WRO) on imports of carpets and hand-knotted products from Nepal. Beginning July 23, 2021, carpets and hand-knotted wool products produced by Annapurna Carpet Industries are admissible. The modification resulted from CBP’s review of Annapurna Carpet’s business practices.

· On August 4, CBP [issued](#) a WRO for tuna and other seafood harvested by the Fijian flagged and owned fishing vessel Hangton No. 112. All merchandise subject to the WRO will be detained at U.S. ports of entry. Contact [Sean Murray](#) with questions.

## DRAWBACK CHANGES

Effective August 15, the drawback program and specialists transitioned from the four drawback ports to five CBP Centers of Excellence and Expertise (CEEs). CBP has issued a chart showing which industries are managed by the five CEEs. The changes do not impact claim submissions, claim processing, or the submission of rulings and privilege applications. CSMS [#49065624](#) (Aug. 13, 2021).

## 232 EXCLUSIONS

It is still possible to request product exclusions for steel and aluminum products subject to Section 232 duties. The updated Section 232 product exclusion [portal](#) includes over 200,000 product exclusion requests. Contact [Brian Murphy](#) with questions or assistance.

## CHINA 301 CIT LITIGATION

· The China Section 301 Lists 3 and 4A litigation in the U.S. Court of International Trade (CIT) continues to progress. On August 2, lead Plaintiffs’ counsel filed a summary judgement motion and responses to the government’s motions to dismiss and for summary judgment. On August 16 the CIT extended the time limit for CBP to create an entry repository to September 3 and extended the temporary restraint period on liquidating entries to October 4. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.

· On August 9, retail trade groups filed a [amicus brief](#) arguing that the U.S. Trade Representative (USTR) clearly exceeded its authority and violated the Administrative Procedures Act when it imposed the China Section 301 tariffs on List 3 and 4A products without connecting them to the initial Section 301 investigation targeting China’s unfair trade practices.

## BIDEN 301 POLICY

On August 6, White House Press Secretary Jen Psaki [indicated](#) that there was no timeline on the Biden Administration’s review of the China Section 301 tariffs and stated that the Administration would not rule out using tariffs to fight unfair trade practices.

## FTZ BOARD ANNUAL REPORT

The U.S. Foreign-Trade Zones Board has released its Annual [Report](#) to Congress for federal fiscal year 2020. The report indicates:

- 261 Approved FTZ projects
  - 195 Active FTZ projects
  - 347 Active production operations
  - FTZ Board - 82 decisions and 232 requests
  - Employment - 478,500 (371,500 in production operations)
  - Companies - 3,400
  - Receipts – Decreased by \$142 billion to \$625 billion
  - Exports – Decreased by \$11 billion to \$94 billion
  - Top Industries - Pharmaceuticals, Oil Refineries, Motor Vehicles.
- Contact [Marshall Miller](#) with questions.

## FY 2022 CBP USER FEE INCREASES

CBP has announced user fee increases, effective October 1, 2021.

- MPF Maximum - \$538.40
  - Informal Entry - \$2.22
  - Manual Entry Surcharge - \$3.33
  - Dutiable Mail Fee - \$6.11
  - Express Consignment - \$1.11
- CSMS [#48938836](#) (July 30, 2021).

security and human rights will be considered before transfers are authorized. Contact [Sean Murray](#) with questions.

### CARBON IMPORT TARIFFS

On July 19, Senator Christopher Coons (D-DE) introduced legislation ([S. 2378](#)) that would impose tariffs on imports of cement, steel, aluminum, iron, and fossil fuels from countries unwilling to commit to reducing carbon emissions. This topic is likely to receive considerable attention and clients should be considering the potential impact.

### HONG KONG ADVISORY

The Departments of State, Commerce, Treasury, and Homeland Security have issued an [advisory](#) warning of the risks of doing business in Hong Kong associated with China's imposition of the National Security Law. The risks include data privacy, transparency, access to business information, and the possible exposure to sanctioned entities.

### METAL LIDS MISCLASSIFICATION

The Justice Department has filed a complaint at the U.S. Court of International Trade (CIT) seeking more than \$18 million in customs duties for the allegedly fraudulent misclassification of metal lids to avoid a 2.6% duty rate. [U.S. v. Crown Cork & Seal, USA, Inc., CIT Case No. 21-00361](#).

### UKRAINE/RUSSIAN LICENSES

The Office of Foreign Asset Controls (OFAC) has published 9 new general licenses (GLs) relating to the Ukraine and Russian sanctions. The new GLs replace expired GLs. [86 Fed. Reg. 37904](#) and [37907](#) (July 19, 2021).

