



STEEL AND ALUMINUM DEAL

- On October 31, the U.S. and EU [reached](#) an agreement in their dispute over the U.S. Section 232 additional duties on steel and aluminum. Beginning January 1, the U.S. agreed to forego Section 232 additional duties on steel (25%) and aluminum (10%) products imported from the EU for the next two years, and will instead impose a tariff-rate quota consistent with historic levels of steel and aluminum imports. In return, the EU will lift its retaliatory tariffs. Contact [Brian Murphy](#) or [Sean Murray](#) with questions.
- The treatment of FTZ admitted merchandise is not yet clear. Contact [Marshall Miller](#) with questions.
- The U.S. and Japan are reportedly negotiating a similar settlement.

DIGITAL SERVICES TAXES

On October 21, the UK, France, Italy, Spain, and Austria [announced](#) revisions to their implementation of Digital Services Taxes (DSTs). The U.S. has [responded](#) by terminating its Section 301 investigations into their DSTs.

CHINA WTO

In a [review](#) of China's trade policy since 2018 at the World Trade Organization (WTO), the U.S., EU, Japan, Britain, Australia, and Canada were critical of Chinese trade policy, citing China's failure to reform its economy consistent with market-based principles as required by China's 2001 WTO accession protocol, and China's labor practices, national security restrictions on trade, and failure to fully notify the WTO of subsidy programs.

CYBERSECURITY CONTROLS

- BIS has published an Interim Final [Rule](#) on export controls relating to cybersecurity items, including National Security (NS) and Anti-terrorism (AT) controls and new license exception Authorized Cybersecurity Exports (ACE), which authorizes exports to most destinations. The rule goes into effect on January 19, 2022. Comments are due by December 6. 86 Fed. Reg. 58205 (Oct. 21, 2021).
- BIS has issued a new Frequently Asked Questions (FAQ) [document](#) on the rule.

CYBER TO ENTITY LIST

BIS has issued a Final Rule that added four companies to the Entity List for engaging in "malicious cyber activities." Two are based in Israel, one in Russia, and one in Singapore. 86 Fed. Reg. [60759](#) (Nov. 4, 2021).

FORCED LABOR

- U.S. Customs and Border Protection (CBP) Executive Assistant Commissioner in the Office of Trade, AnnMarie Highsmith, indicated in public comments that CBP is aware of the complexities of the Withhold Release Orders (WROs) involving Hoshine Silicone Industry and cotton produced in China's Xinjiang region. Ms. Highsmith stated that CBP would attempt to better engage with the trade to facilitate the entry of legitimate merchandise.
- CBP has revised its Hoshine WRO Frequently Asked Questions ([FAQs](#)).
- On October 21, CBP [issued](#) a WRO for tomatoes from Agropecuarios Tom S.A. de C.V., Horitcola Tom S.A. de C.V., and its subsidiaries in Mexico due to the alleged use of forced labor.
- On October 25, Congressman Earl Blumenauer (D-OR) [called](#) on the Biden Administration to take action to prevent the use of forced labor in the Dominican Republic sugar industry.
- On [October 21](#) and [November 4](#), CBP issued WROs for disposable gloves produced by nine companies in Malaysia for the alleged use of forced labor.

HUAWEI AND SMIC LICENSES

According to [information](#) released by the House Foreign Relations Committee on October 21, the Bureau of Industry and Security (BIS) has approved 113 licenses for Huawei valued at \$61 billion and 188 licenses for SMIC valued at \$41 billion, between November 2020 and April 2021. Approximately 70% of license applications for Huawei and over 90% for SMIC were approved. Contact [Sean Murray](#) or [Chuck Ballard](#) with questions or for assistance with a license application.

BIS FDP RULE GUIDANCE

On October 28, BIS issued updated [guidance](#) on the application of the Foreign Direct Product (FDP) Rule to foreign produced items when it is known that they are for certain Entity List entities. The new guidance provides additional comments on product scope, licensing policy, and other issues.

STA LICENSE EXCEPTION

BIS has issued a Proposed Rule that would modify and simplify License Exception STA. Revised wording would clarify that some items in Category 9 qualify for the license exception. A few new restrictions would also be added for Export Control Classification Number (ECCN) 2E003.f, for certain inorganic coatings, and for technologies found in

NEW CUSTOMS MOD ACT

On November 3, Senator Bill Cassidy (R-LA) [circulated](#) a discussion draft of a bill titled the Customs Modernization Act of 2021. The bill's stated aim is to increase CBP's visibility into international supply chains, expand CBP's use of trade data, enhance enforcement, and bring e-commerce companies within the full scope of U.S. customs laws. Specific changes include removing grossly negligent violations of 19 U.S.C. § 1592, altering the threshold for fraudulent violations of § 1592, providing for the summary forfeiture of counterfeit merchandise and merchandise found in violation of the Food, Drug, and Cosmetics Act, expanding record keeping requirements to include e-commerce platforms, and broadening CBP authority to suspend and fine exporters for illegal exports. The discussion draft may turn into a 2022 bill, so clients are encouraged to review and consider comments. Contact [Marshall Miller](#) or [Brian Murphy](#) with questions.

