



BIDEN TRADE AGENDA

Several news sources are reporting:

- The U.S. Trade Representative (USTR) is working on a new China Section 301 product exclusion process. Many lawmakers continue to press for an exclusion process.
- The Biden Administration may initiate a Section 301 investigation into Chinese subsidies that could lead to new Section 301 duties.

CHINA SECTION 301 LITIGATION

In the litigation challenging China Section 301 Lists 3 and 4A, the U.S. Court of International Trade (CIT) [vacated](#) its temporary restraining order on September 8 because the Government agreed to stipulate that refunds will be available for entries liquidated after July 6, 2021, if the Plaintiffs' claims are successful. This action eliminates the burdensome requirement for Plaintiffs to submit entry lists for CBP to suspend liquidation. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.

CENSUS VSDs

Clients are reminded that some Census Automated Export System (AES) filing errors – particularly those involving repetitive errors and/or other government agency issues – warrant the filing of a Voluntary Self-Disclosure (VSD) with Census. Census recently indicated in a Commerce Department advisory committee meeting that it is revising its regulations to reflect its current practice of accepting VSDs by email. Contact [Sean Murray](#) or [Chuck Ballard](#) with questions.

CHINA WTO COMPLIANCE

The U.S. Trade Representative (USTR) has requested comments on China's compliance with the commitments it made in connection with its admission into the World Trade Organization (WTO). Specifically, the USTR invites comments on China's import regulations, export regulations, internal policies affecting trade, intellectual property rights, services, rule of law issues, and other WTO commitments. Comments are supposed to be submitted by September 15. 86 [Fed. Reg. 46066](#) (Aug. 17, 2021).

TRADE BARRIERS

The USTR has requested comments on barriers to U.S. goods and services exports for its annual report on foreign trade barriers. Comments are due by October 26, 2021. 86 [Fed. Reg. 51436](#) (Sept. 15, 2021).

SANCTIONS COMPLIANCE

2021 FALL SEMINARS

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

- Import/Export 101: Oct. 12 – 14
- Import/Export 201: Oct. 19 – 21
- FTZ 101: Nov. 2 – 4
- FTZ 201: Nov. 9 – 11

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.

FORCED LABOR

· On September 10, U.S. Customs and Border Protection (CBP) announced that it was modifying the Forced Labor Finding on certain disposable gloves produced in Malaysia by Top Glove Corporation because it determined that all indications of forced labor were resolved by remediation payments of \$30 million to workers and improved labor and living conditions at company facilities. 86 [Fed. Reg. 50725](#) (Sept. 10, 2021).

· CBP [trade statistics](#) indicate that it detained 967 shipments with a total value of approximately \$368 million between October 1, 2020, and August 6, 2021, due to the possible use of forced labor.

· In the [Frequently Asked Questions](#) (FAQs) for the Hoshine Silicone Industry Co. Ltd. Withhold Release Order (WRO), CBP has revised its comments on the consideration of de minimis arguments.

· Contact [Sean Murray](#) with questions.

CBP FEE INCREASE

CBP user fees increases go into effect on October 1. These increases include the Merchandise Processing Fee (MPF) and informal entry, manual entry, and dutiable mail fees. The maximum MPF is increasing by \$10.17 to \$538.40 per entry. CSMS #[49296457](#) (Sept. 9, 2021).

EQUIPMENT EXPORT FINE

On August 16, the Bureau of Industry and Security (BIS) announced a [settlement](#) with Dynatex International, an equipment manufacturer accused of providing semiconductor manufacturing accessories to at least two entities in China that were on the BIS Entity List. Dynatex believed that since it was selling accessories to a distributor, it was not violating the regulations even though it knew the accessories were going to companies on the Entity List. Dynatex was fined \$469,060.

FTZ SECTION 301 DUTIES

In a recent [letter](#) to the U.S. Trade Representative, the National Association of Foreign-Trade Zones (NAFTZ) has requested that any de-escalation of Section 301 trade remedy duties should also apply to merchandise admitted to FTZs in Privileged Foreign (PF) status. Currently, the Section 301 duty rate applicable to FTZ merchandise in PF status is the rate in effect at the time of admission and any later Section 301 duty rate reductions would not apply to PF status merchandise entered from an FTZ.