### BELARUS

OFAC has sanctioned the Belarusian government pursuant to an August 9 [Executive Order \(EO\)](#). [General License 4](#) (GL 4) has been issued to enable the winding down of operations with Belaruskali OAO. In addition, OFAC has published new frequently asked questions [916](#), [917](#), and [918](#) regarding the EO, the GL, and Belarus.

### USMCA AUTOS

In public comments following meetings with U.S. Trade Representative (USTR) Katherine Tai, Mexican Economy Minister Tatiana Clouthier stated that the U.S. and Mexico disagree on the implementation of the new USMCA rules of origin for automobiles. In a [press release](#), USTR Tai indicated that the U.S. remained committed to the full implementation of the USMCA and the strong auto rules of origin. Contact [Brian Murphy](#) with questions.

### COAC EXPORT REPORT

The Customs Operations Advisory Committee (COAC) issued a 127-page white paper on [June 23](#) that made recommendations for modernizing the export process. Among the recommendations was transferring some data responsibilities from the exporter to the carrier. These data points would include such things as port of export, date of export, and port of unloading. The changes would require changes to the Foreign Trade Regulations (FTR) and the Export Administration Regulations (EAR) before they could take effect.

### SECTION 232 REPORTS

On August 2, the Commerce Department finally released the Section 232 reports on the national security implications of [transformer and transformer components](#), [uranium ore](#), [titanium sponge](#), and [vanadium](#) imports after calls for transparency following the Trump Administration's failure to disclose the information. After investigations conducted during the Trump Administration, Commerce determined that imports of transformer and transformer components, uranium ore, and titanium sponge posed threats to national security, while vanadium imports did not. The transformer and transformer component, uranium ore, titanium sponge, and vanadium reports did not result in the imposition of Section 232 duties.

### DDTC PENALTY

The Directorate of Defense Trade Controls (DDTC) has announced a [Consent Agreement](#) under which it has [fined](#) Keysight Technologies \$6.6 million for exporting International Traffic in Arms Regulations (ITAR) controlled software to a number of countries, including China and Russia, without the required license. Keysight believed the software was controlled under the Export Administration Regulations (EAR), was classified as EAR99, and filed a Commodity Jurisdiction (CJ) request, but exported the software before the DDTC rendered its decision. The DDTC confirmed that the software was in fact ITAR controlled.

### SECTION 301 EXCLUSIONS

The Government Accountability Office (GAO) has issued a [report](#) on the USTR's China Section 301 Product Exclusion process. The GAO report found that USTR did not fully document its internal review procedures for exclusion requests, there were inconsistencies in the manner of reviewing exclusion requests, and the USTR's final decisions sometimes lacked documentation explaining denials. [GAO-21-506](#) (July 2021).

The USTR has determined that no further action was warranted in the Vietnam Section 301 investigation into currency manipulation due to an agreement between the Treasury Department and the State Bank of Vietnam. [86 Fed. Reg. 40675](#) (July 28, 2021).

The USTR has made a technical amendment to a China Section 301 product exclusion covering certain disinfectants that reflects a July 1, 2021 change to the HTSUS ten-digit statistical reporting category for the product. [86 Fed. Reg. 42007](#) (Aug. 4, 2021).

### SEMICONDUCTORS

Mr. Yi-Chi Shih of North Hollywood, California has been [sentenced](#) to over five years in prison for his role in obtaining military-grade semiconductors with the intent of exporting them to China. He was also fined approximately \$600,000.

### SINGAPORE TANKER SEIZED

A U.S. federal court [ordered](#) that a tanker owned by Singaporean Kwek Kee Sen be forfeited to the U.S.

### BUY AMERICAN

On July 28, 2021, the White House released a [Fact Sheet](#) providing a summary of actions taken by the Biden Administration to increase federal purchases of domestic products.

The Defense Department, General Services Administration, and National Aeronautics and Space Administration have published a Proposed Rule to amend the Federal Acquisition Regulations (FAR) regarding domestic preferences for government procurement outlined in Executive Order 14005. Under the Proposed Rule, the domestic content threshold would increase, enhanced price preferences will be applied for critical materials or components, and post-award reporting of domestic content would be required. Comments are due by September 28. [86 Fed. Reg. 40980](#) (July 30, 2021).