CHINA SECTION 301 LITIGATION

In the litigation challenging China Section 301 Lists 3 and 4A at the U.S. Court of International Trade (CIT), the lead Plaintiffs counsel's reply brief was filed on November 15 to complete briefing on the case. Oral arguments have been scheduled for February 1, 2022. Please contact [Brian Murphy](#) or [Sean Murray](#) with questions.

HTS 2022 CHANGES

Clients should be preparing for the changes to the Harmonized Tariff Schedule (HTS) at the international heading and subheading levels that take effect on January 1, 2022. The 351 amendments to the HTS nomenclature include new provisions for cell therapy products, placebos, clinical trial kits, diagnostics kits, 3D printers, electric vehicles, drones (UAVs), e-waste, and other items. The World Trade Organization (WTO) has posted an [online tool](#) for tracking changes and the U.S. International Trade Commission (ITC) issued a [report](#) on the changes in April 2021. Contact [Brian Murphy](#) or [Sean Murray](#) with questions or for assistance in classifying your products under the new HTS nomenclature.

ITC STUDY

On October 15, the U.S. Trade Representative (USTR) [requested](#) that the International Trade Commission (ITC) launch an investigation into the effects of trade in goods and services

AD/CVD NON-REIMBURSEMENT
Pursuant to the new AD/CVD regulations published on September 21, AD/CVD non-reimbursement certifications now require a link to the relevant entry or entry line numbers. CSMS [#49927834](#) (Oct. 29, 2021).

FCPA \$160 MILLION CHARGE

Honeywell Inc.'s quarterly [10-Q filing](#) indicates a probable loss of at least \$160 million to settle investigations by the U.S. Department of Justice and Brazil over alleged violations of the Foreign Corrupt Practices Act. The investigations relate to Honeywell's use of third parties in connection with a project awarded in 2010.

VENEZUELAN LICENSES

· On October 26, the Office of Foreign Assets Control (OFAC) re-published the various versions of General License (GL) 8, which is now GL 8H. This GL allows the wind-down of operations with PDVSA in Venezuela up to December 1, 2021. [86 Fed. Reg. 59028](#) (Oct. 26, 2021).

· OFAC has published four Venezuela-related general licenses. Three of them - GL 7, GL 7A, and GL 7B - had previously expired. [86 Fed. Reg. 58016](#) (Oct. 20, 2021).

HAPTIC MOTORS

CBP has ruled that haptic motors are classified in Heading 8501 as "electric motors and generators" instead of in Heading 8512 as "a part of electrical lighting or signaling apparatus of a kind used for motor vehicles." CBP determined that the haptic motor transmitted mechanical energy from its electric motor to the intended load, consistent with the Explanatory Notes to Heading 8501. HQ [H311099](#) (Oct. 18, 2021).

COVID FOOD TESTS

On October 25, the U.S. Department of Agriculture [announced](#) that the Hong Kong government has disposed of three food shipments after a year of monitoring and testing food to prevent the spread of COVID-19. The disposed food were shipments of chilled fish from Indonesia that tested positive for COVID-19.

FDA GUIDANCE

On November 5, the Food and Drug Administration (FDA) announced that it was withdrawing the guidance on export certification provided in Section 110.100 of the FDA Compliance Policy Guide because it has issued other guidance on FDA export certifications, including its FDA's August 2021 publication of guidance for industry entitled [FDA Export Certification](#). [86 Fed. Reg. 61279](#) (Nov. 5, 2021).

FDA ACE SUPPORT

The FDA will discontinue ACE support services via telephone beginning January 1, 2022. ACE support team members are to be available by telephone when questions cannot be resolved by email. CSMS [#49963220](#) (Nov. 11, 2021).

ETHIOPIA AND ERITREA

The Directorate of Defense Trade Controls (DDTC) announced on November 1 that it was placing an arms embargo on

on workers and underserved communities.
ECCN 1E001. Comments are due by December 6. [86 Fed. Reg. 58615](#) (Oct. 22, 2021).

TRADE SECRETS THEFT

A former Broadcom engineer has been [indicted](#) for taking trade secrets from Broadcom and providing them to his new employer, a Chinese startup. If convicted, the engineer could face up to 10 years in federal prison. Another former engineer, a Canadian who worked for GE, has been [sentenced](#) to 24 months in prison for taking GE trade secrets and using them with his new company, ThermoGen Power Services. The engineer was also ordered to pay \$1.4 million in restitution to GE.

BCI PROPOSED RULE

BIS has issued a Proposed Rule on brain-computer interface (BCI) technologies. BCI refers to "a direct communication pathway between an enhanced or wired brain and an external device." Comments are due by December 10. [86 Fed. Reg. 59070](#) (Oct. 26, 2021).

ICT SUPPLY CHAIN

BIS conducted a virtual forum on October 29 seeking recommendations to strengthen the resiliency of critical supply chains supporting U.S. information and communications technology (ICT). BIS has released a [transcript](#) of the forum. [86 Fed. Reg. 57806](#) (Oct. 19, 2021).