RECONCILING FTZ ENTRIES

Clients are reminded to be mindful of Harbor Maintenance Fees when reconciling Type 06 FTZ entries. The FTZ HMF CBPF 349 submissions and payments are not integrated into the ACE system. Clients should file copies of CBPF 349 and CBPF 350 forms and payment verification with Reconciliations. Contact [Marshall Miller](#) with questions.

FTZ CBP DOCUMENTATION

Clients are urged to carefully review CBP Form 7512s, e214s, Customs entries, and export documentation prepared and filed by third parties. We have seen an increasing volume of errors in FTZ admission, entry, and export documentation, especially involving applicant names, zone status, and origin on e214s.

FTZ BACKGROUND

Clients interested in the FTZ program are encouraged to read an [article](#) by Marshall Miller recently published in the Journal of Commerce that summarizes over 50 years of FTZ developments.

USITC 2020 TRADE REPORT

The U.S. International Trade Commission (ITC) has released a [report](#) on 2020 U.S. trade issues that highlights trade trends during the COVID-19 pandemic, including an overall 9% drop in merchandise trade. The report includes Section 301 cases, U.S. trade preference programs, bilateral trade issues, and interactive charts and graphs on [trade data](#) and industry sectors.

RELIGIOUS ARTICLES

CBP has revoked six rulings and issued HQ H310688 (July 13, 2021), which classifies menorahs as lamps and lighting fittings of Heading 9405 instead of as festive articles of Heading 9505. However, the menorahs may still enter

The Office of the Foreign Assets Control (OFAC) has [announced](#) a \$189,453 settlement with NewTek, Inc. for 52 apparent violations of the Iranian Transactions and Sanctions Regulations. According to the announcement, NewTek sold products to two third-party distributors, one in France and another in Dubai, with knowledge the goods would be re-sold to Iran. NewTek did not have an export control or sanctions compliance program in place during the relevant time period and did not provide training to personnel on export control or sanctions compliance.

VIDEO CAMERAS

The U.S. Court of International Trade (CIT) determined that webcams and conference cameras are classified in Heading 8517 as other apparatus for the transmission or reception of voice, images, or other data, and not in Heading 8525 as television cameras based on a principal use analysis. *Logitech, Inc. v. U.S.*, CIT Slip Op. No. [21-106](#) (Aug. 24, 2021).

FIREARMS UPDATE

The Bureau of Industry and Security (BIS) has issued a Final Rule, effective September 20, that makes relatively minor clarifying changes to the Export Administration Regulations (EAR) relating to the export of firearms and ammunition. [86 Fed. Reg. 46590](#) (Aug. 19, 2021).

RUSSIAN FIREARMS SANCTIONED

Following the poisoning of Aleksey Navalny, OFAC has [imposed sanctions](#) on the import of Russian arms and ammunition and OFAC and the State Department have sanctioned Russian individuals and [entities](#). Other restrictions are being imposed on nuclear and missile-related goods and technology. OFAC also added frequently asked question (FAQ) [920](#) to its list of FAQs relating to Russia and the Ukraine.

RUSSIAN PIPELINE SANCTIONS

On August 20, President Biden announced a new [Executive Order \(EO\)](#) relating to the Protecting Europe's Energy Security Act of 2019 (PEESA). In response to the new EO, OFAC has announced a new General License (GL) [1A](#), new frequently asked questions (FAQs) [919](#), [920](#), and [921](#), and updated FAQ [894](#). [86 Fed. Reg. 47205](#) (Aug. 24, 2021).

BROKER EDUCATION

CBP has issued a Proposed Rule that would, among other things, impose a continuing education requirement of at least 36 hours of continuing education credits per triennial period on customs brokers. Comments are due by November 9, 2021. [86 Fed. Reg. 50794](#) (Sept. 10, 2021).

EXCISE TAX DRAWBACK

The U.S. Court of Appeals for the Federal Circuit (CAFC) has affirmed a decision which invalidated Customs regulations that limited the amount of substitution drawback that can be claimed for excise taxes on imported wine. *The National Assoc. of Manufacturers, the Beer Institute v. Dep't of Treasury*, CAFC Slip Op. No. [20-1734](#) (Aug. 23, 2021).

USMCA AUTO RULES

The Mexican government has [requested](#) formal consultations over the U.S. interpretation of the USMCA auto rules of origin applicable to parts and assemblies incorporated into vehicles. Contact [Brian Murphy](#) with questions.