### IMPORT ID 5106 FORM

CBP is disabling the Form 5106 mailbox. Effective September 4, 2021, all CBP Form 5106 requests must be sent to either the relevant Center for Excellence and Expertise (CEE), the relevant Port of Entry, or the Revenue Division. Contact [Marshall Miller](#) for guidance. CSMS [#48979698](#) (Aug. 4, 2021).

### CLOTHING FRAUD

The Justice Department has [announced](#) a \$6 million civil settlement with an individual and two companies for the use of fraudulent invoices to avoid customs duties on clothing imports. This action was initiated by a relator under the False Claims Act. The company's former owner and CEO previously paid \$1.6 million in a criminal action.

### CFIUS REPORT

On July 27, the Treasury Department released its annual [Congressional Report](#) on the Committee on Foreign Investment in the U.S. (CFIUS). The report outlines the number of declarations involving critical technologies and the average time for completing reviews.

### CHINESE GOVERNMENT HACKERS

On July 19, the Justice Department [announced](#) the indictment of four Chinese nationals alleging that the individuals engaged in a campaign to hack into the computer systems of U.S. companies, universities, and government entities to collect information of significant economic benefit to Chinese companies and government entities. All four individuals work with the Chinese Ministry of State Security.

### FALSE AES PENALTY

Mr. Ge Songtao was fined \$114,000 and [sentenced](#) to three and a half years in prison for his role in falsifying Automated Export System (AES) records when he attempted to send rubber landing craft with engines to China without the proper license authority. He falsely stated that the craft were destined to Hong Kong when he knew they would be shipped to China.

### EXPORT PRIVILEGES

The BIS has announced the revocation of export privileges of two individuals

### SOLAR SAFEGUARDS

A group of domestic solar panel producers have filed a [petition](#) seeking an extension of the crystalline silicon photovoltaic (CSPV) cells safeguards set to expire on February 6, 2022. The domestic producers claim that an extension is required because of the economic impact of the COVID-19 pandemic.

### DOMESTIC HTSUS PETITIONS

CBP has requested comments on domestic industry requests to change the tariff classifications of steel table pans, dried onion products, and mixtures of dried garlic and onion. Comments are due by October 12. 86 [Fed. Reg. 44030, 44031, 44033](#) (Aug. 11, 2021).

### FMC RECOMMENDATIONS

On July 28, the Federal Maritime Commission issued [interim recommendations](#) to address issues in the international freight delivery system and minimize barriers to Shipping Act enforcement.

government for its role in shipping oil to North Korea. Mr. Sen is still at large. The tanker was originally seized by Cambodian authorities pursuant to a U.S. warrant.

### FINANCIAL SERVICES OFAC FINE

Payoneer, a financial services firm, has [settled](#) 2,260 apparent violations of multiple sanctions programs with OFAC by agreeing to remit \$1.4 million to the agency. Payoneer had a compliance policy and procedures, but allegedly used a "weak algorithm" in its screening program that passed names of companies which should have been stopped, did not focus on entities in sanctioned countries such as Russia and the Crimea region, and allowed flagged payment to be released during backlog periods.

### CUBA INTERNET FACT SHEET

On August 11, the BIS and OFAC released a [fact sheet](#) on Cuba that outlines the U.S. government's support for Cuban access to the internet and other telecommunication devices. The fact sheet also outlines transactions with Cuba that are allowed, despite the general embargo on trade with Cuba. Contact [Sean Murray](#) or [Chuck Ballard](#) with questions.

convicted of exporting ITAR controlled technical data. Both individuals are also serving time in prison. 86 [Fed. Reg. 45703, 45704](#) (Aug. 16, 2021).

### REWARDING TIPSTERS

The House passed the [Bassam Barabandi Rewards for Justice Act](#) (H.R. 1036) on July 20. The Act would allow the U.S. government to pay rewards for tips it receives on violations of various sanctions and export restrictions. The Senate received its version of the bill on July 21.

### 21<sup>st</sup> CENTURY TASK FORCE

CBP has [announced](#) participants in its task force for its 21st Century Customs Framework modernization effort.

### RUBBER AD INVESTIGATION

The Commerce Department has initiated an antidumping duty investigation into imports of acrylonitrile-butadiene rubber from France, South Korea, and Mexico. CSMS [#48857844](#) (July 22, 2021).

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FTZ STATS	
FOREIGN-TRADE ZONES BOARD	
ACTIVITY AS OF 08/15/2021	
	Approved
Zones	294
Subzones	871
	Pending
Zones	3
Subzones	10
Misc.	45