OFAC VOLUNTARY SOL WAIVER

Mashreqbank PSC, a privately-owned UAE bank, has agreed to pay \$100 million in penalties for violations of the now-repealed Sudanese Sanctions Regulations as part of a global settlement with the New York State Dept. of Financial Services (DFS), the Federal Reserve Board of Governors, and the Office of Foreign Assets Control (OFAC). Notably, OFAC issued a Finding of Violation in lieu of a civil penalty, in part because, even though the bank knew that none of the violations were within OFAC's five-year statute of limitation, it voluntarily entered into a retroactive statute of limitations waiver agreement. Absent this waiver, OFAC would have been time-barred from charging the bank with any of the violations.

SYRIAN FAQs

On November 8, OFAC issued a new Frequently Asked Question (FAQ) on U.S. persons acting on behalf of the U.S. government or the United Nations that relate to Syria "stabilization and early recovery-related efforts."

301 DUTIES WATCHES/CLOCKS

CBP has provided guidance on invoice and entry reporting requirements for watches and clocks composed of both components subject to China Section 301 duties and non-China origin components. China-origin and non-China origin components must be reported on separate entry lines by origin. The invoice and supporting documents must provide sufficient detail to determine value, quantity, HTSUS classification, and country of origin. Clients are reminded this guidance does not alter CBP's long-

RIGHT TO MAKE ENTRY

Clients are reminded that only entities with the "right to make entry" can file Customs entry. CBP has issued a ruling that a wind tower exporter did not possess a sufficient financial interest in the wind towers at the time of importation to establish the right to make entry. CBP distinguished a proposed security interest and delayed payments from rulings involving other post-entry obligations. Contact [Sean Murray](#) with questions. HQ [H312266](#) (Oct. 26, 2021).

AGOA CHANGES

On November 2, USTR [announced](#) that Ethiopia, Mali, and Guinea will be terminated effective January 1, 2022 from African Growth and Opportunity Act (AGOA) benefits unless immediate actions are taken to address the unconstitutional changes in government in Mali and Guinea and human rights abuses in Ethiopia.

NEW DOJ ENFORCEMENT

In prepared comments by Deputy AG Lisa Monaco on October 28, the U.S. Department of Justice (DOJ) [announced](#) three new enforcement initiatives involving corporate criminal investigations: cooperation credit requires the disclosure of all non-privileged information about individuals involved in misconduct, all prior corporate misconduct will be evaluated, and the appointment of independent monitors is no longer an exception. DOJ states that it "will ensure the absence of [compliance] programs inevitably proves a costly omission for companies who end up the focus of [DOJ] investigations."

CPSA ENFORCEMENT

The first corporate criminal enforcement [actions](#) brought under the Consumer Product Safety Act (CPSA) have been resolved under a deferred prosecution agreement. Gree Electric Appliances Inc., headquartered in China, and two of its subsidiaries were charged with failing to notify the CPS Commission that they knew millions of dehumidifiers sold to U.S. consumers were defective and could catch fire. Gree agreed to a penalty of \$91 million, to provide restitution to any uncompensated victims of fires caused by the defective humidifiers, and to improve its compliance programs, including annual status reports to DOJ.

REBREATHER EXPORTS

Two Florida residents were [convicted](#) of attempting to ship rebreather scuba gear to Libya without the required license after being told by Commerce that the equipment required an export license. At least one of them also threatened a government witness. Sentencing is set for January 22, 2022.

FALSE CLAIMS ACT

On October 18, the U.S. Attorney for the Southern District of New York [announced](#) the settlement of a civil fraud lawsuit brought under the False Claims Act against a garment manufacturer for fraudulently underreporting the value of imported

Ethiopia and Eritrea. License applications face a presumption of denial for most exports of defense articles. 86 Fed. Reg. [60165](#) (Nov. 1, 2021).

standing interpretation that, for origin marking purposes, the clock movement determines the origin. CSMS [#50019756](#) (Nov. 2, 2021).

garments to avoid customs duties. The importer has agreed to pay \$50,000

BUYING-SELLING AGENTS

Clients are reminded that Buying Agent fees may not be dutiable while Selling Agent fees are dutiable. The firm can provide legal guidance and documentation for Buying Agent transactions. Contact [Bryan Brown](#) for information.

CREDIT SUISSE FCPA

On October 19, the Securities and Exchange Commission [announced](#) that Credit Suisse had agreed to pay nearly \$475 million to the U.S. and U.K. for violations of the Foreign Corrupt Practices Act (FCPA) resulting from the sale of bonds for the benefit of Mozambique state-owned entities.

NICARAGUA SANCTIONS

On November 10, President Biden signed the "Reinforcing Nicaragua's Adherence to Conditions for Electoral [Reform Act](#) of 2021" (S. 1064) into law. The act imposes sanctions on the Nicaraguan government to restrict multilateral bank lending and to target corruption in President Daniel Ortega's regime.

FTZ STATS

FOREIGN-TRADE ZONES BOARD ACTIVITY AS OF 11/15/2021

	Approved
Zones	297
Subzones*	872
Pending	
Zones	4
Subzones	11
Misc.	34

*From Fed. Reg. Notices