USED VEHICLES

CBP has issued a notice providing that the shipment of used self-propelled vehicles from the continental U.S. to Puerto Rico is not an export for the purposes of Part 192 of the Customs Regulations since Puerto Rico is within the U.S. Customs Territory, but an Automated Export System (AES) filing is still required for exports over \$2,500. CSMS [#49161237](#) (Aug. 24, 2021).

NUCLEAR PORTAL

On August 17, the Department of Energy announced the launch of a new [portal](#) that provides guidance on exporting nuclear related materials and technology. The portal provides links and helps exporters understand which agency has jurisdiction.

321 PILOT

CBP has announced a two-year extension of its Section 321 de minimis entry data pilot through August 2023. Pilot participants agree to electronically transmit certain data in advance for shipments potentially eligible for release under Section 321. [86 Fed. Reg. 48435](#) (Aug. 30, 2021).

FDA WARNING - IVERMECTIN

The Food and Drug Administration (FDA) has requested the assistance of importers to help stop the importation of the animal drug ivermectin for use in preventing or treating COVID-19. CSMS [#49330998](#) (Sept. 13, 2021).

PIPELINE BOND REQUIREMENTS

CBP has issued guidance to clarify that the movement of imported merchandise through a pipeline must be secured by either an importation and entry bond or a custodial bond. CSMS [#49319147](#) (Aug. 31, 2021).

SUCCULENT EXPORTS

Mr. Byungsu Kim, a South Korean citizen, [pled guilty](#) to attempting to export \$600,000 worth of Dudleya succulent plants without the proper authorization. He had stolen the plants from California state parks. Mr. Kim fled the U.S., but was extradited from South Africa. He now faces up to five years in prison.

RETURNED GOODS

CBP has issued updated guidance on the filing requirements for U.S. and foreign returned goods. For shipments valued over \$2,500, CBP has noted that declarations from the foreign shipper, owner, importer, consignee, or agent may be requested to establish the facts underlying the duty-free claim. CSMS [#49163963](#) (Aug. 24, 2021).

duty free under a secondary classification for religious articles in HTSUS subheading 9817.95.01. 55 Cust. B. & Dec. [8](#) (July 28, 2021).

LACEY ACT

The Animal and Plant Health Inspection Service (APHIS) has announced that implementation of Phase VI of the Lacey Act enforcement schedule begins on October 1. CSMS [#48968987](#) (Aug. 7, 2021).

ISF FILING REQUIREMENTS

The Los Angeles CBP Field Office has issued a reminder of Importer Security Filing (ISF) [requirements](#), and indicated that it will hold non-compliant shipments until ISF filings have been transmitted, hold non-intrusive and/or physical examinations at Centralized Examination Stations, and assess liquidated damages up to \$5,000 per violation

CPSC ACE MESSAGING

The Consumer Product Safety Commission (CPSC) has announced the completion of testing and the commencement of ACE messaging to indicate document review or documents required. CSMS [#49307243](#) (Sept. 8, 2021).

PHARMA ORIGIN

CBP has issued a final determination that pharmaceutical capsules composed of Swiss ingredients shipped to India for encapsulation into dosage form are Swiss-origin for purposes of U.S. government procurement because no substantial transformation occurs in India. [86 Fed. Reg. 50723](#) (Sept. 10, 2021).

DRAWBACK PORTS

Effective September 14, drawback claims submitted in ACE are being routed to designated Centers of Excellence and Expertise (CEE) based on the claimant's industry sector. This is a big change from filing at the designated drawback ports. CBP has issued a chart aligning industry sectors with the managing centers. Contact [Sean Murray](#) with questions. CSMS [#49358330](#) (Sept. 13, 2021).

UNUSED DRAWBACK EXPANSION

CBP has issued a ruling that the oiling of a machine, the fitting of a transformer to adjust electrical voltage, and the uploading of software patches to a machine tool do not constitute manufacturing or use. As a result, such machine tools are eligible for unused manufacturing drawback. HQ [H290897](#) (July 28, 2021).

BROKER EXAM

CBP will offer both a remote proctored and in-person Customs Broker Licensing Exam on October 21, 2021. Registration for the exams closes on September 21. CSMS [#49097074](#) (Aug. 23, 2021).

FTZ STATS
FOREIGN-TRADE ZONES BOARD
ACTIVITY AS OF 09/15/2021

	Approved
Zones	297
Subzones*	871
Pending	
Zones	3
Subzones	12
Misc.	36

*From Fed. Reg. Notices